

July 9, 2024

RESOLUTION NO. 2024-34

RESOLUTION BY THE EXECUTIVE COMMITTEE AUTHORIZING RACINE 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 Honorable members of the Racine County Board of Supervisors:

WHEREAS, the County Board of Supervisors previously authorized the County to enter into an engagement agreement with von Briesen & Roper, s.c., Crueger Dickinson LLC and Simmons Hanly Conroy LLC (the “Law Firms”) 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 County’s expenditure of vast money and resources to combat the opioid epidemic; and

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

WHEREAS, the Law Firms filed similar lawsuits on behalf of 66 other Wisconsin counties and all 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

WHEREAS, 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 Firms have coordinated with counsel from around the country (including counsel for Milwaukee, Dane, Waukesha, and Walworth Counties) to prepare the County’s case for trial and engage in extensive settlement discussions with the Opioid Defendants; and

WHEREAS, the settlement discussions with The Kroger Co. (the “Settling Defendant”) resulted in a tentative agreement as to settlement terms pending agreement from the County and other plaintiffs involved in the Litigation; and

WHEREAS, copies of the settlement agreement relating to the Settling Defendant (“Settlement Agreement”) representing the terms of the tentative settlement agreement with the Settling Defendant has been made available at <https://nationalopioidsettlement.com/wp-content/uploads/2024/05/Kroger-Multistate-Settlement-Agreement-Circulated-to-States-March-25-2024.pdf>; and

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

WHEREAS, the County is a Participating Subdivision in the Settlement Agreement and has the opportunity to participate in the benefits associated with the Settlement Agreement provided the County (a) approves the Settlement Agreement; (b) approves the Addendum Two to the Memorandum of Understanding allocating proceeds from the Settlement Agreement (“MOU”) among the various Wisconsin Participating Subdivisions, a copy of which is attached to

3
4 this Resolution (“Addendum Two”); and (c) the Legislature’s Joint Committee on Finance
5 approves the terms of the Settlement Agreement; and
6

7 **WHEREAS**, pursuant to Section 12 of the State-Local MOU entered into between the
8 Wisconsin Participating Subdivisions and the Attorney General of the State of Wisconsin
9 (“State-Local MOU”), the Attorney General has provided notice that the terms of the State-Local
10 MOU shall apply to the Settlement Agreement and all proceeds of such Settlement Agreement;
11 and
12

13 **WHEREAS**, 2021 Wisconsin Act 57 created Section 165.12 of the Wisconsin Statutes
14 relating to the settlement of all or part of the Litigation; and
15

16 **WHEREAS**, pursuant to Wis. Stat. § 165.12(2), the Legislature’s Joint Committee on
17 Finance is required to approve the Settlement Agreement; and
18

19 **WHEREAS**, pursuant to Wis. Stat. § 165.12(2), the proceeds from any settlement of all
20 or part of the Litigation are distributed 70% to local governments in Wisconsin that are parties to
21 the Litigation and 30% to the State; and
22

23 **WHEREAS**, Wis. Stat. § 165.12(4)(b)2. provides the proceeds from the Settlement
24 Agreement must be deposited in a segregated account (the “Opioid Abatement Account”) and
25 may be expended only for approved uses for opioid abatement as provided in the Settlement
26 Agreement; and
27

28 **WHEREAS**, Wis. Stat. § 165.12(7) bars claims from any Wisconsin local government
29 against the Opioid Defendants filed after June 1, 2021; and
30

31 **WHEREAS**, the definition of Participating Subdivisions in the Settlement Agreement
32 recognizes a statutory bar on claims such as that set forth in Wis. Stat. § 165.12(7) and, as a
33 result, the only Participating Subdivisions in Wisconsin are those counties and municipalities
34 that were parties to the Litigation (or otherwise actively litigating a claim against one, some, or
35 all of the Opioid Defendants) as of June 1, 2021; and
36

37 **WHEREAS**, the Legislature’s Joint Committee on Finance is not statutorily authorized or
38 required to approve the allocation of proceeds of the Settlement Agreement among Wisconsin
39 Participating Subdivisions; and
40

41 **WHEREAS**, the Wisconsin Participating Subdivisions previously negotiated and
42 approved the allocation of proceeds among themselves, which allocation is reflected in Exhibit A
43 to the MOU, which is an agreement between all of the entities identified in the Allocation MOU
44 as to how the proceeds payable to those entities under the Settlement Agreements will be
45 allocated; and
46

47 **WHEREAS**, the County and all other Wisconsin Participating Subdivisions agreed to and
48 entered into that certain Addendum to the MOU (“Addendum One”) that provided for allocation
49 of settlement proceeds from previous settlements with certain pharmacies and manufacturers
50 according to the same percentages as that provided in the MOU; and
51

3
4 **WHEREAS**, the County has been informed as to the deadlines related to the effective
5 dates of the Settlement Agreement, the ramifications associated with the County's refusal to
6 enter into the Settlement Agreement, the form of Addendum Two and an overview of the
7 process for finalizing the Settlement Agreements and such information, together with additional
8 resources related to the settlement can be found at [https://nationalopioidsettlement.com/kroger-](https://nationalopioidsettlement.com/kroger-co-settlement/)
9 [co-settlement/](https://nationalopioidsettlement.com/kroger-co-settlement/); and

10
11 **WHEREAS**, the County, by this Resolution, shall deposit the proceeds of the Settlement
12 Agreement consistent with the terms of this Resolution and Wis. Stat. § 165.12(4)(b); and

13
14 **WHEREAS**, pursuant to the County's engagement agreement with the Law Firms, the
15 County shall pay up to an amount equal to 25% of the proceeds from successful resolution of all
16 or part of the Litigation, whether through settlement or otherwise, plus the Law Firms' costs and
17 disbursements, to the Law Firms as compensation for the Law Firms' efforts in the Litigation and
18 any settlement; and

19
20 **WHEREAS**, the Law Firms anticipate making application to the national fee fund
21 established in the Settlement Agreement seeking payment, in whole or part, of the fees, costs,
22 and disbursements owed the Law Firms pursuant to the engagement agreement with the
23 County; and

24
25 **WHEREAS**, it is anticipated the amount of any award from the fee fund established in
26 the Settlement Agreements will be insufficient to satisfy the County's obligations under the
27 engagement agreement with the Law Firms; and

28
29 **WHEREAS**, the County, by this Resolution, and pursuant to the authority granted the
30 County in the applicable Order emanating from the Litigation in relation to the Settlement
31 Agreement and payment of attorney fees, shall authorize and direct the escrow agent
32 responsible for the receipt and distribution of the proceeds from the Settlement Agreement to
33 establish an account for the purpose of segregating funds to pay the fees, costs, and
34 disbursements of the Law Firms owed by the County (the "Attorney Fees Account") in order to
35 fund a local "backstop" for payment of the fees, costs, and disbursements of the Law Firms; and

36
37 **WHEREAS**, in no event shall payments to the Law Firms out of the Attorney Fees
38 Account and the fee fund established in the Settlement Agreement exceed an amount equal to
39 25% of the amounts allocated to the County by virtue of the Addendum Two (Exhibit A to the
40 MOU); and

41
42 **WHEREAS**, the intent of this Resolution is to authorize the County to enter into the
43 Settlement Agreement, the Addendum Two, establish the County's Opioid Abatement Account,
44 and establish the Attorney Fees Account; and

45
46 **WHEREAS**, the County, by this Resolution, shall authorize the County's corporation
47 counsel to finalize and execute any other document or agreement necessary to effectuate the
48 Settlement Agreement and the other agreements referenced herein.

49
50 **NOW, THEREFORE, BE IT RESOLVED:** the County Board of Supervisors hereby
51 approves:

- 3
- 4 1. The execution of the Settlement Agreement and any and all documents ancillary
- 5 thereto and authorizes the County Executive and/or Board Chair to execute same.
- 6
- 7 2. The final negotiation and execution of Addendum Two in form substantially similar to
- 8 that presented with this Resolution and any and all documents ancillary thereto and
- 9 authorizes the County Executive and/or Board Chair to execute same upon
- 10 finalization provided the percentage share identified as allocated to the County is
- 11 substantially similar to that identified in the Addendum Two provided to the Board
- 12 with this Resolution.
- 13
- 14 3. The execution by the County Executive and/or Board Chair of any additional
- 15 documents or agreements for the receipt and disbursement of the proceeds of the
- 16 Settlement Agreement.
- 17

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

22
23 **BE IT FURTHER RESOLVED:** the County hereby authorizes the establishment of an
24 account separate and distinct from any account containing funds allocated or allocable to the
25 County which shall be referred to by the County as the "Attorney Fees Account." An escrow
26 agent shall deposit a sum equal to up to, but in no event exceeding, an amount equal to 20% of
27 the County's proceeds from the Settlement Agreement into the Attorney Fees Account. If the
28 payments to the County are not enough to fully fund the Attorney Fees Account as provided
29 herein because such payments are made over time, the Attorney Fees Account shall be funded
30 by placing up to, but in no event exceeding, an amount equal to 20% of the proceeds from the
31 Settlement Agreement attributable to Local Governments (as that term is defined in the MOU)
32 into the Attorney Fees Account for each payment. Funds in the Attorney Fees Account shall be
33 utilized to pay the fees, costs, and disbursements owed to the Law Firms pursuant to the
34 engagement agreement between the County and the Law Firms provided, however, the Law
35 Firms shall receive no more than that to which they are entitled under their fee contract when
36 considering the amounts paid the Law Firms from the fee fund established in the Settlement
37 Agreement and allocable to the County. The Law Firms may make application for payment from
38 the Attorney Fees Account at any time and the County shall cooperate with the Law Firms in
39 executing any documents necessary for the escrow agent to make payments out of the Attorney
40 Fees Account.

41
42 **BE IT FURTHER RESOLVED** that all actions heretofore taken by the Board of
43 Supervisors and other appropriate public officers and agents of the County with respect to the
44 matters contemplated under this Resolution are hereby ratified, confirmed and approved.

45
46 Respectfully submitted,

47 **EXECUTIVE COMMITTEE**

48 1st Reading _____

49 2nd Reading _____

50 _____
51 Thomas Kramer, Chairman

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3
4 BOARD ACTION

5
6 Adopted _____
7 For _____
8 Against _____
9 Absent _____

32
33 **The foregoing legislation adopted by the County Board of Supervisors of**
34 **Racine County, Wisconsin, is hereby:**

35
36 **Approved:** _____

37 **Vetoed:** _____

38
39 **Date:** _____,

40
41 _____

42 **County Executive**