



AUTHORIZING RUSK COUNTY TO ENTER INTO THE SETTLEMENT AGREEMENT WITH THE KROGER CO. AND AGREE TO THE TERMS OF ADDENDUM TWO TO THE MOU ALLOCATING SETTLEMENT PROCEEDS

TO THE RUSK COUNTY BOARD OF SUPERVISORS

ROLL CALL Board Members	AYE (Yes)	NAY (No)	Abstain / Excused
1. ALEC HAMPTON	✓		
2. JERRY BILLER	✓		
3. STACY ZIMMER	✓		
4. JOHN MOORE	✓		
5. TERRY WEDWICK	✓		
6. SHERRY WALLACE	✓		
7. SUZANNE VOHS	✓		
8. TOM CUDO	✓		
9. PHIL UNTERSCHUETZ	✓		
10. BRIAN COGGINS	✓		
11. PHIL SCHNEIDER	✓		
12. JIM MEYER	✓		
13. KURT GORSEGNER	✓		
14. JOHN KALEPP	✓		
15. TOM HANSON	✓		
16. LOIS GOODE	✓		
17. DAVE WILLINGHAM	✓		
18. MIKE RUSSELL	✓		
19. DAN GUDIS	✓		
TOTAL	19	0	0

BOARD ACTION

Vote Required: Majority Vote of a Quorum

Motion to Approve Adopted Rejected

1st Unterschuetz

2nd Russell

No: 0 Yes: 19 Exc: 0

Reviewed by: _____, Corp. Counsel

Reviewed by: Bernie Wilk, Finance Director

FISCAL IMPACT: (Note if there is any fiscal impact or not)

Additional revenue - no levy impact

Certification:

I, Connie Meyer, Clerk of Rusk County, hereby certify that the above is a true and correct copy of a resolution that was adopted on the 25 day of June, 2024 by the Rusk County Board of Supervisors.

Connie Meyer
Connie Meyer
County Clerk, Rusk County

1 **WHEREAS**, the County Board of Supervisors previously authorized the County to enter
2 into an engagement agreement with von Briesen & Roper, s.c., Crueger Dickinson LLC
3 and Simmons Hanly Conroy LLC (the “Law Firms”) to pursue litigation against certain
4 manufacturers, distributors, and retailers of opioid pharmaceuticals (the “Opioid
5 Defendants”) in an effort to hold the Opioid Defendants financially responsible for the
6 County’s expenditure of vast money and resources to combat the opioid epidemic;
7
8 **WHEREAS**, on behalf of the County, the Law Firms filed a lawsuit against the Opioid
9 Defendants;
10
11 **WHEREAS**, the Law Firms filed similar lawsuits on behalf of 66 other Wisconsin
12 counties and all Wisconsin cases were coordinated with thousands of other lawsuits filed
13 against the same or substantially similar parties as the Opioid Defendants in the Northern
14 District of Ohio, captioned *In re: Opioid Litigation*, MDL 2804 (the “Litigation”);
15
16 **WHEREAS**, four (4) additional Wisconsin counties (Milwaukee, Dane, Waukesha, and
17 Walworth) hired separate counsel and joined the Litigation;
18
19 **WHEREAS**, since the inception of the Litigation, the Law Firms have coordinated with
20 counsel from around the country (including counsel for Milwaukee, Dane, Waukesha,
21 and Walworth Counties) to prepare the County’s case for trial and engage in extensive
22 settlement discussions with the Opioid Defendants;
23
24 **WHEREAS**, the settlement discussions with The Kroger Co. (the “Settling Defendant”)
25 resulted in a tentative agreement as to settlement terms pending agreement from the
26 County and other plaintiffs involved in the Litigation;
27
28 **WHEREAS**, copies of the settlement agreement relating to the Settling Defendant
29 (“Settlement Agreement”) representing the terms of the tentative settlement agreement
30 with the Settling Defendant has been made available at
31 [https://nationalopioidsettlement.com/wp-content/uploads/2024/05/Kroger-Multistate-
32 Settlement-Agreement-Circulated-to-States-March-25-2024.pdf](https://nationalopioidsettlement.com/wp-content/uploads/2024/05/Kroger-Multistate-Settlement-Agreement-Circulated-to-States-March-25-2024.pdf);
33
34 **WHEREAS**, the Settlement Agreement provides, among other things, for the payment of
35 certain sums to Participating Subdivisions (as defined in the Settlement Agreement) upon
36 the occurrence of certain events detailed in the Settlement Agreement;
37
38 **WHEREAS**, the County is a Participating Subdivision in the Settlement Agreement and
39 has the opportunity to participate in the benefits associated with the Settlement
40 Agreement provided the County (a) approves the Settlement Agreement; (b) approves the
41 Addendum Two to the Memorandum of Understanding allocating proceeds from the
42 Settlement Agreement (“MOU”) among the various Wisconsin Participating
43 Subdivisions, a copy of which is attached to this Resolution (“Addendum Two”); and (c)
44 the Legislature’s Joint Committee on Finance approves the terms of the Settlement
45 Agreement;
46
47 **WHEREAS**, pursuant to Section 12 of the State-Local MOU entered into between the
48 Wisconsin Participating Subdivisions and the Attorney General of the State of Wisconsin
49 (“State-Local MOU”), the Attorney General has provided notice that the terms of the
50 State-Local MOU shall apply to the Settlement Agreement and all proceeds of such
51 Settlement Agreement;
52
53 **WHEREAS**, 2021 Wisconsin Act 57 created Section 165.12 of the Wisconsin Statutes
54 relating to the settlement of all or part of the Litigation;

1
2 **WHEREAS**, pursuant to Wis. Stat. § 165.12(2), the Legislature’s Joint Committee on
3 Finance is required to approve the Settlement Agreement;
4

5 **WHEREAS**, pursuant to Wis. Stat. § 165.12(2), the proceeds from any settlement of all
6 or part of the Litigation are distributed 70% to local governments in Wisconsin that are
7 parties to the Litigation and 30% to the State;
8

9 **WHEREAS**, Wis. Stat. § 165.12(4)(b)2. provides the proceeds from the Settlement
10 Agreement must be deposited in a segregated account (the “Opioid Abatement Account”)
11 and may be expended only for approved uses for opioid abatement as provided in the
12 Settlement Agreement;
13

14 **WHEREAS**, Wis. Stat. § 165.12(7) bars claims from any Wisconsin local government
15 against the Opioid Defendants filed after June 1, 2021;
16

17 **WHEREAS**, the definition of Participating Subdivisions in the Settlement Agreement
18 recognizes a statutory bar on claims such as that set forth in Wis. Stat. § 165.12(7) and,
19 as a result, the only Participating Subdivisions in Wisconsin are those counties and
20 municipalities that were parties to the Litigation (or otherwise actively litigating a claim
21 against one, some, or all of the Opioid Defendants) as of June 1, 2021;
22

23 **WHEREAS**, the Legislature’s Joint Committee on Finance is not statutorily authorized
24 or required to approve the allocation of proceeds of the Settlement Agreement among
25 Wisconsin Participating Subdivisions;
26

27 **WHEREAS**, the Wisconsin Participating Subdivisions previously negotiated and
28 approved the allocation of proceeds among themselves, which allocation is reflected in
29 Exhibit A to the MOU, which is an agreement between all of the entities identified in the
30 Allocation MOU as to how the proceeds payable to those entities under the Settlement
31 Agreements will be allocated;
32

33 **WHEREAS**, the County and all other Wisconsin Participating Subdivisions agreed to
34 and entered into that certain Addendum to the MOU (“Addendum One”) that provided
35 for allocation of settlement proceeds from previous settlements with certain pharmacies
36 and manufacturers according to the same percentages as that provided in the MOU;
37

38 **WHEREAS**, the County has been informed as to the deadlines related to the effective
39 dates of the Settlement Agreement, the ramifications associated with the County’s refusal
40 to enter into the Settlement Agreement, the form of Addendum Two and an overview of
41 the process for finalizing the Settlement Agreements and such information, together with
42 additional resources related to the settlement can be found at
43 <https://nationalopioidsettlement.com/kroger-co-settlement/>;
44

45 **WHEREAS**, the County, by this Resolution, shall deposit the proceeds of the Settlement
46 Agreement consistent with the terms of this Resolution and Wis. Stat. § 165.12(4)(b);
47

48 **WHEREAS**, pursuant to the County’s engagement agreement with the Law Firms, the
49 County shall pay up to an amount equal to 25% of the proceeds from successful
50 resolution of all or part of the Litigation, whether through settlement or otherwise, plus
51 the Law Firms’ costs and disbursements, to the Law Firms as compensation for the Law
52 Firms’ efforts in the Litigation and any settlement;
53

54 **WHEREAS**, the Law Firms anticipate making application to the national fee fund
55 established in the Settlement Agreement seeking payment, in whole or part, of the fees,
56 costs, and disbursements owed the Law Firms pursuant to the engagement agreement
57 with the County;
58

59 **WHEREAS**, it is anticipated the amount of any award from the fee fund established in
60 the Settlement Agreements will be insufficient to satisfy the County’s obligations under
61 the engagement agreement with the Law Firms;
62

1 **WHEREAS**, the County, by this Resolution, and pursuant to the authority granted the
2 County in the applicable Order emanating from the Litigation in relation to the
3 Settlement Agreement and payment of attorney fees, shall authorize and direct the escrow
4 agent responsible for the receipt and distribution of the proceeds from the Settlement
5 Agreement to establish an account for the purpose of segregating funds to pay the fees,
6 costs, and disbursements of the Law Firms owed by the County (the "Attorney Fees
7 Account") in order to fund a local "backstop" for payment of the fees, costs, and
8 disbursements of the Law Firms;

9
10 **WHEREAS**, in no event shall payments to the Law Firms out of the Attorney Fees
11 Account and the fee fund established in the Settlement Agreement exceed an amount
12 equal to 25% of the amounts allocated to the County by virtue of the Addendum Two
13 (Exhibit A to the MOU);

14
15 **WHEREAS**, the intent of this Resolution is to authorize the County to enter into the
16 Settlement Agreement, the Addendum Two, establish the County's Opioid Abatement
17 Account, and establish the Attorney Fees Account; and

18
19 **WHEREAS**, the County, by this Resolution, shall authorize the County's corporation
20 counsel to finalize and execute any other document or agreement necessary to effectuate
21 the Settlement Agreement and the other agreements referenced herein;

22
23 **NOW, THEREFORE, BE IT RESOLVED:** the County Board of Supervisors hereby
24 approves:

- 25
26 1. The execution of the Settlement Agreement and any and all documents ancillary
27 thereto and authorizes the County Board Chair or designee to execute same.
28
29 2. The final negotiation and execution of Addendum Two in form substantially
30 similar to that presented with this Resolution and any and all documents
31 ancillary thereto and authorizes the County Board Chair or designee to execute
32 same upon finalization provided the percentage share identified as allocated to
33 the County is substantially similar to that identified in the Addendum Two
34 provided to the Board with this Resolution.
35
36 3. The execution by the County Board Chair or designee of any additional
37 documents or agreements for the receipt and disbursement of the proceeds of the
38 Settlement Agreement.
39

40 **BE IT FURTHER RESOLVED:** all proceeds from the Settlement Agreement not
41 otherwise directed to the Attorney Fees Account shall be deposited in the County's
42 Opioid Abatement Account. The Opioid Abatement Account shall be administered
43 consistent with the terms of this Resolution, Wis. Stat. § 165.12(4), and the Settlement
44 Agreement.
45

46 **BE IT FURTHER RESOLVED:** the County hereby authorizes the establishment of an
47 account separate and distinct from any account containing funds allocated or allocable to
48 the County which shall be referred to by the County as the "Attorney Fees Account." An
49 escrow agent shall deposit a sum equal to up to, but in no event exceeding, an amount
50 equal to 20% of the County's proceeds from the Settlement Agreement into the Attorney
51 Fees Account. If the payments to the County are not enough to fully fund the Attorney
52 Fees Account as provided herein because such payments are made over time, the
53 Attorney Fees Account shall be funded by placing up to, but in no event exceeding, an
54 amount equal to 20% of the proceeds from the Settlement Agreement attributable to
55 Local Governments (as that term is defined in the MOU) into the Attorney Fees Account
56 for each payment. Funds in the Attorney Fees Account shall be utilized to pay the fees,
57 costs, and disbursements owed to the Law Firms pursuant to the engagement agreement
58 between the County and the Law Firms provided, however, the Law Firms shall receive
59 no more than that to which they are entitled under their fee contract when considering the
60 amounts paid the Law Firms from the fee fund established in the Settlement Agreement
61 and allocable to the County. The Law Firms may make application for payment from the
62 Attorney Fees Account at any time and the County shall cooperate with the Law Firms in

1 executing any documents necessary for the escrow agent to make payments out of the
2 Attorney Fees Account.


3
4 **BE IT FURTHER RESOLVED** that all actions heretofore taken by the Board of
5 Supervisors and other appropriate public officers and agents of the County with respect to
6 the matters contemplated under this Resolution are hereby ratified, confirmed and
7 approved.
8
9
10

SUBMITTED BY:

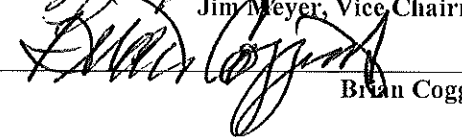
Rusk County Finance Committee



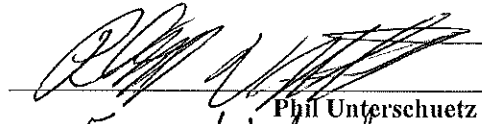
John Kalepp, Chairman



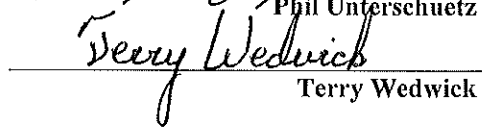
Jim Meyer, Vice Chairman



Brian Coggins



Phil Unterschuetz



Terry Wedwick