

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING THE CITY OF KINGSPORT TO JOIN WITH THE STATE OF TENNESSEE AND OTHER LOCAL GOVERNMENTS IN AMENDING THE TENNESSEE STATE-SUBDIVISION OPIOID ABATEMENT AGREEMENT; APPROVING THE RELATED SETTLEMENT AGREEMENTS; AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ANY OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT OR THIS RESOLUTION

WHEREAS, the opioid epidemic continues to impact communities in the United States, the State of Tennessee, and the City of Kingsport, Tennessee; and

WHEREAS, Kingsport has suffered harm and will continue to suffer harm as a result of the opioid epidemic; and

WHEREAS, the State of Tennessee and some Tennessee local governments have filed lawsuits against opioid manufacturers, distributors, and retailers, including many federal lawsuits by Tennessee counties and cities that are pending in the litigation captioned *In re: National Prescription Opiate Litigation*, MDL No.: 2804 (N.D. Ohio) (the MDL case is referred to as “Opioid Litigation”); and

WHEREAS, the State of Tennessee, non-litigating counties, and representatives of various local governments involved in the Opioid Litigation have adopted a unified plan for the allocation and use of certain prospective settlement and bankruptcy funds from opioid related litigation (“Settlement Funds”); and

WHEREAS, the Tennessee State-Subdivision Opioid Abatement Agreement (the “Tennessee Plan”), sets forth the framework of a unified plan for the proposed allocation and use of the Settlement Funds; and

WHEREAS, City of Kingsport has previously joined settlements pursuant to the Tennessee Plan with three pharmaceutical distributors and a manufacturer; and

WHEREAS, Public Chapter 586 enacted during the 2024 Regular Session of the 113<sup>th</sup> Tennessee General Assembly amended the Tennessee Plan to apply the statutory provisions to a new settlement with Kroger, Co. if the settlement becomes effective; and

WHEREAS, upon review City of Kingsport deems continued participation in and support for the Tennessee Plan including agreement to the settlement of claims and litigation specifically related to Kroger Co and any other settlement of opioid related claims that Tennessee has joined to be in the best interest of the citizens of Kingsport as the same would ensure an effective structure for the commitment of Settlement Funds to abate and seek to resolve the opioid epidemic; and

WHEREAS, amendments to the Tennessee Plan, would extend its terms to the proposed settlements, streamline accounting for certain settlement funds, and address the allocation of certain funds from a manufacturer in bankruptcy; and

WHEREAS, participation in the settlements by a large majority of Tennessee cities and counties will materially increase the amount of settlement funds that Tennessee will receive from pending proposed opioid settlements.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the board of mayor and aldermen finds that the amendments to the Tennessee Plan are in the best interest of the City of Kingsport and its citizens because they would ensure an effective structure for the commitment of Settlement Funds to abate and seek to resolve the opioid epidemic.

SECTION II. That the City of Kingsport hereby expresses its support for a unified plan for the allocation and use of Settlement Funds as generally described in the Tennessee Plan.

SECTION III. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney the Subdivision Participation and Release Form and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the Subdivision Participation and Release Form:

Subdivision Participation and Release Form

Governmental Entity:	State:
Authorized Official:	
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 March 22, 2024 ("*Kroger Settlement*"), and acting through the undersigned authorized official, hereby elects to participate in the Kroger Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Kroger Settlement, understands that all terms in this Participation and Release Form have the meanings defined therein, and agrees that by executing this Participation and Release Form, the Governmental Entity elects to participate in the Kroger Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall promptly, and in any event no later than 14 days after the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in *In re National Prescription Opiate Litigation*, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs' Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal with Prejudice substantially in the form found at [website link to national settlement website to be provided].
3. The Governmental Entity agrees to the terms of the Kroger Settlement pertaining to Participating Subdivisions as defined therein.
4. By agreeing to the terms of the Kroger 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 Kroger 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 Kroger Settlement. The Governmental Entity likewise agrees to arbitrate before the National Arbitration Panel as provided in, and for resolving disputes to the extent otherwise provided in, the Kroger Settlement.

7. The Governmental Entity has the right to enforce the Kroger Settlement as provided therein.

8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Kroger Settlement, including without limitation all provisions of Section XI (Release), 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 Kroger 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 Kroger 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 Kroger Settlement.

10. In connection with the releases provided for in the Kroger 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 Kroger Settlement.

11. Nothing herein is intended to modify in any way the terms of the Kroger Settlement, to which Governmental Entity hereby agrees. To the extent this Participation and Release Form is interpreted differently from the Kroger Settlement in any respect, the Kroger Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Governmental Entity.

SECTION IV. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is further authorized and directed to execute any formal agreements necessary to implement a unified plan for the allocation and use of Settlement Funds that is substantially consistent with the Tennessee Plan, the 2024 amendments thereto and this resolution.

SECTION V. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the Subdivision Participation Release Form as set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes, and to take such other action as necessary and appropriate to effectuate city's participation in the Tennessee Plan and its Amendments.

SECTION VI. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort, and prosperity of the citizens of the city.

SECTION VII. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 6th day of August, 2024.

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PATRICK W. SHULL, MAYOR

ATTEST:

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ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

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RODNEY B. ROWLETT, III, CITY ATTORNEY