

RESOLUTION

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE SETTLEMENT RELATED DOCUMENTS TO RELEASE AND SETTLE ALL CLAIMS AGAINST KROGER, INC. PURSUANT TO THE CITY'S PARTICIPATION IN THE NATIONWIDE OPIOID LITIGATION

WHEREAS, the City of Tupelo (hereinafter the "City") on December 21, 2021, entered into the Mississippi Memorandum of Understanding (the "MOU") which sets forth the framework of a unified plan for the proposed allocation and use of opioid settlement proceeds; and

WHEREAS, pursuant to the MOU, the City has previously entered into settlement agreements and been awarded settlement proceeds as a part of the Distributor Settlement, the Jansen Settlement, and the New National Opioid Settlements; and

WHEREAS, the City of Tupelo, Mississippi and the State of Mississippi have suffered harm from the opioid epidemic, and Kroger, Inc. has been alleged to have contributed to those harmful effects of the opioid epidemic; and

WHEREAS, the City desires to participate in the Settlement Agreement with Kroger, Inc. as a part of the City's ongoing participation in the nationwide opioid litigation; and

WHEREAS, participation in the settlement by a large majority of Mississippi cities and Counties will materially increase the amount of funds to Mississippi and should improve Mississippi's relative bargaining position during additional settlement negotiations;

WHEREAS, failure to participate in the Settlement will reduce funds available to the State, the City of Tupelo, and every other Mississippi city and County;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Tupelo, Mississippi:

SECTION 1. The prefatory findings are incorporated herein and found to be in accordance with a lawful expression of municipal authority.

SECTION 2. The City's participation in the settlement with Kroger Inc., as evidenced by the execution of the Subdivision Participation and Release Form, would be in the best interest of the City of Tupelo and its citizens in that such participation ensures that funds will be available to abate and resolve the harmful effects of the opioid epidemic.

SECTION 3. The terms of the Kroger Settlement Agreement dated March 22, 2024, and the Subdivision Participation and Release Form (Exhibit "A") are hereby adopted and incorporated fully herein by reference.

SECTION 4. The Mayor, City Clerk, and the City's legal counsel are hereby authorized to execute any formal agreements necessary to effectuate the settlement of opioid-related claims against Kroger, Inc., and their related corporate entities, including the document attached as Exhibit "A".

SECTION 4. That the plan for the allocation and use of opioid settlement proceeds shall not be substantially inconsistent with the MOU and this Resolution including but not limited to the settlement participation forms attached hereto.

SECTION 5. That any agreement, settlement, and/or release entered into concerning this matter shall be in the best interest of the City of Tupelo.

After a full discussion of this matter, Councilmember _____ moved that the forgoing resolution be adopted and said motion was seconded by Councilmember _____ and upon the question being put to a vote, the results were as follows:

Councilmember Mims	_____
Councilmember Bryan	_____
Councilmember Beard	_____
Councilmember Davis	_____
Councilmember Palmer	_____
Councilmember Gaston	_____
Councilmember Jones	_____

BE IT RESOLVED on this the ____ day of _____ 2023.

CITY OF TUPELO, MISSISSIPPI

NETTIE DAVIS, City Council President

ATTEST:

MISSY SHELTON, Clerk of the Council

APPROVED

TODD JORDAN, Mayor

DATE

EXHIBIT "A"

EXHIBIT K

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 <https://nationalopioidsettlement.com/>.
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.

Signature: _____

Name: _____

Title: _____

Date: _____