

RESOLUTION NO. 2021-76

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COACHELLA, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO ENTER INTO THE SETTLEMENT AGREEMENTS WITH MCKESSON CORPORATION, CARDINAL HEALTH, INC., AMERISOURCEBERGEN CORPORATION, JOHNSON & JOHNSON, JANSSEN PHARMACEUTICALS, INC., ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC., AND JANSSEN PHARMACEUTICA, INC., AGREE TO THE TERMS OF THE STATE-SUBDIVISION AGREEMENTS, AND AUTHORIZE ENTRY INTO THE STATE-SUBDIVISION AGREEMENTS WITH THE ATTORNEY GENERAL

WHEREAS, the United States is facing an ongoing public health crisis of opioid abuse, addiction, overdose, and death, forcing the State of California and California counties and cities to spend billions of dollars each year to address the direct consequences of this crisis; and

WHEREAS, pending in the U.S. District Court for the Northern District of Ohio is a multidistrict litigation (“MDL”) being pursued by numerous public entity plaintiffs against the manufacturers and distributors of various opioids based on the allegation that the defendants’ unlawful conduct caused the opioid epidemic; and

WHEREAS, on or about July 1, 2021, a proposed nationwide tentative settlement was reached between the plaintiffs in the MDL and several of the defendants, specifically McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation (collectively, “Distributors”), and Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (collectively, “J&J”) (all collectively, the “Settling Defendants”); and

WHEREAS, as part of the settlement with the Settling Defendants, local subdivisions, including certain cities, that are not plaintiffs in the MDL may participate in the settlement in exchange for a release of the Settling Defendants; and

WHEREAS, copies of the proposed terms of those proposed nationwide settlements have been set forth in the Distributors Master Settlement Agreement and the J&J Master Settlement Agreement (collectively “Settlement Agreements”); and

WHEREAS, copies of the Settlement Agreements have been provided to the City Council with this Resolution; and

WHEREAS, the Settlement Agreements provide, among other things, for the payment of a certain sum to settling government entities in California including to the State of California and Participating Subdivisions upon occurrence of certain events as defined in the Settlement Agreements (“California Opioid Funds”); and

WHEREAS, California local governments in the MDL have engaged in extensive discussions with the State Attorney General’s Office (“AGO”) as to how the California Opioid Funds will be allocated, which has resulted in the Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds- Distributor Settlement and Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds- Janssen Settlement (collectively the “Allocation Agreements,”) which are agreements between all of the entities identified in the Allocation Agreements; and

WHEREAS, copies of the Allocation Agreements have been provided with this Resolution; and

WHEREAS, the Allocation Agreements allocate the California Opioid Funds as follows: 15% to the State Fund; 70% to the Abatement Accounts Fund; and 15% to the Subdivision Fund. For the avoidance of doubt, all funds allocated to California from the Settlements shall be combined pursuant to Allocation Agreements, and 15% of that total shall be allocated to the State of California (the “State of California Allocation”), 70% to the California Abatement Accounts Fund (“CA Abatement Accounts Fund”), and 15% to the California Subdivision Fund (“CA Subdivision Fund”); and

WHEREAS, under the Settlement Agreements, certain local subdivisions that did not file a lawsuit against the Settlement Defendants may qualify to participate in the Settlement and obtain funds from the CA Abatement Accounts Fund; and

WHEREAS, the City is eligible to participate in the Settlement and become a CA Participating Subdivision by executing a Participation Agreement for each of the settlements; and

WHEREAS, the funds in the CA Abatement Accounts Fund (the 70% allocation) will be allocated based on the allocation model developed in connection with the proposed negotiating class in the National Prescription Opiate Litigation (MDL No. 2804), as adjusted to reflect only those cities and counties that are eligible, based on population or litigation status, to become a CA Participating Subdivision (those above 10,000 in population). The percentage from the CA Abatement Accounts Fund allocated to each CA Participating Subdivision is set forth in Appendix 1 to the Allocation Agreements and provided to the City Council with this Resolution. The City’s share of the CA Abatement Accounts Fund will be a product of the total in the CA Abatement Accounts Fund multiplied by the City’s percentage set forth in Appendix 1 (the “Local Allocation”); and

WHEREAS, a CA Participating Subdivision that is a city will be allocated its Local Allocation share as of the date on which it becomes a Participating Subdivision. The Local Allocation share for a city that is a CA Participating Subdivision will be paid to the county in which the city is located, unless the city elects to take a direct election of the settlement funds, so long as: (a) the county is a CA Participating Subdivision, and (b) the city has not advised the Settlement Fund Administrator that it requests direct payment at least 60 days prior to a Payment Date; and

WHEREAS, it the intent of this Resolution is to authorize the City to enter into the Settlement Agreements by executing the Participation Agreements and to enter into the Allocation Agreements by executing the signature page to those agreements.

.NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COACHELLA DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. The City Manager is authorized to: (1) settle and release the City’s claims against the Settling Defendants in exchange for the consideration set forth in the Settlement Agreements and Allocation Agreements and (2) execute any other documents as may be necessary to fully settle and release the City’s claims against the Settling Defendants.

SECTION 3. That the City Council finds this Resolution is not subject to the California Environmental Quality Act (CEQA) in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty, as in this case, that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

SECTION 4. Severability. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications, and to this end the provisions of this Resolution are declared to be severable.

SECTION 5. Effective Date. This Resolution shall become effective immediately.

PASSED, APPROVED and ADOPTED this 8th day of December 2021.

Steven A. Hernandez
Mayor

ATTEST:

Angela M. Zepeda
City Clerk

APPROVED AS TO FORM:

Carlos Campos
City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF COACHELLA)

I HEREBY CERTIFY that the foregoing Resolution No. 2021-76 was duly adopted by the City Council of the City of Coachella at a regular meeting thereof, held on the 8th day of December 2021, by the following vote of Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

Andrea J. Carranza, MMC
Deputy City Clerk