TIPPECANOE COUNTY BOARD OF COMMISSIONERS

RESOLUTION NO. 2022-09 -CM
RESOLUTION TO OPT BACK IN TO OPIOIDS SETTLEMENT
PURSUANT TO INDIANA CODE 4-6-15-2

WHEREAS, Tippecanoe County has been actively engaged in pursuing damages caused by the manufacture, sale, and distribution of opioids through outside counsel in multidistrict litigation; and

WHEREAS, recent legislation amending Indiana Code 4-6-15 has been adopted by the Indiana legislature and signed into law by the Governor; and

WHEREAS, Tippecanoe County, Indiana, after due consideration of said legislation, has determined that it is in the best interest of its citizens to opt back into the opioids settlements under Indiana Code 4-6-15-2.

NOW, THEREFORE, BE IT RESOLVED by Tippecanoe County, Indiana by and through its Board of Commissioners, having considered whether to elect to opt back into the opioids settlements under Indiana Code 4-6-15-2, that Tippecanoe County now exercises its election to opt back in to the opioid settlements and orders its duly authorized agent to submit a certified copy of this Resolution to the Indiana Attorney General by July 15, 2022.

Duly adopted this 21st day of March, 2022.

BOARD OF COMMISSIONERS OF
TIPPECANOE COUNTY, INDIANA

David S. Byers, President

Tracy A. Brown, Vice President

Thomas P. Murtaugh, Member

ATTEST:

~~Bob Plantenga, Auditor of~~
~~Tippecanoe County~~ Jennifer Wafford, Deputy Auditor

APPROVED AS TO LEGAL FORM

Douglas J. Masson, Tippecanoe County Attorney

Tippecanoe County, Indiana ("Political Subdivision")

Amendment to Agreement for Professional Services Relating to Opioids Settlements with McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation and the Johnson & Johnson Defendants

Whereas, the Political Subdivision entered into an Agreement for Professional Services with Counsel to pursue litigation against various entities, including McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation and the Johnson & Johnson Defendants, to recover damages caused by the manufacture, sale, and distribution of opioids, and,

Whereas, the Political Subdivision has entered into an Agreement for Professional Services that provides for payment of attorneys' contingency fees from the Political Subdivision's gross recovery from the Opioids' Litigation, and,

Whereas, the presiding Judge over the opioids Multi-District Litigation No. 2804 titled *In Re: National Prescription Opiate Litigation,* the Honorable Dan Aaron Polster, entered an Order allowing enforcement of such contingent fee contracts directly from political subdivisions up to a maximum of 15% ("Order"), and encourages the establishment of a "Back Stop" fund by agreement or legislation, which is designed to incentivize Counsel to waive their right to enforce their contingent fee contracts and apply to the Contingent Fee Fund established under the Current Opioids Settlements and to receive payment from a "Back Stop" Fund and,

Whereas, the State of Indiana created a "Back Stop" Fund in Indiana Code 4-6-15, and,

Whereas, the opioids settlements with McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation and the Johnson & Johnson Defendants (the "Current Opioids Settlements") permit Counsel also to seek payment of attorneys' fees separately from a Contingent Fee Fund established by those settlements, and,

Whereas, Counsel is waiving their right to enforce their attorneys' fees under the Agreement for Professional Services as to the Current Opioids Settlements and will instead accept payment of a Reduced Attorneys' Fee in connection with the Current Opioids Settlements in the amount of 8.7% of the Political Subdivision's total gross recovery under these settlements to be withheld by the Budget Agency as provided by Indiana Code 4-6-15-5 and paid per the same schedule as the attorney fee payments from the Contingent Fee Fund established under the Current Opioids Settlements and will seek additional payments as provided under the Current Opioids Settlements, and,

Whereas, the Political Subdivision desires to pay the Reduced Attorneys' Fee in connection with the Current Opioids Settlements, to be withheld from its recovery by the Budget Agency as provided by Indiana Code 4-6-15-5, and paid to Counsel by the Budget Agency on the same schedule as the attorney fee payments from the Contingent Fee Fund established under the Current Opioids Settlements, and,

Whereas, it is estimated that the total fee paid to Counsel will represent a substantial discount from the amount owed under the Agreement for Professional Services.

Now therefore, the Political Subdivision and undersigned Counsel, pursuant to Indiana Code 4-6-15, enter into this Agreement to provide for Counsel to receive payment of the Reduced Attorney Fee as set forth in this Agreement as follows:

A. Definitions

As used in this Agreement:

1. "Agreement for Professional Services" means the contingency fee contract entered into by the Political Subdivision and its Counsel for Counsel's representation of the Political Subdivision in Opioid litigation.

2. "Budget Agency" means the budget agency referred to under Indiana Code 4-6-15-5.

3. "Contingent Fee Fund" means the contingency fee fund established in the Current Opioids Settlements.

4. "Counsel" means the private legal counsel on the Agreement for Professional Services.

5. "Current Opioids Settlements" means the Distributor Settlement Agreement with McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation, and the Janssen Settlement Agreement with the Johnson & Johnson Defendants.

6. "Johnson & Johnson Defendants" means Johnson & Johnson, Janssen Pharmaceuticals, Inc., OrthoMcNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.

7. "Opioid(s) Litigation" has the meaning set forth in Indiana Code 4-6-15.

8. "Opioid(s)" has the meaning set forth in Indiana Code 4-6-15.

9. "Political Subdivision" means that County, City, or Town identified at the beginning of this Agreement.

10. "Reduced Attorneys' Fee" means the amount of 8.7% of the Political Subdivision's total gross share of the Current Opioids Settlements to be received under Indiana Code 4-6-15-4(a)(2) and Indiana Code 4-6-15-4(a)(4).

B. Scope

1. This Agreement applies only to the Current Opioids Settlements with McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation and the Johnson & Johnson Defendants. Any amendments to this Agreement shall be submitted to the Budget Agency to withhold and make payments to Counsel as provided by Indiana Code 4-6-15-5.

C. Payment of Attorneys' Fees to Counsel.

1. The foregoing recitals are hereby incorporated into this Agreement.

2. Prior to distributing the Political Subdivision's share of any recovery under the Current Opioids Settlements, the Budget Agency shall withhold the Reduced Attorneys' Fee to be paid to Counsel as provided by Indiana Code 4-6-15-5. The Budget Agency shall compute the amount of the total Reduced Attorneys' Fee for each of the Current Opioids Settlements by multiplying the total gross amount to which the Political Subdivision is entitled under Indiana Code 4-6-15-4(a)(2) and Indiana Code 4-6-15-4(a)(4) for that settlement by 8.7%.

3. For the Current Opioids Settlement with McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation, the total gross amount to which the Political Subdivision is entitled under Indiana Code 4-6-15-4(a)(2) and Indiana Code 4-6-15-4(a)(4) is **$2,022,836.34**. The Budget Agency shall pay Counsel the Reduced Attorney Fee in the amount of and on the schedule as follows:

Payment No.	Total Fee to Be Paid
1	$18,526.55
2	$20,554.35
3	$36,881.07
4	$25,006.20
5	$25,006.20
6	$25,006.20
7	$25,006.19
Total	$175,986.76

4. For the Current Opioids Settlement with the Johnson & Johnson Defendants, the total gross amount to which the Political Subdivision is entitled under Indiana Code 4-6-15-4(a)(2) and Indiana Code 4-6-15-4(a)(4) is **$474,353.20**. The Budget Agency shall pay Counsel the Reduced Attorney Fee in the amounts and on the schedule as follows:

Payment No.	Total Fee Paid to be Paid
1	$4,344.46
2	$4,819.98
3	$8,648.58
4	$5,863.93
5	$5,863.93
6	$5,863.93
7	$5,863.92
Total	$41,268.73

5. Political Subdivision shall have no further obligation to pay attorneys' fees as to the Current Opioids Settlements.

6. If the amounts paid under a Current Opioids Settlement vary from those set forth in paragraphs C.3 and C.4, the fee and payment schedules shall be updated accordingly to provide accurate payment of the 8.7% Reduced Attorneys Fee.

7. The name, address, telephone number, and email address of the Counsel designated to receive payments of the Reduced Attorneys' Fee from the Budget Agency is:

Peter J. Mougey

Levin, Papantonio, Rafferty, Proctor, Buchanan, O'Brien, Barr, & Mougey, P.A.

316 S. Baylen St., suite 600

Pensacola, FL 32503

opioidsettlement@levinlaw.com

8. All other terms of the Agreement for Professional Services remain in effect.

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Dated this 21st day of March, 2022.

Political Subdivision: Tippecanoe County
Board of Commissioners of Tippecanoe County

By: _____
Name and Title
David S. Byers, President

By: _____
Name and Title
Tracy A. Brown, Vice President

By: _____
Thomas P. Murtaugh, Member

Subdivision Settlement Participation Form

Governmental Entity: Tippecanoe County	State: Indiana
Authorized Official: David S. Byers, President Bd. of Com'rs	
Address 1: 20 N. 3rd St.	
Address 2:	
City, State, Zip: Lafayette, IN 47901	
Phone: 765-423-9215	
Email: Commissioners@tippecanoe.in.gov	

The governmental entity identified above ("*Governmental Entity*"), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated July 21, 2021 ("*Distributor Settlement*"), and acting through the undersigned authorized official, hereby elects to participate in the Distributor Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Distributor Settlement, understands that all terms in this Participation Form have the meanings defined therein, and agrees that by signing this Participation Form, the Governmental Entity elects to participate in the Distributor Settlement and become a Participating Subdivision as provided therein.

2. The Governmental Entity shall, within 14 days of the Reference Date and prior to the filing of the Consent Judgment, secure the dismissal with prejudice of any Released Claims that it has filed.

3. The Governmental Entity agrees to the terms of the Distributor Settlement pertaining to Subdivisions as defined therein.

4. By agreeing to the terms of the Distributor Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.

5. The Governmental Entity agrees to use any monies it receives through the Distributor Settlement solely for the purposes provided therein.

6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Distributor Settlement. The Governmental Entity likewise agrees to arbitrate before the National Arbitration Panel as provided in, and for resolving disputes to the extent otherwise provided in, the Distributor Settlement.

7. The Governmental Entity has the right to enforce the Distributor Settlement as provided therein.

8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Distributor Settlement, including, but not limited to, all provisions of Part XI, and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Distributor Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Distributor Settlement shall be a complete bar to any Released Claim.

9. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision as set forth in the Distributor Settlement.

10. In connection with the releases provided for in the Distributor Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

> **General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Distributor Settlement.

11. Nothing herein is intended to modify in any way the terms of the Distributor Settlement, to which Governmental Entity hereby agrees. To the extent this Participation Form is interpreted differently from the Distributor Settlement in any respect, the Distributor Settlement controls.

I have all necessary power and authorization to execute this Participation Form on behalf of the Governmental Entity.

Signature: _____

Name: David S. Byers

Title: President, Board of Commissioners

Date: 3/21/2022

Settlement Participation Form

Governmental Entity: Tippecanoe County	State: Indiana
Authorized Official: David S. Byers, President Bd of Comm'rs	
Address 1: 20 N. 3rd Street	
Address 2:	
City, State, Zip: Lafayette, IN 47901	
Phone: 765-423-9215	
Email: Commissioners@tippecanoe.in.gov	

The governmental entity identified above ("Governmental Entity"), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated July 21, 2021 ("Janssen Settlement"), and acting through the undersigned authorized official, hereby elects to participate in the Janssen Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Janssen Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Janssen Settlement and become a Participating Subdivision as provided therein.

2. The Governmental Entity shall, within 14 days of the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed.

3. The Governmental Entity agrees to the terms of the Janssen Settlement pertaining to Subdivisions as defined therein.

4. By agreeing to the terms of the Janssen Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.

5. The Governmental Entity agrees to use any monies it receives through the Janssen Settlement solely for the purposes provided therein.

6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity's state where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Janssen Settlement.

7. The Governmental Entity has the right to enforce the Janssen Settlement as provided therein.

8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Janssen Settlement, including but not limited to all provisions of Section IV (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Janssen Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Janssen Settlement shall be a complete bar to any Released Claim.

9. In connection with the releases provided for in the Janssen Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

   > **General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

   A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Janssen Settlement.

10. Nothing herein is intended to modify in any way the terms of the Janssen Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Janssen Settlement in any respect, the Janssen Settlement controls.

I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature: _____

Name: David S. Byers

Title: President, Board of Commissioners

Date: 3-21-22