

2 **RESOLUTION: Authorizing Winnebago County to Enter into the Settlement Agreements**
3 **with McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen**
4 **Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-**
5 **McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceuticals,**
6 **Inc., Agree to the Terms of the MOU Allocating Settlement Proceeds, and**
7 **Authorize Entry into the MOU with the Attorney General**
8

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

10 **WHEREAS**, in Resolution No. 230-122017, the Winnebago County Board of Supervisors authorized
11 Winnebago County to enter into an engagement agreement with von Briesen & Roper, s.c., Crueger Dickinson LLC
12 and Simmons Hanly Conroy LLC (the “Law Firms”) to pursue litigation against certain manufacturers, distributors, and
13 retailers of opioid pharmaceuticals (the “Opioid Defendants”) in an effort to hold the Opioid Defendants financially
14 responsible for Winnebago County’s expenditure of vast money and resources to combat the opioid epidemic; and

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

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

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

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

24 **WHEREAS**, the settlement discussions with McKesson Corporation, Cardinal Health, Inc.,
25 AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen
26 Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (the “Settling Defendants”) resulted in a tentative agreement
27 as to settlement terms pending agreement from Winnebago County and other plaintiffs involved in the Litigation; and

28 **WHEREAS**, copies of the Distributors Settlement Agreement and Janssen Settlement Agreement
29 (collectively “Settlement Agreements”) representing the terms of the tentative settlement agreements with the Settling
30 Defendants are available at this link <https://nationalopioidsettlement.com/>; and

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

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

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

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

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

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

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

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

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

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

64 **WHEREAS**, there is provided with this Resolution a summary of the essential terms of the Settlement
65 Agreements, the deadlines related to the effective dates of the Settlement Agreements, the ramifications associated
66 with Winnebago County's refusal to enter into the Settlement Agreements, the form of the Allocation MOU, the form
67 of the AG MOU, and an overview of the process for finalizing the Settlement Agreements; and

68 **WHEREAS**, Winnebago County, by this Resolution, shall establish the Opioid Abatement Account for the
69 receipt of the proceeds of the Settlement Agreements consistent with the terms of this Resolution; and

70 **WHEREAS**, Winnebago County's Opioid Abatement Account shall be separate from Winnebago County's
71 general fund, shall not be commingled with any other County funds, and shall be dedicated to funding opioid
72 abatement measures as provided in the Settlement Agreements; and

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

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

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

83 **WHEREAS**, Winnebago County, by this Resolution, and pursuant to the authority granted Winnebago

84 County in the applicable Order emanating from the Litigation in relation to the Settlement Agreements and payment
85 of attorney fees, shall execute an Escrow Agreement, which shall among other things direct the escrow agent
86 responsible for the receipt and distribution of the proceeds from the Settlement Agreements to establish an account
87 for the purpose of segregating funds to pay the fees, costs, and disbursements of the Law Firms owed by Winnebago
88 County (the "Attorney Fees Account") in order to fund a state-level "backstop" for payment of the fees, costs, and
89 disbursements of the Law Firms; and

90 **WHEREAS**, in no event shall payments to the Law Firms out of the Attorney Fees Account and the fee fund
91 established in the Settlement Agreements exceed an amount equal to 25% of the amounts allocated to Winnebago
92 County in the Allocation MOU; and

93 **WHEREAS**, the intent of this Resolution is to authorize Winnebago County to enter into the Settlement
94 Agreements, the Allocation MOU, and the AG MOU, establish Winnebago County's Opioid Abatement Account, and
95 establish the Attorney Fees Account; and

96 **WHEREAS**, Winnebago County, by this Resolution, shall authorize Winnebago County's corporation counsel
97 to finalize and execute any escrow agreement and other document or agreement necessary to effectuate the
98 Settlement Agreements and the other agreements referenced herein.

99
100 **NOW, THEREFORE, BE IT RESOLVED** by the Winnebago County Board of Supervisors that it hereby
101 approves:

- 102 1. The execution of the Distributors Settlement Agreement and any and all documents ancillary thereto
103 and authorizes the Winnebago County Executive to execute same.
- 104 2. The execution of the Janssen Settlement Agreement and any and all documents ancillary thereto and
105 authorizes the Winnebago County Executive to execute same.
- 106 3. The final negotiation and execution of the Allocation MOU in form substantially similar to that presented
107 with this Resolution and any and all documents ancillary thereto and authorizes the Winnebago County
108 Executive to execute same upon finalization provided the percentage share identified as allocated to
109 Winnebago County is substantially similar to that identified in the Allocation MOU provided to the Board
110 with this Resolution.
- 111 4. 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 Winnebago County
113 Executive to execute same.
- 114 5. The corporation counsel's negotiation and execution of the Escrow Agreement for the receipt and
115 disbursement of the proceeds of the Settlement Agreements as referenced in the Allocation MOU.

116 **BE IT FURTHER RESOLVED** by the Winnebago County Board of Supervisors that Winnebago County
117 hereby establishes an account separate and distinct from Winnebago County's general fund which shall be titled
118 "Opioid Abatement Account." All proceeds from the Settlement Agreements not otherwise directed to the Attorney
119 Fees Account established under the Escrow Agreement shall be deposited in the Opioid Abatement Account. The

120 Opioid Abatement Account shall be administered consistent with the terms of this Resolution, Wis. Stat. § 165.12(4),
121 and the Settlement Agreements.

122

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

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

142

143 Respectfully submitted by:

144 **PERSONNEL & FIANANCE COMMITTEE**

145 Committee Vote: **3-0 (2 Absent)**

146

147 **JUDICIARY AND PUBLIC SAFETY COMMITTEE**

148 Committee Vote: **4-1**

149

150

151 Vote Required for Passage: **Majority of Those Present**

152

153 Approved by the Winnebago County Executive this ____ day of _____, 2021.

154

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156

157

Jonathan D. Doemel
Winnebago County Executive