



AGENDA MEMORANDUM

Action Item for the City Council Meeting December 14, 2021

DATE: December 14, 2021
TO: Peter Zaroni, City Manager
FROM: Miles Risley, City Attorney
milesr@cctexas.com
361-826-3873

Opioid Crisis Settlement Participation Resolution

CAPTION:

Resolution authorizing participation in the proposed opioid crisis settlement through the Texas Attorney General's office; and adopting and approving the Texas Opioid Abatement Fund Council and Settlement Allocation Term Sheet.

SUMMARY:

This resolution adopts and approves the Texas Opioid Abatement Fund Council and Settlement Allocation Term Sheet. The term sheet provides for the City to receive up to \$1,812,707; however, the latest verbal estimates from the Attorney General's office have indicated the City could receive more than \$2.2 million, due to the addition of other opioid manufacturers to the proposed settlement. In addition, the City will be eligible to apply for grants to address more specified opioid abatement matters from a larger pool of funds available to the State of Texas.

BACKGROUND AND FINDINGS:

The 15% Allocation funds (City Share estimated at \$1.8 million to \$2.2 million [or more from additional companies]) may be generally used pursuant to Texas House Bill 1827 for the "abatement of opioid-related harms". Seventy percent of the state funds may be used for grants to be received by the City for items in the "List of Opioid Remediation Uses," which include training, treatment, supplies (naloxone), education programs, criminal justice programs, overdose response, and other opioid-related programs.

Texas, along with a broad coalition of states and subdivisions, has reached final agreements with four companies to resolve legal claims against for their role in the opioid crisis. One agreement is with opioid manufacturer Johnson & Johnson. The other is three major pharmaceutical distributors: AmerisourceBergen, Cardinal Health, and McKesson.

The two agreements provide for \$26 billion in payments over 18 years, with \$23.9 billion available for opioid abatement and significant amounts front loaded. Funding will be distributed to states according to the allocation agreement reached among the Attorneys General. Subdivisions can only participate in the agreement if their state participates. Texas' combined share is almost \$1.5 billion: \$1.17 billion from the distributors and \$268 million from J&J. Distribution within Texas is

handled through an intrastate agreement between the state and litigating subdivisions. The funding must be used to support any of a wide variety of strategies to fight the opioid crisis. Separate provisions exist to compensate attorneys who have pursued opioid litigation on behalf of states and local governments. Future opioid litigation may result in increases, suspension, and/or reduction of payments. Even without full resolution of claims, states and subdivisions can still receive substantial payments by resolving a significant portion of current and future claims.

Both agreements contain injunctive terms. The distributors will be subject to more oversight, including an independent monitor, relating to deliveries of opioids to pharmacies where diversion and misuse occur. They will be required to establish and fund an independent clearinghouse to track opioid distribution nationwide and flag suspicious orders. J&J will be prohibited from selling or promoting opioids.

ALTERNATIVES:

The alternative to signing the settlement participation form and adopting and approving the term sheet would be filing a separate lawsuit on behalf of the City, expending a great deal of time and resources in litigation with no guarantee of recovery and/or the possibility of recovering less than what is to be awarded.

FISCAL IMPACT:

The fiscal impact based on this settlement will be the City receiving up to \$1,812,707.00, or possibly more. This amount may be less based upon the number of other participating political subdivisions and cities.

RECOMMENDATION:

Staff recommends that City Council authorize participation in the settlement and the adoption and approval of the Texas Term Sheet.

LIST OF SUPPORTING DOCUMENTS:

Subdivision Settlement Participation Form – Janssen Settlement
Subdivision Settlement Participation Form – Distributor Settlement
Settlement Allocation Term Sheet (“Texas Term Sheet”)
Distributor Settlement Agreement
Janssen Settlement Agreement
List of Opioid Remediation Uses