

3 **RESOLUTION:** Authorizing Winnebago County to Enter into the Settlement Agreements with Teva  
4 Pharmaceutical Industries Ltd., Allergan Finance, LLC, Walgreen Co., Walmart, Inc., CVS  
5 Health Corporation and CVS Pharmacy, Inc., Agree to the Terms of the Addendum to the  
6 MOU Allocating Settlement Proceeds, and Authorize Entry into the MOU with the Attorney  
7 General  
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9

10 **TO THE WINNEBAGO COUNTY BOARD OF SUPERVISORS:**

11 **WHEREAS**, the Winnebago County Board of Supervisors previously authorized Winnebago County to enter  
12 into an engagement agreement with von Briesen & Roper, s.c., Crueger Dickinson LLC and Simmons Hanly Conroy  
13 LLC (the "Law Firms") to pursue litigation against certain manufacturers, distributors, and retailers of opioid  
14 pharmaceuticals (the "Opioid Defendants") in an effort to hold the Opioid Defendants financially responsible for  
15 Winnebago County's expenditure of vast money and resources to combat the opioid epidemic; and

16 **WHEREAS**, on behalf of Winnebago County, the Law Firms filed a lawsuit against the Opioid Defendants;  
17 and

18 **WHEREAS**, the Law Firms filed similar lawsuits on behalf of 66 other Wisconsin counties and all Wisconsin  
19 cases were coordinated with thousands of other lawsuits filed against the same or substantially similar parties as the  
20 Opioid Defendants in the Northern District of Ohio, captioned *In re: Opioid Litigation*, MDL 2804 (the "Litigation"); and

21 **WHEREAS**, four (4) additional Wisconsin counties (Milwaukee, Dane, Waukesha, and Walworth) hired  
22 separate counsel and joined the Litigation; and

23 **WHEREAS**, since the inception of the Litigation, the Law Firms have coordinated with counsel from around  
24 the country (including counsel for Milwaukee, Dane, Waukesha, and Walworth Counties) to prepare Winnebago  
25 County's case for trial and engage in extensive settlement discussions with the Opioid Defendants; and

26 **WHEREAS**, the settlement discussions with Teva Pharmaceutical Industries Ltd., Allergan Finance, LLC,  
27 Walgreen Co., Walmart, Inc., CVS Health Corporation and CVS Pharmacy, Inc.. (the "Settling Defendants") resulted  
28 in a tentative agreement as to settlement terms pending agreement from Winnebago County and other plaintiffs  
29 involved in the Litigation; and

30 **WHEREAS**, copies of the various settlement agreements relating to the Settling Defendants (collectively  
31 "Settlement Agreements") representing the terms of the tentative settlement agreements with the Settling Defendants  
32 have been provided with this Resolution; and

33 **WHEREAS**, the Settlement Agreements provide, among other things, for the payment of certain sums to  
34 Participating Subdivisions (as defined in the Settlement Agreements) upon the occurrence of certain events detailed  
35 in the Settlement Agreements; and

36 **WHEREAS**, Winnebago County is a Participating Subdivision in the Settlement Agreements and has the  
37 opportunity to participate in the benefits associated with the Settlement Agreement provided Winnebago County (a)  
38 approves the Settlement Agreements; (b) approves the Memorandum of Understanding allocating proceeds from the  
39 Settlement Agreements among the various Wisconsin Participating Subdivisions, a copy of which is attached to this  
40 Resolution (the "Allocation MOU"); (c) approves the Memorandum of Understanding with the Wisconsin Attorney  
41 General regarding allocation of settlement proceeds, a copy of which is attached to this Resolution (the "AG MOU");  
42 and (d) the Legislature's Joint Committee on Finance approves the terms of the Settlement Agreements and the AG  
43 MOU; and

44           **WHEREAS**, 2021 Wisconsin Act 57 created Section 165.12 of the Wisconsin Statutes relating to the  
45 settlement of all or part of the Litigation; and

46           **WHEREAS**, pursuant to Wis. Stat. § 165.12(2), the Legislature’s Joint Committee on Finance is required to  
47 approve the Settlement Agreements and the AG MOU; and

48           **WHEREAS**, pursuant to Wis. Stat. § 165.12(2), the proceeds from any settlement of all or part of the  
49 Litigation are distributed 70% to local governments in Wisconsin that are parties to the Litigation and 30% to the  
50 State; and

51           **WHEREAS**, Wis. Stat. § 165.12(4)(b)2. provides the proceeds from the Settlement Agreement must be  
52 deposited in a segregated account (the “Opioid Abatement Account”) and may be expended only for approved uses  
53 for opioid abatement as provided in the Settlement Agreements; and

54           **WHEREAS**, Wis. Stat. § 165.12(7) bars claims from any Wisconsin local government against the Opioid  
55 Defendants filed after June 1, 2021; and

56           **WHEREAS**, the definition of Participating Subdivisions in the Settlement Agreements recognizes a statutory  
57 bar on claims such as that set forth in Wis. Stat. § 165.12(7) and, as a result, the only Participating Subdivisions in  
58 Wisconsin are those counties and municipalities that were parties to the Litigation (or otherwise actively litigating a  
59 claim against one, some, or all of the Opioid Defendants) as of June 1, 2021; and

60           **WHEREAS**, the Legislature’s Joint Committee on Finance is not statutorily authorized or required to approve  
61 the allocation of proceeds of the Settlement Agreements among Wisconsin Participating Subdivisions; and

62           **WHEREAS**, the Law Firms have engaged in extensive discussions with counsel for all other Wisconsin  
63 Participating Subdivisions resulting in the proposed Allocation MOU, which is an agreement between all of the  
64 entities identified in the Allocation MOU as to how the proceeds payable to those entities under the Settlement  
65 Agreements will be allocated; and

66           **WHEREAS**, the proposed Addendum to the MOU (“Addendum”) provided with this Resolution provides for  
67 allocation of settlement proceeds among the Wisconsin Participating Subdivisions according to the same percentages  
68 as that provided in the previously-approved MOU allocating the settlement proceeds of the settlements involving  
69 McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen  
70 Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.; and

71           **WHEREAS**, there is provided with this Resolution a summary of the essential terms of the Settlement  
72 Agreements, the deadlines related to the effective dates of the Settlement Agreements, the ramifications associated  
73 with the County’s refusal to enter into the Settlement Agreements, the form of the Addendum, the form of the AG  
74 MOU, and an overview of the process for finalizing the Settlement Agreements; and

75           **WHEREAS**, Winnebago County, by this Resolution, shall deposit the proceeds of the Settlement  
76 Agreements consistent with the terms of this Resolution and Wis. Stat. § 165.12(4)(b); and

77           **WHEREAS**, pursuant to Winnebago County’s engagement agreement with the Law Firms, Winnebago  
78 County shall pay up to an amount equal to 25% of the proceeds from successful resolution of all or part of the  
79 Litigation, whether through settlement or otherwise, plus the Law Firms’ costs and disbursements, to the Law Firms  
80 as compensation for the Law Firms’ efforts in the Litigation and any settlement; and

81           **WHEREAS**, the Law Firms anticipate making application to the national fee fund established in the  
82 Settlement Agreements seeking payment, in whole or part, of the fees, costs, and disbursements owed the Law  
83 Firms pursuant to the engagement agreement with Winnebago County; and

84           **WHEREAS**, it is anticipated the amount of any award from the fee fund established in the Settlement  
85 Agreements will be insufficient to satisfy Winnebago County's obligations under the engagement agreement with the  
86 Law Firms; and

87           **WHEREAS**, Winnebago County, by this Resolution, and pursuant to the authority granted Winnebago  
88 County in the applicable Order emanating from the Litigation in relation to the Settlement Agreements and payment  
89 of attorney fees, shall authorize and direct the escrow agent responsible for the receipt and distribution of the  
90 proceeds from the Settlement Agreements to establish an account for the purpose of segregating funds to pay the  
91 fees, costs, and disbursements of the Law Firms owed by Winnebago County (the "Attorney Fees Account") in order  
92 to fund a local "backstop" for payment of the fees, costs, and disbursements of the Law Firms; and

93           **WHEREAS**, in no event shall payments to the Law Firms out of the Attorney Fees Account and the fee fund  
94 established in the Settlement Agreements exceed an amount equal to 25% of the amounts allocated to Winnebago  
95 County in the Addendum; and

96           **WHEREAS**, the intent of this Resolution is to authorize Winnebago County to enter into the Settlement  
97 Agreements, the Addendum, and the AG MOU, establish Winnebago County's Opioid Abatement Account, and  
98 establish the Attorney Fees Account; and

99           **WHEREAS**, Winnebago County, by this Resolution, shall authorize Winnebago County's Corporation  
100 Counsel or designee to finalize and execute any escrow agreement and other document or agreement necessary to  
101 effectuate the Settlement Agreements and the other agreements referenced herein.

102  
103           **NOW, THEREFORE, BE IT RESOLVED** the Winnebago County Board of Supervisors hereby approves:

- 104           1.     The execution of the Settlement Agreements and any and all documents ancillary thereto and  
105                 authorizes the County Executive or designee to execute same.
- 106           2.     The final negotiation and execution of the Addendum in form substantially similar to that presented  
107                 with this Resolution and any and all documents ancillary thereto and authorizes the County Executive  
108                 or designee to execute same upon finalization provided the percentage share identified as allocated  
109                 to Winnebago County is substantially similar to that identified in the Addendum provided to the Board  
110                 with this Resolution.
- 111           3.     The final negotiation and execution of the AG MOU in form substantially similar to that presented with  
112                 this Resolution and any and all documents ancillary thereto and authorizes the County Executive or  
113                 designee to execute same.
- 114           4.     The execution by the County Executive or designee of any additional documents or agreements for  
115                 the receipt and disbursement of the proceeds of the Settlement Agreements as referenced in the  
116                 Addendum.

117           **BE IT FURTHER RESOLVED**, all proceeds from the Settlement Agreements not otherwise directed to the  
118 Attorney Fees Account shall be deposited in Winnebago County's Opioid Abatement Account. The Opioid  
119 Abatement Account shall be administered consistent with the terms of this Resolution, Wis. Stat. § 165.12(4), and the  
120 Settlement Agreements.

121 **BE IT FURTHER RESOLVED**, Winnebago County hereby authorizes the establishment of an account  
122 separate and distinct from any account containing funds allocated or allocable to Winnebago County which shall be  
123 referred to by the County as the "Attorney Fees Account." An escrow agent shall deposit a sum equal to up to, but in  
124 no event exceeding, an amount equal to 20% of Winnebago County's proceeds from the Settlement Agreements into  
125 the Attorney Fees Account. If the payments to Winnebago County are not enough to fully fund the Attorney Fees  
126 Account as provided herein because such payments are made over time, the Attorney Fees Account shall be funded  
127 by placing up to, but in no event exceeding, an amount equal to 20% of the proceeds from the Settlement  
128 Agreements attributable to Local Governments (as that term is defined in the Allocation MOU) into the Attorney Fees  
129 Account for each payment. Funds in the Attorney Fees Account shall be utilized to pay the fees, costs, and  
130 disbursements owed to the Law Firms pursuant to the engagement agreement between Winnebago County and the  
131 Law Firms provided, however, the Law Firms shall receive no more than that to which they are entitled under their  
132 fee contract when considering the amounts paid the Law Firms from the fee fund established in the Settlement  
133 Agreements and allocable to Winnebago County. The Law Firms may make application for payment from the  
134 Attorney Fees Account at any time and Winnebago County shall cooperate with the Law Firms in executing any  
135 documents necessary for the escrow agent to make payments out of the Attorney Fees Account.

136 **BE IT FURTHER RESOLVED**, that all actions heretofore taken by the Board of Supervisors and other  
137 appropriate public officers and agents of Winnebago County with respect to the matters contemplated under this  
138 Resolution are hereby ratified, confirmed and approved.  
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140 *Fiscal Note: These settlements will produce revenue to the County over a period of years in amounts which are not*  
141 *yet determined. Based on a comparison with previous settlements involving distributors, annual payments under*  
142 *these settlements may be in the range of \$167,000 to \$315,000 per year over ten or more years. This revenue will*  
143 *be placed in the Opioid Abatement Account and must be spent on opioid abatement measures as allowed by the*  
144 *settlement agreements, with expenditures subject to future County Board approval.*  
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Respectfully submitted by:  
**PERSONNEL & FINANCE COMMITTEE**

148 Committee Vote: 5-0

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**JUDICIARY AND PUBLIC SAFETY COMMITTEE**

151 Committee Vote: 5-0

152  
153 Vote Required for Passage: **Majority of Members Present**

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155 Approved by the Winnebago County Executive this \_\_\_\_ day of \_\_\_\_\_, 2023.

156  
157 \_\_\_\_\_  
158 Jonathan D. Doemel  
159 Winnebago County Executive