

**RESOLUTION #12-13-21-03**

**AUTHORIZING MUSCATINE COUNTY, IOWA TO ENTER INTO SETTLEMENT AGREEMENTS WITH MCKESSON CORPORATION, CARDINAL HEALTH, INC., AMERISOURCEBERGAN CORPORATION, JOHNSON & JOHNSON, JANSSEN PHARMACEUTICALS, INC., ORTHO-MCNEIL-JANSSEN PHARMACEUTICAL. INC., AND JANSSEN PHARMACEUTICA, INC., AGREE TO TERMS OF THE IOWA OPIOID ALLOCATION MEMORANDUM OF UNDERSTANDING AND AUTHORIZE ENTRY INTO THAT MEMORANDUM OF UNDERSTANDING**

WHEREAS, in 2021, the County Board of Supervisors authorized Muscatine County (the "County") to enter into an engagement agreement with Crueger Dickinson LLC, Simmons Hanly Conroy LLC and von Briesen & Roper, s.c. (the "Law Firms") to pursue litigation against certain manufacturers, distributors, and retailers of opioid pharmaceuticals (the "Opioid Defendants") in an effort to hold the Opioid Defendants financially responsible for the impact on of the Opioid Epidemic on the County and resources necessary to combat the opioid epidemic; and

WHEREAS, on behalf of the County, the Law Firms filed a lawsuit against the Opioid Defendants in 2018 and have been litigating against the Opioid Defendants since that time; and

WHEREAS, negotiations to settle claims against several of the Opioid Defendants, specifically McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (the "Settling Defendants") have been ongoing for several years; and

WHEREAS, negotiations with the Settling Defendants have resulted in proposed nationwide settlements of state and local government claims involved in the Litigation; and

WHEREAS, copies of the proposed terms of those proposed nationwide settlements have been set forth in the Distributors Master Settlement Agreement and the J&J Master Settlement Agreement (collectively "Settlement Agreements");and

WHEREAS, copies of the Settlement Agreements as well as summary of the main terms of the Settlement Agreements, the deadlines for submitting the Participation Agreements to the Settlement Agreements and the MDL Court's Order setting deadlines for any Plaintiff who declines to enter into the Settlement Agreements have been provided to the County prior to the execution of this Resolution; and

WHEREAS, the Settlement Agreements provide, among other things, for the payment of a certain sum to settling government entities in Iowa including to the State of Iowa and Participating Subdivisions, as that term is defined in the Settlement Agreements, upon occurrence of certain events as defined in the Settlement Agreements ("Iowa Opioid Funds"); and

WHEREAS, the Law Firms have engaged in extensive discussions with the State Attorney General's Office ("AGO") as to how the Iowa Opioid Funds will be allocated, which has resulted

in the proposed Iowa Opioid Allocation Memorandum of Understanding (“Allocation MOU”), which is an agreement between all of the entities who are signatories to the Allocation MOU; and

WHEREAS, a copy of the Allocation MOU and the Exhibits to that MOU have been provided with this Resolution; and

WHEREAS, the Allocation MOU divides Iowa Opioid Funds as follows: (i) 50% to the State (“the Iowa Abatement Share”) and (ii) 50% to Participating Local Governments (“LG Share”), less fees and costs allocated to the Iowa Backstop Fund as set forth in Section D of the Allocation MOU and in this Resolution (“LG Abatement Share”); and

WHEREAS, the LG Abatement Share shall be distributed in direct payments to the Counties that are Participating Local Governments according to the allocation model developed in connection with the proposed negotiating class in the National Prescription Opiate Litigation (MDL No. 2804) in the amounts set forth on Exhibit 2 to the Allocation MOU (“Direct Distribution Percentage”). The Direct Distribution Percentage will be multiplied by the total LG Abatement Share to arrive at the total allocation to the Participating Local Government (the “Direct Distribution Amount”); and

WHEREAS, 100% of the Iowa Abatement Share and the LG Abatement Share, regardless of allocation, shall be utilized only for Opioid Related Expenditures incurred after the Effective Date of this MOU. The list of approved Opioid Related Expenditures are set forth in Exhibit 1 to this MOU; and

WHEREAS at least 75% of the Iowa Abatement Share and 75% of the LG Abatement Share shall be utilized only for the “Core Strategies” listed in Schedule A of Exhibit 1 to this MOU; and

WHEREAS, every Participating Local Government that receives a Direct Distribution Amount shall create a separate fund on its financial books and records that is designated for the receipt and expenditure of the entity’s Direct Distribution Amount, called the “LG Abatement Fund.” Funds in an LG Abatement Fund shall not be commingled with any other money or funds of the Participating Local Government. A Participating Local Government may invest LG Abatement Fund funds consistent with the investment of other funds of a Participating Local Government; and

WHEREAS, Funds in a LG Abatement Fund may be expended by a Participating Local Government only for Opioid Related Expenditures. For avoidance of doubt, funds in a LG Abatement Fund may not be expended for costs, disbursements or payments made or incurred prior to the Settlement; and

WHEREAS, each LG Abatement Fund shall be subject to audit in a manner consistent with Code of Iowa §§331.402(2) (i) and 11.6. Any such audit shall be a financial and performance audit to ensure that the LG Abatement Fund disbursements are consistent with the terms of this MOU. If any such audit reveals an expenditure inconsistent with the terms of this MOU, the Participating Local Government shall immediately redirect the funds associated with the inconsistent expenditure to an Opioid Related Expenditure; and

WHEREAS, County has contracted with the Law Firms for representation in the Litigation and the Law Firms have been representing those entities since 2018 and in consideration for the Law Firms' representation, the County entered into a contract with the Law Firms for a 25% contingency fee applied to County's total recovery from any settlement; and

WHEREAS, the Settlement Agreements provide for the payment of attorney's fees and legal expenses owed by States and Participating Local Governments to outside counsel retained for Opioid Litigation. To effectuate this, the Court in the MDL Litigation has established a fund to compensate attorneys representing plaintiffs in the Litigation (the "National Attorney Fee Fund"); and

WHEREAS, the Law Firms intend to make application to the National Attorney Fee Fund. However, because there is still uncertainty regarding what counsel for litigating local governments will recover as compensation for the large volume of work done and the large out of pocket expense of the Litigation, and whereas the Parties to the Allocation MOU desire to fairly compensate outside counsel for the work done on behalf of the Participating Local Governments in Iowa, the Allocation MOU provides that a fund be created from 15% of the LG Share attributable to the Litigating Local Governments, less any amounts a Litigating Local Government ("Iowa Backstop Fund"); and

WHEREAS, the Iowa Backstop Fund is meant to compensate outside counsel for participating local governments only for amounts not recovered at the National Fee Fund attributable to their Iowa clients; and

WHEREAS, to be eligible for the Iowa Backstop Fund, the Law Firms must first seek payment from the National Attorneys' Fees Fund and may not recover amounts attributable to Counsel's representation of the County received at the National Attorneys' Fees Fund from the Iowa Backstop Fund; and

WHEREAS, the County, by this Resolution, agrees to the creation of the Iowa Backstop Fund in the amount of 15% of the LG Share attributable to the Litigating Local Governments in order to fund a state-level "backstop" for payment of the fees, costs, and disbursements of the Law Firms; and

WHEREAS, in no event shall the total of the amounts received by the Law Firms at the National Attorney's Fees Fund related to the County and the amount received at the Iowa Backstop Fund exceed the amount the Law Firms would have been entitled to pursuant their fee contract with the County; and

WHEREAS, the County, by this Resolution, shall establish an account for the receipt of the LG Abatement Share consistent with the terms of this Resolution ("the LG Abatement Fund"); and

WHEREAS, the County's LG Abatement Fund shall be separate from the County's general fund, shall not be commingled with any other County funds, and shall be dedicated to funding opioid abatement measures as provided in the Settlement Agreements and the Allocation MOU; and

WHEREAS, the County must comply annually with the reporting requirements in the Allocation MOU; and

WHEREAS, the if the County elects to become a Participating Subdivision in the Settlement Agreements it will receive the benefits associated with the Settlement Agreement and the Allocation MOU, provided the County (a) approves the Settlement Agreements; (b) executes the Participation Agreements stating the County's intention to be bound by the Settlement Agreements; (3) approves the Allocation MOU; (4) executes the Acknowledgement and Agreement to be Bound to Memorandum of Understanding necessary to execute the Allocation MOU; and

WHEREAS, the intent of this Resolution is to authorize the County to enter into the Settlement Agreements by executing the Participation Agreements and to enter into the Allocation MOU by executing the Acknowledgement and Agreement to be Bound to Memorandum of Understanding necessary to execute the Allocation MOU.

NOW, THEREFORE, BE IT RESOLVED that the Muscatine County Board of Supervisors hereby approves and authorizes Santos Saucedo, Board Chair to settle and release the County's claims against the Settling Defendants in exchange for the consideration set forth in the Settlement Agreements, Allocation MOU and all exhibits thereto, including taking the following measures:

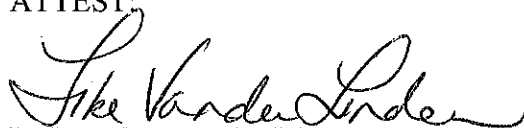
1. The execution of the Participation Agreement to the Distributors Settlement Agreement and any and all documents ancillary thereto.
2. The execution of the Participation Agreement to the Janssen Settlement Agreement and any and all documents ancillary thereto.
3. The execution of the Allocation MOU by executing the Acknowledgement and Agreement to be bound to Memorandum of Understanding.

BE IT FURTHER RESOLVED that Muscatine County hereby establishes an account separate and distinct from the County's general fund which shall be titled "LG Abatement Fund" to receive the LG Abatement Share from the Settlement Agreements.

BE IT FURTHER RESOLVED that all actions heretofore taken by the Board of Supervisors and other appropriate public officers and agents of the County with respect to the matters contemplated under this Resolution are hereby ratified, confirmed and approved.

Passed and approved this 13nd day of December, 2021.

ATTEST:



Tibe Vander Linden  
Muscatine County Auditor



Santos Saucedo, Chairperson  
Muscatine County Board of Supervisors