

RESOLUTION NO. 2021-47

**VILLAGE OF YORKVILLE
RACINE COUNTY, WISCONSIN**

A RESOLUTION AUTHORIZING THE VILLAGE OF YORKVILLE TO ENTER INTO THE SETTLEMENT AGREEMENTS WITH MCKESSON CORPORATION, CARDINAL HEALTH, INC., AMERISOURCEBERGEN CORPORATION, JOHNSON & JOHNSON, JANSSEN PHARMACEUTICALS, INC., ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC., AND JANSSEN PHARMACEUTICA, INC., AGREE TO THE TERMS OF THE MOU ALLOCATING SETTLEMENT PROCEEDS, AND AUTHORIZE ENTRY INTO THE MOU WITH THE ATTORNEY GENERAL

THE VILLAGE BOARD OF THE VILLAGE OF YORKVILLE, RACINE COUNTY, WISCONSIN, RESOLVES AS FOLLOWS:

WHEREAS, the Village Board previously approved an engagement agreement with Phipps Deacon Purnell, PLLC now known as Phipps, Ortiz, Talafuse PLLC (the “Law Firm”) 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 Village’s expenditure of vast money and resources to combat the opioid epidemic; and

WHEREAS, on behalf of the Village, the Law Firm filed a lawsuit against the Opioid Defendants; and

WHEREAS, similarly 66 Wisconsin counties filed similar lawsuits (including Racine County), and all of those Wisconsin cases were coordinated with thousands of other lawsuits filed against the same or substantially similar parties as the Opioid Defendants in the Northern District of Ohio, captioned *In re: Opioid Litigation*, MDL 2804 (the “Litigation”) and four (4) additional Wisconsin counties (Milwaukee, Dane, Waukesha, and Walworth) hired separate counsel and joined the Litigation; and

WHEREAS, since the inception of the Litigation, the Law Firm has coordinated with counsel from around the country (including counsel for Milwaukee, Dane, Waukesha, and Walworth Counties) to prepare the case for trial and engage in extensive settlement discussions with the Opioid Defendants; and

WHEREAS, the settlement discussions with McKesson Corporation, Cardinal Health, Inc., Amerisource Bergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (the “Settling Defendants”) resulted in a tentative agreement as to settlement terms pending agreement from the Village and other plaintiffs involved in the Litigation;

WHEREAS, copies of the Distributors Settlement Agreement and Janssen Settlement Agreement (collectively “Settlement Agreements”) representing the terms of the tentative settlement agreements with the Settling Defendants have been provided with this Resolution; and

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

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

WHEREAS, 2021 Wisconsin Act 57 created Section 165.12 of the Wisconsin Statutes relating to the settlement of all or part of the Litigation and pursuant to Wis. Stat. § 165.12(2): (a) the Legislature’s Joint Committee on Finance is required to approve the Settlement Agreements and the AG MOU; and (b) the proceeds from any settlement of all or part of the Litigation are distributed 70% to local governments in Wisconsin that are parties to the Litigation and 30% to the State; and

WHEREAS, Wis. Stat. § 165.12(4)(b)2. provides the proceeds from the Settlement Agreement must be deposited in a segregated account and may be expended only for approved uses for opioid abatement as provided in the Settlement Agreements and Wis. Stat. § 165.12(7) bars claims from any Wisconsin local government against the Opioid Defendants filed after June 1, 2021; and

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

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

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

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

WHEREAS, the intent of this Resolution is to authorize the Village to enter into the Settlement Agreements, the Allocation MOU, and the AG MOU; and

WHEREAS, the Village, by this Resolution, shall authorize the Village officials to execute documents or agreements necessary to effectuate the Settlement Agreements, the Allocation MOU, and the AG MOU and the any other documents referenced herein.

NOW, THEREFORE, BE IT RESOLVED: the Village Board hereby approves:

1. The execution of the Distributors Settlement Agreement and any and all documents ancillary thereto and authorizes the President and Clerk to execute same.
2. The execution of the Janssen Settlement Agreement and any and all documents ancillary thereto and authorizes the President and Clerk to execute same.
3. The final negotiation and execution of the Allocation MOU in form substantially similar to that presented with this Resolution and any and all documents ancillary thereto and authorizes the Board President and Clerk to execute same upon finalization provided the percentage share identified as allocated to the Village is substantially similar to that identified in the Allocation MOU provided to the Board with this Resolution.
4. The final negotiation and execution of the AG MOU in form substantially similar to that presented with this Resolution and any and all documents ancillary thereto and authorizes the President and Clerk to execute same.

BE IT FURTHER RESOLVED, that the Village hereby establishes an account separate and distinct from the Village's general fund which shall be titled "Opioid Abatement Account." All proceeds from the Settlement Agreements not otherwise directed to the Attorney Fees Account established under the Escrow Agreement shall be deposited in the Opioid Abatement Account. The Opioid Abatement Account shall be

administered consistent with the terms of this Resolution, Wis. Stat. § 165.12(4), and the Settlement Agreements.

BE IT FURTHER RESOLVED, that after further information is received on the allocation of funds and proceeds, the Village will review that information and authorize accounts for receipt of proceeds and funds from the Settlement Agreements and further address the attorney fees allocations at that time consistent with the agreements and MOUs approved hereunder as a part of the Resolution.

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

This Resolution was adopted by the Yorkville Village Board on December 13, 2021.

Ayes: 4

Nays: 0

Abstentions: 0

Absences: 1

VILLAGE OF YORKVILLE

By: 
Douglas Nelson, President

Attest: 
Michael McKinney, Administrator/Clerk