

RESOLUTION NO. 2023-12

**VILLAGE OF YORKVILLE
RACINE COUNTY, WISCONSIN**

RESOLUTION APPROVING AN ADDITIONAL MEMORANDUM OF UNDERSTANDING AND ADDENDUM WITH WISCONSIN STATE-LOCAL GOVERNMENT PLAINTIFFS FOR THE ALLOCATION OF OPIOID SETTLEMENT PROCEEDS, AGREEING TO THE TERMS OF THE WISCONSIN STATE-LOCAL GOVERNMENT OPIOID MEMORANDUM OF UNDERSTANDING AND ADDENDUM ALLOCATING CERTAIN SETTLEMENT PROCEEDS, AND AUTHORIZING THE EXECUTION OF SUCH MEMORANDUM OF UNDERSTANDING FOR THE VILLAGE OF YORKVILLE, RACINE COUNTY, WISCONSIN

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

RECITALS

WHEREAS, in November 2019, the Village Board authorized the Village to enter into an engagement agreement with Phipps Ortiz Talafuse LLC, previously operating under the name Phipps Deacon Purnell 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, the Law Firm filed similar lawsuits on behalf of other Wisconsin municipalities in state court in Wisconsin, but the Wisconsin cases were removed to federal court and are currently 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

WHEREAS, additional Wisconsin cities and counties 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 other Wisconsin cities and counties) to prepare the Village’s case for trial and engage in extensive settlement discussions with the Opioid Defendants; and

WHEREAS, in February 2023, settlement discussions with Walgreens, Walmart, CVS, TEVA, and Allergan (“Settling Defendants”) resulted in tentative agreements as to settlement terms (“Settlement Agreements”) pending agreement from the State of Wisconsin, the local governments, and the other parties involved in the litigation; and

WHEREAS, the Memorandum of Understanding and Addendum (“MOU and Addendum”) provides, among other things, for the payment of certain sums to Participating Subdivisions (as defined in the related Settlement Agreements) upon the occurrence of certain events detailed in the Settlement Agreements pursuant to Wis. Stat. § 165.12, which provides for the allocation of opioid settlement proceeds; and

WHEREAS, the State and the Local Governments intend MOU to effectuate the terms of future Settlement Agreements arising out of the Litigation in a manner consistent with Wis. Stat. § 165.12(2); and

WHEREAS, it is not the intent of the State and Local Governments that this MOU and Addendum supersede or alter any previously agreed upon MOU between the State and Local Governments related to the Litigation; and

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

WHEREAS, the Village, by this Resolution, shall authorize the Village President and Administrator/Clerk to finalize and execute any escrow agreement and other document or agreement necessary to effectuate the Settlement Agreements related to this MOU and Addendum and the other agreements referenced herein.

NOW, THEREFORE, BE IT RESOLVED, that the Village Board hereby approves the Allocation MOU and Addendum and authorizes its execution and the execution of any and all documents ancillary thereto by the Village President and Administrator/Clerk; and

BE IT FURTHER RESOLVED, that all actions heretofore taken by the Village Board and 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 April 10, 2023.

VILLAGE OF YORKVILLE

Ayes: 5

By: /s/ Douglas Nelson
Douglas Nelson, President

Nays: 0

Attest: /s/ Michael McKinney
Michael McKinney, Administrator/Clerk

Abstentions: 0

Absences: 0

**WISCONSIN STATE-LOCAL GOVERNMENT MEMORANDUM OF
UNDERSTANDING FOR THE ALLOCATION OF
OPIOID SETTLEMENT PROCEEDS**

WHEREAS, the State of Wisconsin (“State”), its communities, and their people have been harmed by misfeasance, nonfeasance and malfeasance committed by certain entities that engage in or have engaged in the manufacture, marketing, promotion, distribution or dispensing of an opioid analgesic, specifically related to the covered conduct by Defendants *In re: Opioid Litigation*, MDL 2804 pending in the United States District Court for the Northern District of Ohio (“Litigation”);

WHEREAS, certain Wisconsin local governments identified on the attached Exhibit A (“Local Governments”), through their counsel, and the State of Wisconsin, through its Attorney General, are separately engaged in investigations, litigation, and settlement discussions seeking to hold the Defendants in the Litigation accountable for the damage caused by their misfeasance, nonfeasance and malfeasance;

WHEREAS, the State of Wisconsin and the Local Governments share a common desire to abate and alleviate the impacts of the misfeasance, nonfeasance and malfeasance described above throughout the State of Wisconsin and in its local communities;

WHEREAS, the settlement discussions with Walgreens, Walmart, CVS, Teva, and Allergan (“Settling Defendants”) resulted in tentative agreements as to settlement terms (“Settlement Agreements”) pending agreement from the State of Wisconsin, the Local Governments and other parties involved in the Litigation;

WHEREAS, while the Local Governments and the State recognize that the sums which may be available from the aforementioned Settlement Agreements will likely be insufficient to fully abate the public health crisis caused by the Opioid epidemic, they share a common interest in dedicating the most resources possible to the abatement effort;

WHEREAS, the State of Wisconsin enacted Wis. Stat. § 165.12 which provides for an allocation of opioid settlement proceeds;

WHEREAS, the State and the Local Governments intend this Memorandum of Understanding (“MOU”) to effectuate the terms of future Settlement Agreements arising out of the Litigation in a manner consistent with Wis. Stat. § 165.12(2); and

WHEREAS, this MOU does not supersede or alter any previously agreed upon MOU between the State and Local Governments related to the Litigation.

NOW, THEREFORE, the State and the Local Governments, enter into this MOU upon the terms described herein.

1. As used in this MOU, the term “Opioid Settlement Proceeds” shall mean all funds allocated by a Settlement Agreement (“Settlement Payments”) to the State or Local

Governments for purposes of opioid remediation activities, as well as any repayment of those funds and any interest or investment earnings that may accrue as those funds are temporarily held before being expended on opioid remediation strategies. "Opioid Settlement Proceeds" do ***not*** include the "Additional Restitution Amount" (also known as additional remediation, or any other fund, proceed, or amount paid to States who did not utilize outside counsel), reimbursement of the United States Government, or separate funds identified in Settlement Agreements as direct or indirect compensation for a Party's litigation fees, expenses, and/or costs.

2. The Settlement Administrator shall directly distribute the Opioid Settlement Proceeds to the State and to Local Governments in such proportions and for such uses as set forth in this MOU.
3. Opioid Settlement Proceeds shall be allocated as follows: (i) 30% to the State of Wisconsin ("State Share"); and (ii) 70% to Local Governments ("LG Share"). Opioid Settlement Proceeds shall not be considered funds of the State or any Local Government unless and until such time as each annual distribution is made.
4. 100% of the "Additional Restitution Amount" shall be paid to the State and deposited with the Department of Health Services.
5. Except for Opioid Settlement Funds expended in payment of attorney fees as provided in Wis. Stat. § 165.12(6), all Opioid Settlement Proceeds, regardless of allocation, and the entire "Additional Restitution Amount," shall, consistent with Wis. Stat. § 165.12(3) and (4), and except as provided in Wis. Stat. § 165.12(5), be utilized only for purposes identified as approved uses for abatement in a Settlement Agreement.
6. If any portion of the LG Share is used for the payment of owed attorney fees as authorized under Wis. Stat. § 165.12(6), the Local Governments shall report to the Attorney General and the Joint Committee on Finance the amount of the payment(s) and provide the contract(s) under which the attorney fees are purportedly owed.

Notwithstanding any limitations or characterization of funds herein to the contrary, any payments for attorneys' fees and expenses may only be paid for out of the owing Local Governments' share.

7. The parties agree to comply with the terms of the Settlement Agreements, including but not limited to (a) a requirement that a certain percentage of the Settlement Payment be spent on remediation, and (b) that at least 70% of a Settlement Payment be used solely for future Opioid Remediation as defined by the Settlement Agreements.
8. The LG Share shall be paid to each Local Government by the Settlement Administrator based on the allocation created and agreed to by the Local Governments which assigns each Local Government a percentage share of the LG Share, less any applicable attorney fees as authorized under Wis. Stat. § 165.12(6) and referenced above.

9. Nothing in this MOU is intended to alter or change any Local Government's right to pursue its own claim. Rather, the intent of this MOU is to provide a mechanism for the receipt and expenditure of Opioid Settlement Proceeds. Notwithstanding the foregoing, only Local Governments who are Participating Subdivisions under a Settlement Agreement, and who agree to the terms of this MOU may directly receive Opioid Settlement Proceeds.
10. Notwithstanding any limitations or characterization of funds herein to the contrary, any payments for Local Government attorney's fees and expenses may be applied only to the LG Share or any Local Government share of the LG Share. The State shall have no responsibility for payment of attorneys' fees or litigation expenses.
11. The parties understand that the United States may claim a portion of the Opioid Settlement Proceeds for Medicaid reimbursement. The parties agree that, to the extent a claim for Medicaid reimbursement is made, the parties shall bear the liability for the reimbursement on a pro rata basis based upon the particular claims made by the United States related to the Medicaid reimbursement. The parties agree to meet, confer, and cooperate in good faith concerning the allocation of any such liability.
12. The Attorney General may extend this MOU to apply to future settlements with other entities who engage in or have engaged in the manufacture, marketing, promotion, distribution or dispensing of an opioid analgesic, specifically related to the covered conduct by Defendants in the Litigation. To exercise this option, the Attorney General shall send written notice to counsel for the Local Governments. The Local Governments shall have 30 days from the date of the notice to express in writing any objection(s) to the extension of the MOU to the settlement(s). If any Local Government objects to the extension of the MOU to the settlement(s), it shall not be extended.

Notice to the Local Governments shall be sent via regular U.S. Mail or email to:

Andrew Phillips
Attolles Law, s.c.
222 E. Erie Street
Suite 210
Milwaukee, WI 53202
aphillips@attolles.com

Erin Dickinson
Crueger Dickinson LLC
4532 N. Oakland Ave.
Milwaukee, WI 53211
ekd@cruegerdickinson.com

Burton LeBlanc
2600 CitiPlace Drive
Suite 400
Baton Rouge, LA 70809
bleblanc@baronbudd.com

Shayna Sacks
360 Lexington Avenue
Eleventh Floor
New York, NY 10017
ssacks@napolilaw.com

Christopher Smith
von Briesen & Roper, s.c.
411 E. Wisconsin Ave.
Suite 1000
Milwaukee, WI 53202
christopher.smith@vonbriesen.com

Steven Nelson
von Briesen & Roper, s.c.
411 E. Wisconsin Ave.
Suite 1000
Milwaukee, WI 53202
steven.nelson@vonbriesen.com

Any objection(s) by a Local Government shall be sent via regular U.S. Mail or email to:

Laura E. McFarlane
Assistant Attorney General
Wisconsin Department of Justice
17 W. Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857
mcfarlanele@doj.state.wi.us

and

R. Duane Harlow
Assistant Attorney General
Wisconsin Department of Justice
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857
harlowrd@doj.state.wi.us

13. This MOU may be executed in counterparts. Electronic signatures shall in all respects be considered valid and binding.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereby execute this MOU as of the date set forth below.

ON BEHALF OF THE STATE OF WISCONSIN:

Attorney General Josh Kaul

Date: _____

ON BEHALF OF THE LOCAL GOVERNMENTS:

Adams County
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Ashland County
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Barron County
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Bayfield County
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Douglas County
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Superior, City of
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Milwaukee County
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Wauwatosa, City of
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Sturtevant, City of
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Union Grove, City of
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Yorkville Town
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Date: 4/12/2023

Richland County
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EXHIBIT A
Litigating Local Governments

Adams County
Ashland County
Barron County
Bayfield County
Brown County
Buffalo County
Burnett County
Calumet County
Chippewa County
Clark County
Columbia County
Crawford County
Dane County
Dodge County
Door County
Douglas County
City of Superior
Dunn County
Eau Claire County
Florence County
Fond Du Lac County
Forest County
Grant County
Green County
Green Lake County
Iowa County
Iron County
Jackson County
Jefferson County

Juneau County
Kenosha County
City of Kenosha
Village of Pleasant Prairie
Kewaunee County
La Crosse County
Lafayette County
Langlade County
Lincoln County
Manitowoc County
Marathon County
Marinette County
City of Marinette
Marquette County
Menominee County
Milwaukee County
City of Cudahy
City of Franklin
City of Greenfield
City of Milwaukee
City of Oak Creek
City of South Milwaukee
City of Wauwatosa
City of West Allis
Monroe County
Oconto County
Oneida County
Outagamie County
Ozaukee County

Pepin County
Pierce County
Portage County
Price County
Racine County
Village of Mount Pleasant
Village of Sturtevant
Village of Union Grove
Town of Yorkville
Richland County
Rock County
Rusk County
Sauk County
Sawyer County
Shawano County
Sheboygan County
St Croix County
Taylor County
Trempealeau County
Vernon County
Vilas County
Walworth County
Washburn County
Washington County
Waukesha County
Waupaca County
Waushara County
Winnebago County
Wood County

**ADDENDUM TO WISCONSIN LOCAL GOVERNMENT
MEMORANDUM OF UNDERSTANDING**

WHEREAS, the Local Governments entered into the MOU for purposes of memorializing their agreement surrounding, among other things, allocation of the proceeds of the settlements with McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho- McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.;

WHEREAS, the settlement discussions with Walgreens, Walmart, CVS, Teva, and Allergan resulted in tentative agreements as to settlement terms (“Settlement Agreements”) pending agreement from the State of Wisconsin, the Local Governments and other parties involved in the Litigation; and

WHEREAS, the Local Governments intend this Addendum to the MOU to effectuate the terms of the Settlement Agreements and allocate the proceeds of the Settlement Agreements to each of the Local Governments in the same manner and same percentages as set forth in the MOU and Exhibit A thereto.

NOW, THEREFORE, the Local Governments enter into this Addendum to the MOU upon the terms described herein.

1. The Local Governments ratify, confirm and agree in all respects to the MOU. By this Addendum, the Local Governments agree that any and all proceeds of the Settlement Agreements defined herein shall be distributed, allocated and otherwise disposed of in the same manner as set forth in the MOU and Exhibit A thereto.
2. Nothing in this MOU is intended to alter or change any Local Government’s right to pursue its own claim. Rather, the intent of this MOU is to provide a mechanism for the receipt and expenditure of Opioid Funds.
3. This MOU may be executed in counterparts. Electronic signatures shall in all respects be considered valid and binding.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereby execute this Addendum as of the date set forth below.

ON BEHALF OF THE LOCAL GOVERNMENTS:

Adams County
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Yorkville Town
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