



Issue: RESOLUTION 2021-125: A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A SETTLEMENT PARTICIPATION FORM TO ENABLE THE CITY TO PARTICIPATE IN THE NATIONAL OPIOID SETTLEMENT AGREEMENT.

Date: December 6, 2021

Submitted By: Nick Woodman, City Attorney

Background

In June of 2017, the Missouri Attorney General's Office filed suit against several opioid manufacturers. This suit, the third filed by a State at that time, would eventually become part of a national effort by states, municipalities, and others to hold opioid makers, distributors, and dispensers accountable for flooding the market with prescription opioids and engaging in alleged misconduct in the manufacturing, marketing, promotion, and distribution of opioids.

On July 21, 2021, Attorneys General from 14 states, including Missouri, announced that the three largest pharmaceutical distributors (Amerisource Bergin, McKesson, and Cardinal Health) had proposed a \$26 billion settlement agreement. The details of the settlement include financial payouts to states and municipalities and reforms on the opioid distribution process. Specifically, the settlement requires the distributors to establish a clearinghouse in which every opioid shipment is tracked. The distributors will then be required to check this clearinghouse before shipping a delivery. If it appears that the order is too large, the distributor is required to notify state and federal authorities and withhold the shipment.

Additionally, the settlement contemplates 26 billion dollars in payouts, however this payout amount declines by about half if a certain critical mass of municipalities does not sign on to the settlement agreement. The State of Missouri must achieve this sign-on requirement by January 2, 2022. Nixa is listed in the settlement agreement as a subdivision eligible for receipt of a direct allocation.

The settlement agreement indicates that Missouri's maximum payout would be 2.0056% of the overall settlement amount. This equates to about \$500 million. At this time, the State-Subdivision allocation amounts are not finalized.

Analysis



The approval of Resolution 2021-125 would authorize the City Administrator to execute the "Settlement Participation Form," thereby binding the City to the terms of the settlement agreement. The City of Nixa's participation in the settlement agreement would assist the State in meeting its obligations to obtain the required amount of subdivision participation for the full \$26 billion settlement amount. The City's participation also allows for the potential of a direct allocation of settlement funds to the City for use in opioid mitigation measures.

By agreeing to participate in the settlement, the City will be releasing the distributors from further claims that could be brought by the City, this means the City would be barred from bringing individual claims against the distributors related to opioid matters.

Recommendation

Even though agreeing to participate in the settlement agreement bars the City from pursuing individual claims against the distributors, staff recommends approval. Participation in the Settlement Agreement helps ensure that the City and the State obtain the maximum amount of settlement funds while also giving the Attorney General's Office tools to modify the practice of the three largest opioid distributors.

RESOLUTION NO. 2021-125

**A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE
CITY ADMINISTRATOR TO EXECUTE A SETTLEMENT PARTICIPATION
FORM TO ENABLE THE CITY TO PARTICIPATE IN THE
NATIONAL OPIOID SETTLEMENT AGREEMENT.**

WHEREAS on July 21, 2021, the Attorneys General of 14 states, including Missouri, announced a settlement agreement with several of the nation's largest pharmaceutical distributors; and

WHEREAS the settlement agreement was the result of many different suits filed across the country by states, municipalities, tribal governments, and others to address the harmful business practices of major opioid manufactures and distributors; and

WHEREAS the settlement agreement is structured such that, in order for the full \$26 billion in payouts to be achieved, States must obtain a certain amount of participation from their political subdivisions; and

WHEREAS under the terms of the settlement agreement, if the State of Missouri achieves enough political subdivision participation, the State stands to be allocated approximately \$500 million in funds to abate the opioid-related matters; and

WHEREAS the Missouri Attorney General's Office has proved the "Settlement Participation Form," attached hereto as "Resolution Exhibit A," which, if executed, would evidence the City's participation in the overall settlement agreement; and

WHEREAS the State must achieve a sufficient level of political subdivision participation by January 2, 2022, to be entitled to the full amount of settlement funds; and

WHEREAS by participating in the settlement agreement, the City is eligible to receive a direct allocation from the State's settlement funds; and

WHEREAS the City Council desires to participate in the settlement agreement and is cognizant that if the settlement agreement is approved certain claims the City may have against certain opioid distributors are to be released.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NIXA, AS FOLLOWS, THAT:

SECTION 1: City Council hereby authorizes the City Administrator to execute on behalf of the City the "Settlement Participation Form" which is attached hereto and incorporated herein by this reference as "Resolution Exhibit A." The City Administrator is further authorized and empowered to do all things necessary or convenient to carry out the terms and intent of this Resolution and to complete the City's participation in the settlement agreement.

RESOLUTION NO. 2021-125

SECTION 2: This Resolution shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

ADOPTED BY THE CITY COUNCIL THIS 13TH DAY OF DECEMBER 2021.

ATTEST:

CITY CLERK

PRESIDING OFFICER

APPROVED BY THE MAYOR THIS _____ DAY OF _____ 2021.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

CITY ATTORNEY

RESOLUTION EXHIBIT A

Settlement Participation Form

Governmental Entity: Nixa city	State: MO
Authorized Signatory:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

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 Election and Release have the meanings defined therein, and agrees that by this Election, 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, dismiss with prejudice 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.
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 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 Election and Release is interpreted differently from the Distributor Settlement in any respect, the Distributor Settlement controls.



I swear under penalty of perjury that I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____

