

ORDINANCE NO. 2019 – 42

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A SETTLEMENT AGREEMENT AND MUTUAL RELEASE WITH MICHAEL CLIMACO AND DECLARING AN EMERGENCY**

WHEREAS, litigation has been threatened by Michael Climaco against the City of Parma Heights regarding special counsel fees for services rendered to the City as a result of the Cornerstone project; and

WHEREAS, the parties have engaged in protracted settlement negotiations regarding the special counsel fees requested by Michael Climaco; and

WHEREAS, based upon those protracted negotiations the parties have mutually agreed to resolve all alleged claims regarding special counsel fees and the parties are desirous of settling all issues between them upon the terms set forth in the Settlement Agreement so as to avoid the risk of uncertainty and delay occasioned by litigation; and

WHEREAS, this council wishes to authorize the Mayor to enter into the Settlement Agreement to resolve these alleged claims.

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

Section 1. The Mayor is authorized to enter into a settlement agreement with Michael Climaco pursuant to terms and conditions approved by the Director of Law and substantially similar to a copy of which is attached hereto as Exhibit A and incorporated as if fully rewritten.

Section 2. This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council and that all deliberations of the Council and of any of its Committees comprised of a majority of the members of the Council that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 3. This Ordinance is declared to be an emergency measure immediately necessary for the public peace, health, and safety of the Municipality and for the further reason that the approval of the Settlement Agreement will preclude any potential litigation; wherefore, this Ordinance shall be in full force and effect from and immediately after its passage by Council and approval by the Mayor.

PASSED: 12-17-2019

  
PRESIDENT OF COUNCIL

ATTEST: Florence A. Bohdan  
CLERK OF COUNCIL

12-17-2019  
APPROVED

FILED WITH THE MAYOR: 12-17-2019

  
MAYOR

## Settlement Agreement and Release

This Settlement Agreement and Release (the "Agreement") effective as of December 9, 2019 is made and entered into by and between the City of Parma Heights, County of Cuyahoga, State of Ohio (the "City") with a principal address of 6281 Pearl Road, Parma Heights, Ohio 44130 and Michael L. Climaco, attorney at law ("Special Counsel") whose residence address is currently 16340 Handies Way, Broomfield, Colorado 80023, collectively referred to as "the Parties".

### Recitals

WHEREAS, from on or about January 28, 2003 through October 31, 2012, at the behest of the prior city administration, Special Counsel had provided legal services on behalf of the City as an outside legal counsel; and

WHEREAS, the Parties agree that a final settlement of amounts due the Special Counsel is of mutual benefit to both the Special Counsel and the City

WHEREAS, the Parties have reached an agreement as to the amount and manner of payment for prior legal services due Special Counsel from the City

NOW, THEREFORE, in consideration of the promises and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. **Payment.** The City shall pay Special Counsel for past legal services rendered the total sum of One Hundred Thirty Thousand Dollars (\$130,000.00), payable as follows:
  - a. The sum of One Hundred Thousand Dollars (\$100,000.00) shall be paid during the month of December, 2019, as soon as can be expeditiously paid following City Council's approval of this Agreement; plus
  - b. The balance of Thirty Thousand Dollars (\$30,000.00) shall be paid on or before July 31, 2020.
2. **Release.** In consideration of the payments made by the City to the Consultant the Consultant does release, dismiss, and forever discharge the City and its respective representatives, officers, members, agents and successors from any and all claims and causes of action of any kind and every description, whether known or unknown, which Special Counsel may now have by reason of any cause whatsoever, including, but not limited to: claims relating to the legal services provided.

3. **Time.** The Parties agree that time is of the essence with respect to the amounts and dates of payment set forth in this Agreement.
4. **Notices.** All notices due under this Agreement shall be in writing and shall be deemed sufficient if delivered in person and a receipt obtained therefore, or if sent by certified or registered U.S. mail postage prepaid, return receipt requested, addressed to the party for whom intended at its or his address set forth above or at such other address as may be designated by either party to the other, in written notice. Notice shall be effective upon receipt.
5. **Signature.** A facsimile or scanned signature of either party shall be deemed adequate in terms of executing acceptance and approval of this Agreement.
6. **Successors and Binding Agreement.** This Agreement will be binding upon and inure to the benefit of the parties and their successors.
7. **Miscellaneous.** No provision of this Agreement may be modified, waived or discharged unless such waiver, modification, or discharge is agreed to in writing and signed by the Parties hereto. No waiver by either party hereto at any time of any breach by the other party hereto or compliance with any condition or provision of this agreement to be performed by such other party will be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. No Agreements or representation, oral or otherwise, express or implied, with respect to the subject matter hereof, have been made by any of the parties that are not set forth expressly in this Agreement and every one of them, if, in fact, there may have been any, is hereby terminated without liability or any other legal effect whatsoever.
8. **Entire Agreement.** This Agreement constitutes the entire Agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior verbal or written agreements, covenants, communications, understandings, commitments, representations or warranties, whether oral or written, by any party hereto or any of its representatives pertaining to such subject matter.
9. **Governing Law and Enforcement.** The validity, interpretation, construction, and performance of this Agreement will be governed by the substantive laws of the State of Ohio.
10. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same agreement.
11. **Captions and Paragraph Headings.** Captions and paragraph headings used herein are used for convenience and are not part of this Agreement and will not be used in construing it.


WHEREFORE, the Parties have executed this Agreement effective December 9, 2019


Witness:

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Michael P. Byrne, Mayor  
City of Parma Heights

Witness:

  
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Michael L. Climaco, Esq.