

**BEACHWOOD CITY COUNCIL
LEGAL AND PERSONNEL COMMITTEE MEETING AGENDA
MONDAY, NOVEMBER 11, 2019, 6:00 PM
at BEACHWOOD CITY HALL, CONFERENCE ROOM A,
25325 Fairmount Boulevard, Beachwood, Ohio 44122**

James Pasch
Justin Berns
Brian Linick
Eric Synenberg

Agenda Items

1. Mayor's Report
2. Discussion regarding Professional Services Contracts for 2020 - Tactical Planning and GPD Group
3. Discussion regarding Facilities Usage Agreement Extension
4. Discussion regarding the amendment of BCO Chapter 622 "No Smoking"
5. Discussion regarding Opioid Litigation Certification of Class to include the City of Beachwood, Ohio
6. Any other matters coming before the Legal and Personnel Committee

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CITY OF BEACHWOOD

INTER-OFFICE MEMORANDUM

TO: Legal and Personnel Committee of Council
James Pasch, Chair
Justin Berns
Brian Linick
Eric Synenberg

FROM: Tina Turick, Assistant Administrative Officer 

DATE: November 1, 2019

SUBJECT: Professional Service Contract Proposals 2020
City Planner – George Smerigan
City Engineer – Joseph Ciuni

The Mayor and I met with Law Director Calta, Finance Director Heiser, Accounting Supervisor Forester, Building Commissioner Griswold, City Planner Smerigan and City Engineer Ciuni on several occasions to review our current contracts for Engineering and Planning services to determine how best to move forward in 2020.

The meetings were done in concert with the Building and Zoning fee structure review and the recommendation to City Council for a fee-based schedule eliminating most deposits. In coordination with the change from deposits to fees (October 21st Building and Grounds committee) this was a natural transition.

Currently, the City Engineer and City Planner are required to submit separate invoices for each project so it can be reconciled against the deposit. This results in multiple invoices for multiple projects and is very cumbersome in terms of the handling required for the processing of these invoices. With the aforementioned change in the Building and Zoning fee schedule, this will no longer be necessary.

In addition, the administration reviewed the amounts billed in previous years (based on the hourly rate contracts currently in place) and requested a modified invoicing system using a set monthly fee and has received proposals reflecting this change.

The proposal from Mr. Ciuni separates out the small building items (retainer) from the major engineering of contracts from the Public Works Department projects, which will be handled on an hourly basis as is the current practice.

The proposal from Mr. Smerigan accounts for most planning work to be accomplished under the retainer, with an hourly rate for any work requested outside of the scope of services provided under the retainer.

Enclosed for your review and information is the following:

1. Engineering Services Proposed Contract for 2020

- a. Monthly retainer: \$1,850 per Month (\$22,200 annual retainer)
- b. Hourly rate fee structure for all other services

Note: The attached proposal shows the hourly rate change requested and the rates currently paid.

2. Planning Services Proposed Contract for 2020

- a. Monthly retainer: \$2,400 (\$28,800 annual retainer)
- b. Hourly rate for any work outside of the scope of services provided under the retainer \$120/hour.

Note: Mr. Smerigan's hourly rate for 2019 was \$115/hour.

After careful consideration, we believe the City will benefit moving forward reducing costs associated with the handling of individual invoices by project and that this approach should help streamline the administrative process. The team will be present at the November 11, 2019 committee meeting to answer any questions or to review the content of the 2020 contract proposals. Should we move forward with these "retainer" contracts, language will be included indicating that these gentlemen will remain independent contractors and not City employees.

T.M.T

Cc: Martin S. Horwitz, Mayor
Diane Calta, Law Director
Larry Heiser, Finance Director
William Griswold, Building Commissioner
Robert Forester, Accounting Supervisor
George Smerigan, City Planner
Joseph R. Ciuni, City Engineer

Enclosure: Tactical Planning 2020 Proposal
GPD City Engineering 2020 Proposal

CONTRACT WITH GLAUS, PYLE, SCHOMER, BURNS AND DEHAVEN, INC. DBA GPD GROUP FOR CONSULTING ENGINEERING SERVICES FOR THE CITY OF BEACHWOOD, OHIO FOR 2020

This Contract is entered into by and between Glaus, Pyle, Schomer, Burns and Dehaven, Inc. DBA GPD Group located at 5595 Transportation Boulevard, Suite 100, Cleveland, Ohio 44125, ("Contractor") and the CITY OF BEACHWOOD, OHIO located at 25325 Fairmount Boulevard, Beachwood, Ohio 44122 ("City");

WITNESSETH, that in consideration of the Contractor being selected by City Council as the City's Consulting Engineer for the City of Beachwood for 2020, and for the money considerations provided herein, the parties covenant and agree as follows:

1.) (a) For all engineering services, not included in the City's retainer services, compensation shall be made on the basis of time spent by the City Consulting Engineer or his employees at the rates set forth in the following schedule of hourly rates, plus expenses and supplies, subject to the limitations set forth hereafter:

Project Manager (E5-6)	\$109.00
Senior Engineer (E4)	\$100.00
Design Engineer (E2-3)	\$ 92.50
Staff Engineer (E-1)	\$ 85.00
Senior Architect	\$100.00
Design Architect	\$ 94.00
Sr. Landscape Architect	\$100.00
Landscape Architect	\$ 88.00
Senior Designer (D2)	\$ 78.50
Staff Designer (D1)	\$ 65.00
Cad Drafter (Cad 1-3)	\$ 71.00
Eng.Arch. Intern/Coop	\$ 55.00
Inspector	\$ 57.00
Inspector Overtime	\$ 84.00
Inspector Coordinator	\$ 75.00
Sr. Environmental Specialist	\$ 105.00
Environmental Specialist	\$ 78.00
Survey Project Manager	\$100.00
Sr. Surveyor	\$ 95.00
Surveyor	\$ 90.00
Sr. Survey Technician	\$ 65.00
Survey Technician	\$ 55.00

(b) For all engineering services identified as retainer services and as outlined in Attachment "A", a copy of which is attached hereto and incorporated herein, at Section A, the Contractor shall be compensated at a monthly rate of One Thousand Eight Hundred and Fifty Dollars (\$1,850.00) per month.

2.) The Contractor may be assigned Engineering work by the Mayor, or Department Directors. The Contractor shall not begin any work until it has submitted a letter to the Mayor, with a copy to the Department Director or Chairman of any legislative body assigning such

work, clearly defining the scope of the engineering work accepted by the Contractor that will be the subject of later billing, and a purchase order is issued by the City for such work.

3.) There shall be no charge for out-of-town travel expenses unless such travel is approved by the Mayor in advance. The Contractor shall, on a monthly basis, provide the Mayor and Finance Director with a detailed invoices including a written accounting of all time spent by any representative of the Contractor. Such invoices shall include an itemization of time spent on City matters, a description of the work performed, and an identification of the person performing the work.

4.) The Contractor shall accept no other work within the City from private employers. The Contractor shall avoid all conflicts of interest.

5.) All original plans, drawings, specifications, surveys, reports and other miscellaneous drawings shall be delivered to the City immediately upon completion.

6.) This Contract shall be effective for the period of January 1, 2020 through December 31, 2020, unless canceled in accordance with Section 19.

7.) The City reserves the right to audit all books, time records, invoices, and other documents of the Contractor that relate to any invoices billed to the City of Beachwood, for a period of two (2) years after any such invoice is submitted. The Contractor shall maintain adequate documentation for at least two (2) years to enable the City to conduct such audit.

8.) The Contractor is an independent contractor who shall provide all equipment materials and labor necessary to perform the work. The Contractor shall be responsible for arranging for workers' compensation coverage for its employees, and shall deliver to the City a copy of a certificate showing compliance with such laws. The Contractor further agrees to file an income tax return with R.I.T.A. in accordance with municipal tax laws.

9.) The City shall be entitled to cancel this Contract upon giving five (5) days written notice to the Contractor for failure of the Contractor to comply with any of the provisions of this contract or to furnish satisfactory work in connection with the required services. The Contractor will perform all work in accordance with all Federal, State and local laws and regulations governing such services, including but not limited to equal employment opportunity laws and prevailing wage rates, where applicable. Contractor shall certify compliance with all applicable laws.

10.) Contractor shall provide the work without any sub-contractors, and shall provide proper supervision and supervisory personnel in connection with all of the work.

11.) The Contractor shall furnish the City with evidence of (a) general liability insurance and (b) errors and omissions or professional liability insurance from a company licensed by the State of Ohio, both of which shall be in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) for any accidental occurrence or error or omission arising out of any act or omission by the Contractor which causes bodily harm, property damage, or any other damages, and shall cause the City to be named as an additional insured on the general liability policies. The Contractor agrees to fully defend, indemnify and hold the City harmless from any and all claims, demands or causes of action for personal injury, property damage or otherwise

arising from the work and services provided, and whether involving employee claims or third party claims.

12.) Findings for Recovery Certification: Ohio law prohibits any state agency or political subdivision from awarding a contract, in excess of twenty-five thousand dollars (\$25,000.00), for goods, services, or construction to any person against whom a finding of recovery has been issued by the Auditor of State, if that finding is unresolved. Contractor certifies that an unresolved finding for recovery has not been issued against Contractor and attached is a completed Findings for Recovery Certification.

13.) This Contract shall be deemed made and entered into in the State of Ohio and shall be governed by and construed in accordance with the laws of Ohio and the laws of the United States in that order. Any controversy or claim, whether based upon contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Contract, whether between the parties, or of either of the parties' employees, agents or affiliated businesses, will be resolved in the appropriate court in Cuyahoga County, Ohio.

14.) Contractor acknowledges that no modifications can be made to this Contract without prior written consent and prior approval by the City.

15.) Contractor agrees and acknowledges that records created by, received by, or maintained by Contractor during the term of this Agreement and in the performance of the required services may be a public record and agrees to maintain such records in a manner that is consistent with the City's public records policy and records retention policy. All responses to public records requests shall be processed by the City's Law Department.

16.) It shall be the responsibility of Contractor to obtain a copy of the purchase order issued by the City for the approved amount of work being performed under this Contract. Furthermore, it shall be the responsibility of Contractor to track remaining funds available and to not invoice the City for any amounts not approved by the issued purchase order and the terms of this Contract. Any alterations to this Contract shall conform to BCO 121.09(a). Invoices that exceed the approved amount of an issued purchase order or the terms of this Contract will not be paid by the City.

17.) This Contract represents the entire agreement between the parties, will be governed by the laws of the State of Ohio, and shall be binding upon both parties. This Contract cannot be assigned by the Contractor without the prior written permission of the City.

18.) This Contract may be executed by electronic mail, facsimile or in counterparts, each of which shall be deemed an original and all of which shall be deemed to be one and the same instrument.

19.) Both the City and the Contractor may terminate this Contractor by giving a thirty (30) day written notice to the other party.

IN WITNESS WHEREOF, the parties have set their hand to this Contract on the dates next to their respective signatures.

GLAUS, PYLE, SCHOMER, BURNS AND
DEHAVEN, INC. DBA GPD GROUP

CITY OF BEACHWOOD

By: _____

By: _____

Martin S. Horwitz, Mayor

Its: _____

Date: _____

Date: _____

Approved as to Form:

City Law Department
Diane A. Calta, Law Director
Nathalie E. Supler, Assistant Law Director
25325 Fairmount Boulevard
Beachwood, Ohio 44122
(216) 595-5462

CERTIFICATE OF THE DIRECTOR OF FINANCE

To the Mayor/Director of Public Safety:

I hereby certify that the amount required to meet the City's obligations under this Contract has been lawfully appropriated and is in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrance.

Larry Heiser
Director of Finance
Date: _____

FINDINGS FOR RECOVERY CERTIFICATION

I am aware that Ohio law, under certain circumstances, prohibits a political subdivision from awarding a contract for goods, services or construction to any person against whom a finding of recovery has been issued by the Auditor of State, if that finding is unresolved. I hereby certify that an unresolved finding for recovery has not been issued against GLAUS, PYLE, SCHOMER, BURNS AND DEHAVEN, INC. DBA GPD GROUP.

SIGNATURE

PRINTED NAME

TITLE

DATE

ATTACHMENT A

**CITY OF BEACHWOOD
CITY ENGINEER
SCOPE OF SERVICES**

A. Retainer Services (Building Department):

The Services rendered as a part of our monthly retainer shall include the following:

- (a) Act as a technical consultant and advisor on engineering matters referred to ENGINEER by the Mayor or Building Commissioner.
- (b) Attend regular and special meetings of the City Planning and Zoning Commission.
- (c) Attend city Council Meetings, only if requested by the Mayor, for the purpose of discussing the items that were recommended for approval by Planning and Zoning Commission to City Council.
- (d) Attend regular and special internal staff meetings to discuss the pending Agenda items on the next Planning and Zoning Commission meeting.
- (e) As requested by the Building Commissioner, meet with applicants, builders, design professionals and owners to review and discuss their project and related matters.
- (f) Site Plan reviews for Planning and Zoning Commission approval for all projects with a construction cost less than \$250,000.
- (g) Miscellaneous reviews for Planning and Zoning Commission approval including: Lot Split and Consolidation Plats, building additions, house additions, minor site plan modifications, parking lot expansions, and any

property modifications that involves grading, filling, utility or drainage improvements.

- (h) Review new House Topography plans and provide final inspection of the site prior to issuance of an occupancy permit.
- (i) Review and approve all street opening permits and provide final inspection prior to final acceptance. Perform all follow-up correspondence for corrective work as needed.
- (j) Serve as liaison with utility companies for project coordination, data collection, transfer and relocation schedules.
- (k) Update City Maps including:
 - a. Zoning Map
 - b. Address map
 - c. Flood Plain Map
 - d. Street Map

B. Additional Services

Any additional tasks will be performed on an hourly basis utilizing the approved hourly rate table. These tasks may include, but not limited to:

- (a) Site Plan reviews for projects with a construction cost over \$250,000.
- (b) Daily inspection of any project that was approved in section "A" above. Final inspection prior to occupancy permit is included in section "A", however daily inspection will be invoiced on an hourly basis.

- (c) Any special studies requested by the Mayor, Building Commissioner and/or Planning and Zoning Commission. These studies could include:
 - a. Traffic Studies.
 - b. Hydraulic Studies/Sewer Capacity Studies
 - c. Water Supply Studies
- (d) Printing of City Maps for display purposes. These printing costs will be strictly a "pass through" from the printing company with no GPD mark up.

C. Compensation:

For Services described in Section "A" above, the Engineer shall be compensated on a monthly basis. Total yearly compensation for 2020 shall be \$22,200. This payment shall be invoiced monthly at a rate of \$1,850 per month.



5595 Transportation Boulevard, Suite 100
Cleveland, Ohio 44125

Phone 216.518.5544
www.gpdgroup.com

Mr. Martin S. Horwitz
Mayor
City of Beachwood
25325 Fairmount Boulevard
Beachwood, OH 44122

October 9, 2019
20191119.01

RE: City Engineering Services – Year 2020

Dear Mayor Horwitz:

For 2020, the City has requested a modified invoicing system for most of the small Building Department plan reviews and meeting attendance. GPD will now be compensated under a "retainer fee" for these services, as described in Attachment "A" of our contract. The proposed "retainer fee" will be a monthly fee of \$1,850 per month.

For all other services provided (and not included in the monthly "retainer fee") the rates listed below will apply in the year 2020. Please note: In order to make our invoicing more standard company wide, we have removed and added some disciplines (see below). We have also added hourly rates and fixed costs for our Geotechnical Engineering services that we now offer, should the City choose to utilize them.

SCHEDULE OF HOURLY RATES

<u>Discipline</u>	<u>Jan. 1, 2018 to Dec. 31, 2019</u>	<u>Jan. 1, 2020 to Dec. 31, 2020</u>	<u>% Increase</u>
Project Manager (E5-6)	\$107.00	\$109.00	1.80%
Senior Engineer (E4)	\$97.50	\$100.00	2.50%
Design Engineer (E2-3)	\$92.50	\$92.50	2.78%
Staff Engineer (E1)	\$83.50	\$85.00	1.80%
Senior Architect	\$93.50	\$100.00	6.50%
Design Architect	\$90.00	\$94.00	4.30%
Sr. Landscape Architect	N/A	\$100.00	Added
Landscape Architect	N/A	\$88.00	Added
Senior Designer (D2)	\$77.00	\$78.50	1.90%
Staff Designer (D1)	\$65.00	\$65.00	0.00%

Cad Drafter (Cad 1-3)	\$71.00	\$71.00	0.00%
Eng./Arch. Intern/Coop	N/a	\$55.00	Added
Inspector	\$56.00	\$57.00	1.00%
Inspector Overtime	\$83.00	\$84.00	1.20%
Inspector Coordinator	\$74.00	\$75.00	1.30%
Professional Surveyor	\$87.00	\$0.00	Removed
Survey Coordinator	\$71.00	\$0.00	Removed
Two Man Survey Crew	\$117.00	\$0.00	Removed
One Man Survey Crew w/ Robotic Instrument	\$90.50	\$0.00	Removed
Sr. Environmental Specialist	N/A	\$105.00	Added
Environmental Specialist	\$77.00	\$78.00	1.90%
Survey Project Manager	N/A	\$100.00	Added
Sr. Surveyor	N/A	\$95.00	Added
Surveyor	N/A	\$90.00	Added
Sr. Survey Technician	N/A	\$65.00	Added
Survey Technician	N/A	\$55.00	Added

Average Increase = 2%

Below are the disciplines for the Geotechnical Services offered by GPD:

Geotech Project Manager	\$115.00
Drill/Field Manager	\$ 90.00
Sr. Driller & Field & Lab Tech	\$ 80.00
Driller & Field & Lab Tech	\$ 67.00
Asst. Driller & Field & Lab Tech	\$ 53.00

Geotech Field Supplies and Fixed Costs

Mortar Cubes	\$11.00/each
Grout Prisms	\$21.50/each
Concrete Test Cylinders	\$15.50/each
Concrete Test Beams	\$45.00/each
Drill Rig	\$500.00/day
Floor Flatness Gauge	\$115.00/day
Nuclear Density Gauge	\$60.00/day

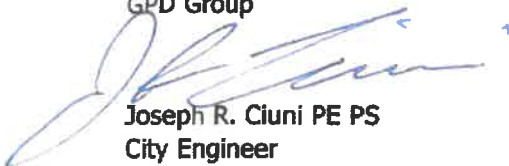
As has been our past practice, we will submit a proposal for each assigned task over \$2,500 in fee, based on the above Schedule of Hourly Rates and we will not begin work until a PO has been assigned.

As required in our contract we will provide by the end of the year a list of personnel in our firm that will potentially work on the municipal projects. We have also enclosed their level of classification and a description of the minimum requirements at each level (i.e. Engineer 1 through 6, Designer 1 and 2 etc.).

The above rates include all payroll costs, overhead, non-reimbursable expenses, profit etc. Printing and copying that is performed by outside vendors (because our in house equipment is not sufficient) will be invoiced at cost, with no mark-up.

Thank you for your continued confidence in GPD. If you have any questions please call.

Sincerely,
GPD Group



Joseph R. Ciuni PE PS
City Engineer

cc. Contract File

CONTRACT WITH TACTICAL PLANNING, LLC. TO PROVIDE PROFESSIONAL PLANNING SERVICES FOR THE CITY OF BEACHWOOD IN 2020

This Contract is entered into by and between GEORGE SMERIGAN, of the firm TACTICAL PLANNING, LLC., whose address is P.O. Box 3163, Cuyahoga Falls, Ohio 44223, ("Planner" or "Contractor") and the CITY OF BEACHWOOD, OHIO 25325 Fairmount Boulevard, Beachwood, Ohio 44122 ("City");

WITNESSETH, that in consideration of the Contractor being selected by City Council as the City's Professional Planning Consultant to render various services for the City for 2020 and for the money considerations provided herein, the parties covenant and agree as follows:

A. Scope of Services

As a Professional Planner and Consultant for the City during 2020, Contractor shall provide the following services ("Services"):

- 1) Attend regular and special meetings of the City's Planning and Zoning Commission;
- 2) Provide plan reviews and staff reports on Planning and Zoning Commission agenda items;
- 3) Attend regular and special meetings of the City's Architectural Review Board;
- 4) Attend such meetings of Council and/or Council Committees as are requested by the Mayor;
- 5) Attend internal meetings to review and discuss pending items; and
- 6) Meet with applicants, developers, builders, design professionals, residents, and business owners as necessary to review and discuss development projects, zoning issues, and related matters.

It is further understood that Services will also include any other related routine services, but not additional, special, or extraordinary services such as special projects, special requests, litigation services, and drafting of major ordinances or plan updates ("Additional Services"). The Contractor may be assigned such additional planning work by the Mayor, Council, or the Planning & Zoning Commission. The Contractor shall not begin any such work until it has submitted a letter to the Mayor, with a copy to the Chairman of any legislative body assigning such work, clearly defining the scope of the planning work accepted by the Contractor that will be the subject of later billing, and a purchase order is issued by the City for such work. It is intended that the fees for such additional services will be billed separately as Additional Services as provided herein.

B. Compensation

- 1) For services described in Section A hereof during calendar year 2020, the City shall compensate the Consultant based upon a lump sum retainer fee on an annualized basis of Twenty-Eight Thousand Eight Hundred Dollars (\$28,800.00) per year. Payments shall be made monthly in the amount of Two Thousand Four Hundred Dollars (\$2,400.00) at the beginning of each month.
- 2) Payments for Additional Services as defined in Section A shall be provided on an hourly rate basis at the rate of One Hundred Twenty Dollars (\$120.00) per hour and/or at the City's option upon a negotiated and mutually agreeable fixed fee amount.

- 3) Any reimbursable expenses incurred shall be in addition to regular compensation. Reimbursable expenses shall not be accrued without prior written authorization by the City and shall be paid monthly based upon reasonable documentation.
- 4) There shall be no charge for out-of-town travel expenses unless such travel is approved by the Mayor in advance. The Contractor shall, on a monthly basis, provide the Mayor and Finance Director with a written accounting of all time spent by any representative of the Contractor. Such accounting shall include an itemization of time spent on City matters, a description of the work performed, and an identification of the person performing the work.

C. City Responsibilities

The City shall provide the Consultant, at no cost, suitable work space for office hours and meetings while at City Hall.

D. General Provisions

- 1) The Contractor shall accept no other work within the City from private employers. The Contractor shall avoid all conflicts of interest.
- 2) All original plans, drawings, specifications, surveys, reports and other miscellaneous drawings shall be delivered to the City immediately upon completion.
- 3) This Contract shall effective for the period of January 1, 2020 through December 31, 2020, unless canceled in accordance with Section D (6).
- 4) The City reserves the right to audit all books, time records, invoices, and other documents of the Contractor that relate to any invoices billed to the City of Beachwood, for a period of two (2) years after any such invoice is submitted. The Contractor shall maintain adequate documentation for at least two (2) years to enable the City to conduct such audit.
- 5) The Contractor is an independent contractor who shall provide all equipment materials and labor necessary to perform the work. The Contractor shall be responsible for arranging for workers' compensation coverage for its employees, and shall deliver to the City a copy of a certificate showing compliance with such laws. The Contractor further agrees to file an income tax return with R.I.T.A. in accordance with municipal tax law.
- 6) The City shall be entitled to cancel this Contract upon giving five (5) days written notice to the Contractor for failure of the Contractor to comply with any of the provisions of this contract or to furnish satisfactory work in connection with the required services. The Contractor will perform all work in accordance with all Federal, State and local laws and regulations governing such services, including but not limited to equal employment opportunity laws and prevailing wage rates, where applicable. Contractor shall certify compliance with all applicable laws.
- 7) Contractor shall provide the work without any sub-contractors, and shall provide proper supervision and supervisory personnel in connection with all of the work.

8) The Contractor shall furnish the City with evidence of (a) general liability insurance and (b) errors and omissions or professional liability insurance from a company licensed by the State of Ohio, both of which shall be in the amount of Two Hundred Fifty Thousand (\$250,000.00) for any accidental occurrence or error or omission arising out of any act or omission by the Contractor which causes bodily harm, property damage, or any other damages, and shall cause the City to be named as an additional insured on the general liability policies. The Contractor agrees to fully defend, indemnify and hold the City harmless from any and all claims, demands or causes of action for personal injury, property damage or otherwise arising from the work and services provided, and whether involving employee claims or third party claims.

9) Findings for Recovery Certification: Ohio law prohibits any state agency or political subdivision from awarding a contract, in excess of twenty-five thousand dollars (\$25,000.00), for goods, services, or construction to any person against whom a finding of recovery has been issued by the Auditor of State, if that finding is unresolved. Contractor certifies that an unresolved finding for recovery has not been issued against Contractor and attached is a completed Findings For Recovery Certification.

10) This Contract shall be deemed made and entered into in the State of Ohio and shall be governed by and construed in accordance with the laws of Ohio and the laws of the United States in that order. Any controversy or claim, whether based upon Contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Contract, whether between the parties, or of either of the parties' employees, agents or affiliated businesses, will be resolved in the appropriate court in Cuyahoga County, Ohio.

11) Contractor acknowledges that no modifications can be made to this Contract without prior written consent and prior approval by the City.

12) Contractor agrees and acknowledges that records created by, received by, or maintained by Contractor during the term of this Agreement and in the performance of the required services may be a public record and agrees to maintain such records in a manner that is consistent with the City's public records policy and records retention policy. All responses to public records requests shall be processed by the City's Law Department.

13) This Contract represents the entire agreement between the parties, will be governed by the laws of the State of Ohio, and shall be binding upon both parties. This Contract cannot be assigned by the Contractor without the prior written permission of the City.

14) It shall be the responsibility of the Contractor to obtain a copy of the purchase order issued by the City for the approved amount of the Services or Additional Services being performed. Furthermore, it shall be the responsibility of the Contractor to track remaining funds available and not to invoice the City for any amounts not approved by the terms of the issued purchase order and the terms of this Contract. Any alteration to this Agreement shall conform to BCO 121.09(a). Invoices that exceed the approved amount of an issued purchase order or the terms of this Agreement will not be paid by the City.

15) This Contract may be executed by electronic mail, facsimile or in counterparts, each of which shall be deemed an original and all of which shall be deemed to be one and the same instrument.

16) Both the City and the Contractor may terminate this Contractor by giving a thirty (30) day written notice to the other party.

TACTICAL PLANNING, LLC.
GEORGE SMERIGAN

CITY OF BEACHWOOD

By: _____

By: _____

Martin S. Horwitz, Mayor

Its: _____

Date: _____

Date: _____

Approved as to Form:

City Law Department
Diane A. Calta, Law Director
Nathalie E. Supler, Assistant Law Director
25325 Fairmount Boulevard
Beachwood, Ohio 44122
(216) 595-5462

CERTIFICATE OF THE DIRECTOR OF FINANCE

To the Mayor/Director of Public Safety:

I hereby certify that the amount required to meet the City's obligations under this Contract has been lawfully appropriated and is in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrance.

Larry Heiser
Director of Finance
Date: _____

FINDINGS FOR RECOVERY CERTIFICATION

I am aware that Ohio law, under certain circumstances, prohibits a political subdivision from awarding a contract for goods, services or construction to any person against whom a finding of recovery has been issued by the Auditor of State, if that finding is unresolved. I hereby certify that an unresolved finding for recovery has not been issued against Tactical Planning, LLC.

SIGNATURE

PRINTED NAME

TITLE

DATE

INTRODUCED BY:

ORDINANCE NO. 2019-

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A SIX (6) MONTH EXTENSION TO THE FACILITIES USAGE AGREEMENT BETWEEN THE CITY OF BEACHWOOD AND THE BOARD OF EDUCATION OF THE BEACHWOOD CITY SCHOOL DISTRICT COMMENCING JANUARY 1, 2020 AND EXPIRING ON JUNE 30, 2020; AND DECLARING THIS TO BE AN URGENT MEASURE

WHEREAS, the City and the Beachwood Board of Education operate numerous recreation programs; and

WHEREAS, the City has historically used the Beachwood Board of Education's facilities, including the buildings and fields for such programs; and

WHEREAS, the City and the Beachwood Board of Education have, over the years, entered into various Facilities Usage Agreements establishing the terms and conditions of such usage; and

WHEREAS, the current Facilities Usage Agreement began on January 1, 2017 and is set to expire on December 31, 2019; and

WHEREAS, this Council desires to authorize the Mayor to extend the current Facilities Usage Agreement for six (6) months at the 2019 monthly installment rate of Thirty-One Thousand Eight Hundred and Seventy One Dollars and 20/100 Cents (\$31,871.20), plus any fees that may be due under the terms of the current Facilities Usage Agreement during the six (6) month extension term.

WHEREAS, NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Beachwood, County of Cuyahoga, and State of Ohio, that:

Section 1: The Mayor of the City of Beachwood, Ohio is hereby authorized and directed to enter into an extension to the current Facilities Usage Agreement between the City and the Beachwood Board of Education for six (6) months at the 2019 monthly installment rate of Thirty-One Thousand Eight Hundred and Seventy One Dollars and 20/100 Cents (\$31,871.20) , plus any fees that may be due under the terms of the current Facilities Usage Agreement during the six (6) month extension term.

Section 2: It is found and determined that all formal actions and deliberations of Council and its committees relating to the passage of this legislation that resulted in formal action were in meetings open to the public where required by Chapter 105 of the Codified Ordinances of the City.

Section 3: This Ordinance is hereby declared to be an urgent measure necessary for the immediate preservation of the public peace, health, or safety, or the efficient operation of the City, and for the further reason of the immediate necessity of assuring the City uninterrupted use of the School's recreation facilities through June 30, 2020; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

WHEREFORE, this Ordinance shall be in full force and effect from and after the earliest date permitted by law.

Attest: I hereby certify this legislation was duly adopted on the ____ day of November, 2019, and presented to the Mayor for approval or rejection in accordance with

Article III, Section 8 of the Charter on the ____ day of November, 2019.

Clerk

Approval:

I have approved this legislation this ____ day of November, 2019, and filed it with the Clerk.

Mayor

AMENDMENT TO
FACILITIES USAGE AGREEMENT
BETWEEN
CITY OF BEACHWOOD
AND
BEACHWOOD CITY SCHOOL DISTRICT BOARD OF EDUCATION

THIS AMENDMENT to the FACILITIES USAGE AGREEMENT is made and entered into this ____ day of _____, 2019, by and between the BOARD OF EDUCATION OF THE BEACHWOOD CITY SCHOOL DISTRICT, whose address is 24601 Fairmount Boulevard, Beachwood, Ohio 44122 (hereinafter referred to as "District" or "Board") and the CITY OF BEACHWOOD, OHIO whose address is 25325 Fairmount Boulevard, Beachwood, Ohio 44122 (hereinafter referred to as "City").

WHEREAS, the District and City previously entered into a Facilities Usage Agreement dated December 6, 2016 that provided for a term of three (3) years commencing on January 1, 2017 and expiring December 31, 2019; and

WHEREAS, the Facilities Usage Agreement provides for the term of the agreement to be extended by mutual agreement of the parties; and

WHEREAS, the District and City mutually desire to extend the term of the Facilities Usage Agreement for six (6) months from January 1, 2020 through June 30, 2020.

NOW THEREFORE, BE IT AGREED by the Council of the City of Beachwood and the Board of Education of the Beachwood City School District, that:

1. The parties hereby expressly agree to extend the term of the Facilities Usage Agreement for six (6) months from January 1, 2020 through June 30, 2020 in accordance with Section 4.00 of the Facilities Usage Agreement at the 2019 monthly installment rate of Thirty-One Thousand Eight Hundred and Seventy One Dollars and 20/100 Cents (\$31,871.20), plus any fees that may be due under the terms of the current Facilities Usage Agreement during the six (6) month extension term.

2. This Amendment amends the Facilities Usage Agreement with respect to Section 4.00 Term of Agreement only and all of the other terms, conditions and provisions in the Facilities Usage Agreement are unchanged, incorporated herein and shall remain in full force and effect.

IN WITNESS HEREOF, the parties hereto have set their hands to duplicates thereof, each copy of which shall be deemed an original.

BOARD OF EDUCATION OF THE
BEACHWOOD CITY SCHOOL DISTRICT

CITY OF BEACHWOOD

By: _____
Dr. Brian Weiss, President

By: _____
Mayor Martin S. Horwitz

By: _____
Michele E. Mills, Treasurer

Approved for Form:

Diane A. Calta, Law Director
Beachwood Law Department

STATE OF OHIO)
) SS: Beachwood City School District
CUYAHOGA COUNTY)

Before me, a Notary Public in and for said county and state, personally appeared the above named Dr. Brian Weiss, President, Robert P. Hardis, Superintendent and Michele Mills, Treasurer of the Beachwood City School District Board of Education, the authorized persons who executed the foregoing Agreement, who acknowledged that they did sign the foregoing Agreement in their official capacities on behalf to the Board of Education and by authority of the Board of Education, and that said Agreement is their respective free acts and deed individually and officially and the free act and deed of the Board of Education.

SWORN to before me and subscribed in my presence this _____ day of _____, 2019.

Notary Public

STATE OF OHIO)
) SS: City of Beachwood
CUYAHOGA COUNTY)

Before me, a Notary Public in and for said county and state, personally appeared the above named Martin S. Horwitz, Mayor of the City of Beachwood, an Ohio chartered city which executed the foregoing Agreement, who acknowledged that he did sign the foregoing Agreement as such officer in behalf of said City and by authority of its City Council, and that said Agreement is his free act and deed individually and the free act and deed of said City

SWORN to before me and subscribed in my presence this _____ day of _____, 2019.

Notary Public

Beachwood, OH Code of Ordinances

CHAPTER 622

No Smoking

- 622.01 Intent.**
- 622.02 Definitions.**
- 622.03 Restrictions on smoking in public places.**
- 622.04 Violations.**
- 622.05 Enforcement.**
- 622.06 Remedies.**

CROSS REFERENCES

Smoking Ban- See Ohio R.C. 3794
Nonsmoking areas provided - see Ohio R.C. 3791.031
Outdoor air pollution - see, F.P. 1503.09, 1511
Air conditioning- see BLDG. Ch. 1311

622.01 INTENT.

Council intends that the restrictions and limitations of this chapter shall be viewed as standards prohibiting smoking in City buildings and on City property on top of the existing restrictions implemented by the state of Ohio in Ohio R.C. 3794. It is not the intent of Council to prohibit smoking or the sale of tobacco products, but rather to affirm the right of nonsmokers to breathe clean air and to protect persons and property.

622.02 DEFINITIONS.

As used in this chapter:

- (a) "Electronic Cigarette" means any electronic product or device that produces a vapor that delivers nicotine or any other substance to the person inhaling from the device to simulate smoking and is likely to be offered to or purchased by consumers as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or vaporizer.
- (b) "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted smoking device for burning tobacco or any other plant.
- (c) "Smoking material" means any cigar, cigarette, pipe, marijuana, plant, electronic cigarette, or any other smoking equipment.

622.03 RESTRICTIONS ON SMOKING IN PUBLIC PLACES.

Smoking Prohibited. Smoking and/or the possession of lighted smoking materials in any form is prohibited in

buildings and enclosed structures owned, leased or operated by the City and on any property owned, leased or operated by the City. This includes the Beachwood City Park, Beachwood Family Aquatic Center Complex and the Barkwood Dog Park and all areas within those facilities such as trails, but does not include parking lots.

622.04 VIOLATIONS.

- (a) No person shall smoke and/or be in the possession of any smoking materials in any area restricted by this chapter.
- (b) Whoever violates any of the provisions of this section is guilty of a misdemeanor of the fourth degree. Punishment shall be as provided in Section 698.02. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

DRAFT

NPO Litigation
PO Box 6727
Portland, OR 97228-6727



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Chief Legal Officer
CITY OF BEACHWOOD
25325 FAIRMOUNT BLVD
BEACHWOOD OH 44122-1799

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**CLASS ACTION NOTICE AND FREQUENTLY ASKED
QUESTIONS (“FAQs”)**

**To: All U.S. Counties, Cities, and Local Governments as
listed at www.OpioidsNegotiationClass.info**

A court authorized this notice. This is not a solicitation from a lawyer.

- Counties and cities across the country have sued manufacturers, distributors, and retailers of prescription opiate drugs seeking, among other things, reimbursement for monies spent addressing the opioid crisis. All federal actions have been centralized into one court in Ohio and are entitled, In re: National Prescription Opiate Litigation, MDL No. 2804 (N.D. Ohio). Additional cases are pending in state courts.
- The Court in In re: National Prescription Opiate Litigation has certified a voluntary “Negotiation Class” (“Class”). The Class is defined as: **all counties, parishes, and boroughs (collectively, “counties”); and all incorporated places, including without limitation cities, towns, townships, villages, and municipalities (collectively “cities”)**. The Class includes all counties and cities, whether they have filed a lawsuit or not. The complete current list of Class Members is available at the Class website: www.OpioidsNegotiationClass.info. This list may be updated as the Court may order.
- **NO SETTLEMENT HAS BEEN REACHED. HOWEVER, IF YOUR COUNTY OR CITY STAYS IN THE CLASS**, it will be bound if a Class settlement is approved in the future. Your county or city will likely **NOT** be provided another opportunity to be excluded from this Class action, so you should read this notice carefully and consult with your counsel regarding your county or city’s rights.
- The Court has certified two Racketeer Influenced and Corrupt Organizations Act (“RICO”) claims under Rule 23(b)(3) and two Controlled Substances Act (“CSA”) issues under Rule 23(c)(4). (see FAQ 7). The Class is certified solely to consider and vote on any future settlement offers made to the Class by one or more of 13 defendants (see FAQ 5). The purposes of the Class are (a) to unify cities and counties into a single negotiating entity to maximize their bargaining power and (b) to provide finality to opioids litigation for any settling Defendant.
- This Negotiation Class will not decide any claims or defenses in opioids litigation on the merits. It is certified as a Negotiation Class only, to facilitate Class Members’ approval or rejection of proposed settlements. There are no proposed settlements at this time, and no guarantee that there will be in the future. **However, your legal rights are affected and it is recommended that you consult with counsel regarding the choice you have to make now.**



YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

STAY IN THE CLASS REQUIRES NO ACTION	Stay in the Class. Await the negotiation outcome, but retain the right to pursue your own lawsuit in the meantime. Give up certain rights if a Class settlement is reached and approved by the Class and Court, but get a share of any Class settlement. By taking no action in response to this Notice, you remain in the Class. As a Class Member, you will still retain your right to pursue your own case unless and until any possible Class settlement is approved by the Court. As a Class Member, you have the right to vote on any settlement proposed to the Negotiation Class. A settlement will not be accepted unless supported by 75% of the voting Class Members, counted by number, population, and allocation, for both litigating and non-litigating entities, and approved by the Court. Settlement funds will be distributed at the county level and each county's share – and city's suggested share – can be viewed now by utilizing the Allocation Map at the Class website, www.OpioidsNegotiationClass.info. If the Court approves any settlement, that judgment will prohibit Class Members from suing the settling Defendant(s) about the claims and issues in the litigation.
REMOVE YOURSELF FROM THE CLASS REQUIRES ACTION BY NOVEMBER 22, 2019	Get out of the Class. Get no portion of any settlement. Keep rights. Those who exclude themselves from the Class cannot vote on, will not have the right to be paid under, and will not be bound by, any Class settlement. You keep any rights to negotiate separately about the same legal claims in this lawsuit, even if the Court approves a settlement for the Class. Class Members may exclude themselves from ("opt out" of) the Class by having an authorized officer or employee complete and sign the Exclusion Request Form enclosed here and submit it on or before November 22, 2019 by email or mail in accordance with the instructions in FAQ 26 below.

- Class representatives and Class counsel will represent the Class in negotiations with Defendants who choose to do so. You may enter an appearance through an attorney (at your own expense) if you desire, but it is not required. Class Membership does not eliminate existing agreements with individual counsel. The procedure for payment of Class/common benefit attorneys' fees/costs in connection with any Class settlement must be approved by the Court. Details of the proposed options and procedures for fees and costs are posted on the Class website.
- For complete information on the Class, the settlement allocation formulas, the Class certification motion and Order, the list of included Class Members, the voting process to be used by the Class in accepting or rejecting any Class settlement offer, and an Allocation Map determining your allocation of any proposed settlement, go to **www.OpioidsNegotiationClass.info**. Important information on the Opioids-related litigation, including all pertinent Orders and Schedules, and Frequently Asked Questions, will be available on the Class website on an ongoing and current basis.

Your rights and options are further explained below.

Any questions? Read on and visit www.OpioidsNegotiationClass.info.

DO NOT WRITE OR CALL THE COURT OR THE CLERK'S OFFICE FOR INFORMATION

Questions? Visit www.OpioidsNegotiationClass.info

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BASIC INFORMATION

1. Why is a Negotiation Class being formed? What is its purpose?

The purpose of the Negotiation Class is to create a cohesive group of cities and counties to negotiate Classwide settlements, on a voluntary basis, with Defendants who make, distribute, or sell opioids nationwide. Class Representatives and Class Counsel will represent the Negotiation Class. Class Members will vote on any Class settlement proposal. If 75% of those Class Members who vote (as described in FAQ 18 and 19 below) support a proposed Settlement, Class Counsel will ask the Court to approve it. The ultimate purpose of the Negotiation Class is to make settlement easier to obtain.

2. Is this the first Negotiation Class Action?

Yes. This is a new use of the Class action mechanism under Federal Rule of Civil Procedure 23, reflecting the unique nature of the national opioids litigation. Unlike any mass litigation before, thousands of cities and counties nationwide are pursuing claims against major defendants. The goal is to recover money to help fight the opioids epidemic, provide prevention and treatment services going forward, and change Defendants' practices.

3. Why use a Class mechanism?

Joining all cities and counties together as a Negotiation Class gives them maximum negotiating power, makes the negotiation of comprehensive settlements a more practical process, enables Defendants to know the group with which they are negotiating, and enables Class Members to vote on resulting settlement offers.

4. Who are the Class Representatives?

The Court has authorized the following 49 counties and cities to serve as the Negotiation Class's Class Representatives: (1) County of Albany, New York; (2) City of Atlanta, Georgia; (3) Bergen County, New Jersey; (4) City of Baton Rouge/East Baton Rouge Parish, Louisiana; (5) Broward County, Florida; (6) Camden County, New Jersey; (7) Cass County, North Dakota; (8) City of Chicago, Illinois; (9) Cobb County, Georgia; (10) City of Concord, New Hampshire; (11) Cumberland County, Maine; (12) City of Delray Beach, Florida; (13) Denver, Colorado; (14) Escambia County, Florida; (15) Essex County, New Jersey; (16) County of Fannin, Georgia; (17) Franklin County, Ohio; (18) Galveston County, Texas; (19) County of Gooding, Idaho; (20) City of Grand Forks, North Dakota; (21) County of Hennepin, Minnesota; (22) City of Indianapolis, Indiana; (23) County of Jefferson, Alabama; (24) Jefferson County/City of Louisville, Kentucky; (25) Jersey City, New Jersey; (26) Kanawha County, West Virginia; (27) King County, Washington; (28) City of Lakewood, Ohio; (29) City of Los Angeles, California; (30) City of Lowell, Massachusetts; (31) City of Manchester, New Hampshire; (32) Maricopa County, Arizona; (33) Mecklenburg County, North Carolina; (34) The Metropolitan Government of Nashville and Davidson County, Tennessee; (35) Milwaukee County, Wisconsin; (36) Monterey County, California; (37) City of Norwalk, Connecticut; (38) County of Palm Beach, Florida; (39) Paterson City, New Jersey; (40) City of Phoenix, Arizona; (41) Prince George's County, Maryland; (42) Riverside County, California; (43) City of Saint Paul, Minnesota; (44) City of Roanoke, Virginia; (45) County of Rockland, New York; (46) City and County of San Francisco, California; (47) County of Smith, Texas; (48) County of Tulsa, Oklahoma; and (49) Wayne County, Michigan.

WHO IS IN THE CLASS

9. What entities are included in the Negotiation Class?

The Negotiation Class is defined as:

All counties, parishes, and boroughs (collectively, “counties”); and all incorporated places, including without limitation cities, towns, townships, villages, and municipalities (collectively “cities”).

A complete current list of Class Members is available at www.OpioidsNegotiationClass.info. The list may be updated as the Court may order.

The terms “counties” and “cities” are used only as shorthand. The Class includes political subdivisions with other names, such as parishes, villages, towns, townships, etc. The list of Class Members was devised primarily from the U.S. Census Bureau lists of governmental entities that provide services to their residents. Check the Cities and Counties lists posted on the Class website to confirm whether you are a Negotiation Class Member.

10. Are counties and cities with state court-filed actions considered part of the Negotiation Class?

Yes. Counties and cities that sue in state court are Members of this Negotiation Class, with the option to opt out. However, nothing about Membership in the Negotiation Class interferes with the rights of any federal or state court plaintiffs to proceed with their own cases for litigation, trial, or individual settlement. Only if and when a Class settlement has been reached, has been approved by 75% of the voting Class Members as described in FAQ 19, and has been approved by the Court, would Class Members lose their ability to proceed on their own, in exchange for the settlement benefits that they would receive.

11. Will the Negotiation Class end the opioid litigation that my County or City has filed?

Not now and only if a Class settlement is later reached and approved. Your county’s or city’s Membership in the Negotiation Class will not immediately affect any opioid suit it has filed, whether in federal or state court. It also will not stop your county or city from filing or pursuing a lawsuit, and it will not affect any scheduled hearings or trials in any lawsuit. However, if there is a final Class settlement, approved by the required 75% of the voting Class Members and by the Court, the final settlement will likely end all other opioids-related litigation brought by Class Members. In the meantime, you do not need to opt out of the Class to file, continue to prosecute, or settle your own case, and you may keep any settlement or judgment you obtain. If any county or city obtains a judgment or settlement with a Defendant before the Negotiation Class does, however, it will not receive additional compensation through any later Negotiation Class settlement. But by remaining in the Class, your county or city does risk foregoing its own lawsuit (although it would obtain money from a Class settlement) if a Class settlement is reached and approved.

12. How does the Negotiation Class affect other types of opioid plaintiffs that are not counties or cities?

The Negotiation Class does not directly affect the litigation or settlement of the claims of other types of plaintiffs, such as Indian Tribes, third party payors, and others, that are proceeding in federal or state courts. These plaintiffs can organize themselves as groups or propose their own Classes, for trial or settlement purposes.

THE NEGOTIATION CLASS PROCESS

13. Now that the Court has approved this process, what will happen next?

The creation of the Negotiation Class has these next steps:

- On **September 11, 2019**, Judge Polster, the federal judge overseeing all of the national opioids litigation, certified the Negotiation Class to go forward.
- On or before **September 20, 2019**, Class Action Notice will be sent via First-Class mail and posted to the Class website **www.OpioidsNegotiationClass.info** to all Class Members.
- **Class Members have until November 22, 2019 to decide whether to participate or to opt out of the Class. This is the “opt-out period.” All Class Members are automatically included in the Class. If a Class Member wants to participate, it does not need to do anything at this point. Only Class Members that wish to exclude themselves (“opt out”) and not participate in the Class must act: they must submit a copy of the enclosed Exclusion Request Form on or before November 22, 2019, using the instructions in FAQ 26.**
- After the close of the opt-out period, the Court will enter an order confirming the Membership of the Class, saying who is in and who is out of the Class.
- After that, the Class will operate if, and only if, one or more of the Defendants wishes to negotiate with the Class as a whole through the Negotiation Class mechanism.
- If a proposed Class settlement is reached, the proposal will be submitted to the entire Class Membership for its approval or rejection in accordance with the voting formula (described in FAQ 18 and 19 below). If no proposed settlement is reached, the Class will not vote and will have no other role.

14. If my County or City chooses to participate in the Negotiation Class, how will it know when there is a proposed Class settlement?

All Negotiation Class Members will be given advance notice of any Class settlement offer, including details on its terms and conditions, and they will have an opportunity to vote on each settlement offer. Class Members will be able to cast their vote securely, through the Class website, which will establish a voting identity and portal for each Class Member. Only Class settlements achieving 75% approval votes, by number, by allocation, and by population, of the litigating and non-litigating Class Members that vote (as described in FAQ 19) will be submitted to the Court, which will make the final determination of whether to approve the settlement.

15. If there is a proposed Class settlement, does the Court still have to approve it?

Yes. If there is a proposed settlement that is approved by 75% of the voting Class Members, as described in FAQ 18 and 19, the Court will review and decide whether to approve it, under the Class action settlement approval process set forth in Federal Rule of Civil Procedure 23(e). Generally, the Court will assess whether any settlement is fair, reasonable, and adequate. All applications for fees and costs also require court approval under Rule 23 procedures. (See https://www.law.cornell.edu/rules/frcp/rule_23.)

16. If there is a proposed settlement and my County or City is included in the Negotiation Class, but it disapproves of the settlement terms, can my County or City object to the settlement?

Yes. As a Negotiation Class Member, you will be entitled under Rule 23(e) to object to any settlement, even if it has received approval from the Class. However, as described in FAQ 27, you

Questions? Visit www.OpioidsNegotiationClass.info



will likely not be able to exclude yourself from the Class at that time. An objection explains your concerns to the Court for its consideration but does not remove you from the Class.

17. How long will the Negotiation Class last?

The Negotiation Class will last for 5 years from the date it is certified by the Court. The Court certified the Class on September 11, 2019 and the Negotiation Class will last until September 11, 2024. After that date, the Class will not exist as an entity with which a Defendant can negotiate. However, the Negotiation Class will continue to exist with regard to: (1) any Class settlements presented to the Negotiation Class for a vote before that date, to carry out the voting and approval process; and (2) any Class settlements reached before that date, to complete settlement administration and enforcement.

VOTING

18. If there is a proposed Class settlement, how will the voting be done?

Each Class Member will vote only once on any particular Class settlement proposal. The vote will simply be yes-or-no, in favor of or against the proposed settlement. Class Members that do not vote will not be counted as either yes or no votes; as with an election for government office in the United States, the only votes that are counted are those of the voters who actually cast votes. Class Members' votes will be tabulated mechanically within each applicable voting pool, to make sure that 75% of each pool is in favor of the proposed settlement before it is presented to the Court. The voting pools are described in FAQ 19. Voting tabulation does not require any effort by the Class Members. The requirement of 75% support of voting Class Members across the different voting pools ensures that no settlement will go forward without a wide cross-section of support from cities and counties of all sizes and interests.

19. If there is a proposed Class settlement, how many votes are needed to approve it?

The agreement to be bound by a supermajority vote means that no settlement can be reached that would bind the Negotiation Class without the approval of 75% of the voting Class Members, defined in several ways. To be binding, 75% of those voting in each of the following six categories must approve a proposed settlement:

- 75% of the total number of voting Class Members that had filed suit as of June 14, 2019 ("litigating entities"). This number is based on all individual Class Members who had suits on file regardless of size, so that each voting entity has one vote;
- 75% of the total number of voting Class Members that had not filed suit as of June 14, 2019 ("non-litigating entities"). This number is based on all individual Class Members who had not filed suit, regardless of size, so that each voting entity has one vote;
- 75% of the total population of all voting Class Members that had filed suit as of June 14, 2019. For this computation, the vote of the county or city is weighted according to its population, with each person in a voting city and each person in a voting county equal to one vote. Thus, by way of example, if a county votes yes and has a population of 20,000, and a city within the county votes yes and has a population of 10,000, the county's vote is weighted as 20,000 votes in favor, and the city's vote is recorded as 10,000 votes in favor. The population for each County or City will be based on current census data. The current data is presented on the Class website, www.OpioidsNegotiationClass.info. Individual residents in this category may be counted twice, once as a resident of a municipality, and once as a resident of a county;

Questions? Visit www.OpioidsNegotiationClass.info

- 75% of the total population of all voting Class Members that had not filed suit as of June 14, 2019. For this computation, the vote of the county or city is weighted according to its population, with each person in a voting city and each person in a voting county equal to one vote. Thus, by way of example, if a county votes and has a population of 20,000, and a city within the county votes yes and has a population of 10,000, the county's vote is weighted as 20,000 votes in favor, and the city's vote is recorded as 10,000 votes in favor. Again, the population for each County or City will be based on current census data. The current data is presented on the Class website, www.OpioidsNegotiationClass.info. Individual residents in this category may be counted twice, once as a resident of a municipality, and once as a resident of a county;
- 75% of the litigating Class Members casting votes, weighted by their settlement fund allocations as shown at the Allocation Map posted at opioidsnegotiationclass.info; and
- 75% of the non-litigating Class Members casting votes, weighted by their settlement fund allocations as shown at the Allocation Map posted at opioidsnegotiationclass.info.

For purposes of counting votes, only votes cast will be considered. In order for a proposed settlement to be binding on the Negotiation Class, 75% of those Class Members who cast votes in **each** of these six categories must be in favor. No settlement will be submitted to the Court for final approval unless 75% of those voting in **each** of the six categories are in favor. No county or city that is not a Class Member as of the deadline for a vote on a proposal will be allowed to vote on that proposal.

ALLOCATION OF CLASS SETTLEMENT FUNDS

20. If there is a Class settlement, how will my County or City's share of the settlement be determined?

Any Class settlement funds will be distributed in three steps:

Step 1: Each county's share of the settlement will be distributed in accordance with an "allocation model." The allocation model uses three factors, based on reliable, detailed, and objective national data, to determine the share of a settlement fund that each county will receive. These factors address the most critical causes and effects of the opioids crisis, and are each weighted equally (1/3-1/3-1/3): (1) the amount of opioids distributed within the county, (2) the number of opioid deaths that occurred in the county; and (3) the number of people who suffer opioid use disorder in the county. This model is designed not to favor either small or large counties based solely on population. Ultimately, the model allocates settlement funds in proportion to where the opioid crisis has caused actual harm.

Step 2: Counties and their constituent cities, towns, and boroughs may distribute the funds allocated to the county among all of the jurisdictions in any manner they choose. If the county and cities cannot agree on how to allocate the funds, the Class website reflects a default allocation that will apply. The default allocation formula uses historical federal data showing how the specific county and the cities within it have made opioids-related expenditures in the past. Any of the affected jurisdictions may ask a Special Master to apply a different formula.

Step 3: If the default allocation is used and a city's share is less than \$500, then that amount will instead be distributed to the county in which the city lies to allow practical application of the abatement remedy. Affected cities could seek recovery through intra-county allocation described in Step 2, or from the Class Members' Special Needs Fund (see FAQ 24). In the rare circumstance that a city with a share of less than \$500 lies in a county that does not have a county government, the amount would instead go to the Class Members' Special Needs Fund, and Class members could seek recovery from that Fund.

Further information about the allocation formulas and their data sources are available at the Class website.

Questions? Visit www.OpioidsNegotiationClass.info



21. What happens if a county and its constituent cities make different decisions about staying in the Class?

- If a county and all of its constituent cities remain in the Class, each entity's share will be determined as explained in FAQ 20.
- If a county remains in the Class, but one or more cities within the County are not in the Class, there are a variety of ways that a Class settlement might address that situation, but it is possible that a Class settlement would require that the County's allocation be reduced.
- If a county is not in the Class, but cities within that county remain in the Class, there are a variety of ways a Class settlement might address that situation. One possibility is that a city would receive no direct monetary allocation because its county has opted out, but that it could seek monetary relief through the Special Needs Fund (see FAQ 24). If a settlement provides a city no possibility of monetary relief because its county has opted out, Class Counsel anticipates the city would not be required to release its claims against the settling Defendant.

22. If there is a settlement between a Defendant and a State or States, what impact will this Negotiation Class have on the division of monies between a State and the cities and counties within the State?

The Negotiation Class process does not interfere with a Defendant's ability to settle directly with one or more States. If a Defendant reaches a settlement directly with a State, nothing about this Negotiation Class process would affect the distribution of those settlement funds between the State and its own cities or counties. The Court has explicitly ordered that the Class's lawyers not involve themselves or the Class in the process of allocating monies secured by States between themselves and their counties and cities.

23. Will Negotiation Class Representatives receive anything more than other Class Members?

Negotiation Class Representatives do not receive preferential treatment under any settlement simply for serving as Class Representatives. Their allocation will be calculated in precisely the same manner as every other Class Member's. However, they can apply to the Court for reimbursement of costs and expenses incurred by reason of serving as Class Representatives. Also, courts often award a modest amount to Class Representatives, called an incentive or service award, so as to encourage Class Representatives to step forward on behalf of others. Any such awards are subject to Class notice and Court approval.

24. What is the Special Needs Fund?

Fifteen percent (15%) of any Class settlement fund will be put into the "Special Needs Fund." Any Class Member may apply for a distribution from the Special Needs Fund: (1) to recover its costs of litigating its own opioids lawsuit, if that case was filed before June 14, 2019; and/or (2) to obtain additional relief for any local impact of the opioids crisis that is not captured by the Class Member's allocation. Applications will be made to and approved by a court-appointed Special Master, on a case-by-case basis. Any unawarded amount remaining in this Special Needs Fund would revert to the Class.

YOUR RIGHTS AND OPTIONS

25. Can my county or city exclude itself from the Negotiation Class?

Yes. You have a **one-time** opportunity to exclude your county or city from the Class and you must do so before November 22, 2019. You must follow the procedure set forth in FAQ 26 below to

Questions? Visit www.OpioidsNegotiationClass.info

exclude your county or city. As explained in FAQ 27, you will likely **not** be given a second opportunity to exclude your county or city from the Class if a settlement is later reached and you should not count on such an opportunity being available at that time.

26. How does my county or city exclude itself from the Negotiation Class?

You may exclude your county or city (“opt out”) by signing and sending, either by email or by first-class U.S. mail, the enclosed Exclusion Request Form.

- If submitted by email, the form must be sent to info@OpioidsNegotiationClass.info on or before **November 22, 2019**.
- If submitted by mail, the form must be postmarked on or before **November 22, 2019** and sent by first-class U.S. mail to:

NPO Litigation
P.O. Box 6727
Portland, OR 97228-6727

The Exclusion Request Form must be signed by an **authorized** official or employee of the county or city itself, under penalty of perjury pursuant to 28 U.S.C. § 1746, and is subject to verification by the Court. If you exclude your county or city from the Negotiation Class, your county or city will not be bound by any Orders or Judgments regarding the Class, and it will have no right to share in any settlement reached by the Class.

27. If my county or city stays in the Negotiation Class, can it exclude itself later if it doesn't like a proposed settlement?

Not under the current Court Order. The Court's Order certifying the Negotiation Class provides only one opportunity for a county or city to exclude itself from the Class. The exclusion deadline ends on November 22, 2019. If a settlement is reached and proposed to the Class for its approval, Class Members who do not support the settlement may (1) vote against it and/or, (2) if the settlement is nonetheless approved by the Class votes, file objections with the Court. Rule 23 permits a court to offer a second opportunity for Class Members to opt out when a settlement is proposed, but the Rule does not require the Court to give Class Members a second opportunity to opt out. In this case, it is anticipated that the Court will not give Class Members a second opportunity to opt out. Therefore, Class Members should not rely on that possibility. Class Members should expect that there will be no opportunity to opt out of the Class after **November 22, 2019**.

THE LAWYERS REPRESENTING THE CLASS

28. Who are the Class Counsel?

The Court has authorized the following six lawyers to jointly represent the Negotiation Class: Jayne Conroy and Christopher A. Seeger are Co-Lead Negotiation Class Counsel and Gerard Stranch, Louise Renne, Mark Flessner, and Zachary Carter are Negotiation Class Counsel. Each of these six lawyers represents only cities or counties in Opioids-related litigation.

29. How do Class Counsel get paid?

Class Counsel will apply to the Court for approval of fees and costs under Rule 23(h). As a Class Member, you will receive notice and have an opportunity to object to any such application. The Court may appoint fee committees to make recommendations of any fee awards, to avoid duplication of payment, and to ensure appropriate compensation of those whose efforts provided a common benefit. The Court will make the final decision about all fees paid out of the Class's recovery to any lawyer.

Questions? Visit www.OpioidsNegotiationClass.info



30. Under this proposal, what happens to my County or City's current fee agreement with outside counsel?

The current fee agreement that a county or city has with its outside counsel remains in effect. Membership in the Negotiation Class does not change that. In the event of any settlement that achieves Class and Court approval, there would be a "Private Attorneys Fund" from which outside counsel for Class Members that had signed retainer agreements for opioid epidemic-related litigation before June 14, 2019 could apply for fees and costs in lieu of any current fee agreement. That would be a voluntary decision between the county or city and its outside counsel. A total of up to 10% (maximum) of any approved Class settlement amount will be held in the Private Attorneys Fund. Any unawarded amount remaining in this Fund would revert to the Class. The Court must approve all payments from this Fund.

GETTING MORE INFORMATION

31. How can my County or City keep up with what's going on in this case?

Pertinent news and information will be posted at the Class website, **www.OpioidsNegotiationClass.info** on an ongoing basis. As a Class Member, you also will have the opportunity to sign up, through the Class website, for email notices alerting you to the fact that new information has been posted to the Class website.

**DO NOT WRITE OR CALL THE COURT OR THE
CLERK'S OFFICE FOR INFORMATION**

DATE: September 11, 2019.



IF YOU WANT TO EXCLUDE YOUR COUNTY OR CITY
YOU MUST ACT BY NOVEMBER 22, 2019

EXCLUSION REQUEST FORM

Read this page carefully then turn to Page 2 if you want to sign and send

Complete this form **ONLY** if your County or City does **NOT** want to remain a Class Member and does not want to share in any potential negotiated Class settlement. If your County or City does not complete and submit this form, it will be deemed to be a Class Member so long as it is a County or City in the United States as those terms are described in the Class Notice and is on the list of Class Members found at www.OpioidsNegotiationClass.info.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

_____ x
:
In re NATIONAL PRESCRIPTION : 1:17-md-2804 (DAP)
OPIATE LITIGATION :
_____ x

Class Notice Administrator
NPO Litigation
P.O. Box 6727
Portland, OR 97228-6727

Dear Class Notice Administrator:

My County or City does **NOT** want to be a member of the Negotiation Class certified in the *In re National Prescription Opiate Litigation*. I understand that by completing the information requested on page 2, signing, and submitting a copy of this form by email (to the email address on page 2) sent on or before **November 22, 2019** OR by first-class U.S. mail (to the mailing address on page 2) post-marked on or before **November 22, 2019**, I am opting my County or City out of the Negotiation Class and it will **NOT** be a Class Member. I understand that by timely submitting this form, my County or City is foregoing the right to share in any Class settlement that may be obtained. I understand that my County or City is **NOT** guaranteed an opportunity to opt back in if there is a Class settlement, so this is our final decision. I also understand that by opting out, my County or City will not be bound by any judgment entered as part of any Class settlement.

I understand that if my jurisdiction is a Class Member and wants to remain a Class Member, it does not need to do anything now. I understand that I should **NOT** return this Exclusion Request Form if my jurisdiction wants to remain a Class Member.

I understand that, if I have any questions, I may contact Class Counsel at **1-877-221-7468**, or visit www.OpioidsNegotiationClass.info **BEFORE** I mail this form to you and **BEFORE** **November 22, 2019**.

**TURN TO PAGE 2 IF YOU WANT TO SIGN EXCLUSION/OPT-OUT FORM
AND FOR EMAIL AND MAILING ADDRESSES**





**IF YOU WANT TO EXCLUDE YOUR COUNTY OR CITY
YOU MUST ACT BY NOVEMBER 22, 2019**

EXCLUSION REQUEST FORM
Read Information on Page 1 carefully before signing

Having read and understood the information on page 1, the County or City **(circle one)** entitled _____ in the State of _____ hereby excludes itself from the Negotiation Class certified by the United States District Court in the Northern District of Ohio in *In re National Prescription Opiate Litigation*, MDL 2804. Under penalty of perjury and in accordance with 28 U.S.C. § 1746, I declare that I am an official or employee authorized to take legal action on behalf of my County or City.

Signature: _____

Print name: _____

Title: _____

City or County Represented: _____ (Circle one): City / County

Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____ Email: _____

Date: _____

BY NOVEMBER 22, 2019

EMAIL TO:

info@OpioidsNegotiationClass.info

**OR SEND BY
FIRST CLASS MAIL TO:**

NPO Litigation
P.O. Box 6727
Portland, OR 97228-6727