

RESOLUTION NO. 2021-65

RESOLUTION AUTHORIZING CITY MANAGER TO PARTICIPATE IN THE INTRA-STATE OPIOID DISTRIBUTER/MANUFACTURER SETTLEMENT; TO SIGN A RELEASE WHEREBY THE CITY WOULD WAIVE THE RIGHT TO FILE FUTURE CLAIMS AGAINST THE NAMED DISTRIBUTERS AND MANUFACTURER; AND TO SIGN THE INTRA-STATE SETTLEMENT AGREEMENT ON BEHALF OF THE CITY; BOTH OF WHICH ARE CONTINGENT ON THE CITY ATTORNEY'S REVIEW AND APPROVAL

WHEREAS, Local governments throughout the country have filed lawsuits against various opioid manufacturers and distributors due to their actions that resulted in an uncontrolled and misleading distribution of millions of addicting opioid pills; and

WHEREAS, In Oregon, ten counties and one city (Clackamas County, Clatsop County, Columbia County, Curry County, Jackson County, Josephine County, Lane County, Multnomah County, Washington County, Yamhill County and the City of Portland) filed suit and are part of the national MultiDistrict Litigation (MDL), which includes the combination of over 3,000 federal court cases; and

WHEREAS, The litigating entities have reached a proposed settlement agreement with opioid distributors as well as one manufacturer, and the terms of proposed settlement agreements to date include direct monetary payments to states and local governments; and

WHEREAS, Forest Grove, because it has a population in excess of 10,000, has been invited to participate in the settlement process even though we were not originally a part of the underlying litigation; and

WHEREAS, To participate in the settlement program, the city will need to sign two sets of documents for each settlement agreement: (1) a release waiving our right to file future claims related to these issues; and (2) an intra-state agreement that will govern how the funds are distributed in Oregon; and

WHEREAS, If the city accepts this invitation, it has to sign a release, which would preclude us from later filing suit against the distributors and/or Janssen on claims related to the opioid epidemic and in exchange for participation, local governments will receive a monetary payment based on the intra-state agreement; and

WHEREAS, It is currently estimated that Forest Grove will receive a maximum of \$444,776, paid over 18 years, to spend on opioid abatement and will need to maintain detailed records of expenditures and participate in a yet to be determined reporting program; and

WHEREAS, the settlement money can be used for treatment and prevention programs, education and training for first responders and other staff members, and research.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:

Section 1. To authorize the City Manager to participate in the intra-state opioid distributor/manufacturer settlement; to sign a release whereby the City would waive the right to file future claims against the named distributors and manufacturer; and to sign the intra-state settlement agreement on behalf of the City; both of which are contingent on the City Attorney's review and approval

Section 2. This resolution is effective immediately upon its enactment by the City Council.

PRESENTED AND PASSED this 13th day of December, 2021.



Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 13th day of December, 2021.



Peter B. Truax, Mayor

PARTICIPATION INSTRUCTIONS

Thank you for registering your subdivision on the national settlement website and for considering participating in the proposed Settlement Agreement with Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (collectively “Janssen”). This virtual envelope contains a Participation Form for the settlement including a release of claims and a separate Signature Page for Oregon’s Proposed State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds. Both documents in this envelope must be executed, without alteration, and submitted in order for your subdivision to be considered “participating.”

The sign-on period for subdivisions ends on January 2, 2022. On or after that date, the states (in consultation with the subdivisions) and Janssen will determine whether the subdivision participation rate is sufficient for the settlement to move forward. If the deal moves forward, your release will become effective. If it does not, it will not.

As a reminder, if you have not already started your review of the settlement documentation, detailed information about the Settlements may be found at: <https://nationalopioidsettlement.com/>. This national settlement website also includes links to information about how the Settlements are being implemented in your state and how settlement funds will be allocated within your state, including information about, and links to, any applicable allocation agreement or legislation. This website will be supplemented as additional documents are created.

Settlement Participation Form

Governmental Entity: Forest Grove city	State: OR
Authorized Signatory: Jesse vanderzanden	
Address 1: 1924 Council Street	
Address 2:	
City, State, Zip: Forest Grove	Oregon 97116
Phone: 503-992-3236	
Email: jvanderzanden@forestgrove-or.gov	

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 (“Janssen Settlement”), and acting through the undersigned authorized official, hereby elects to participate in the Janssen Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Janssen 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 Janssen 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 Janssen Settlement pertaining to Subdivisions as defined therein.
4. By agreeing to the terms of the Janssen 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 Janssen 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 Janssen Settlement.
7. The Governmental Entity has the right to enforce the Janssen Settlement as provided therein.



8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Janssen Settlement, including but not limited to all provisions of Section IV (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 Janssen 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 Janssen Settlement shall be a complete bar to any Released Claim.

9. In connection with the releases provided for in the Janssen 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 Janssen Settlement.

10. Nothing herein is intended to modify in any way the terms of the Janssen Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Janssen Settlement in any respect, the Janssen 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.

DocuSigned by:
Jesse Vanderzanden
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Signature: _____

Name: Jesse VanderZanden

Title: City Manager

Date: 12/22/2021



**State of Oregon Subdivision Agreement
Regarding Distribution and Use of
Settlement Funds**

1. Introduction

Pursuant to the Distributor Settlement Agreement, dated as of July 21, 2021, and any revision thereto (the “Distributor Settlement Agreement”), and the Janssen Settlement, dated as of July 21, 2021, and any revision thereto (the “Janssen Settlement Agreement, and collectively with the Distributor Settlement Agreement, the “Distributor and Janssen Agreements”), including Sections V and Exhibits O to the Distributor and Janssen Agreements, this agreement (the “OR Allocation Agreement”) is entered into between the State of Oregon and the OR Participating Subdivisions (the State of Oregon and OR Participating Subdivisions each a “Party,” and, collectively, the “Parties”) and governs the allocation, distribution, and use of Settlement Fund payments made to Oregon pursuant to Sections IV and V of the Distributor Settlement Agreement and Sections V and VI of the Janssen Agreement. For the avoidance of doubt, this OR Allocation Agreement does not apply to payments made pursuant to Sections IX or X of the Distributor Settlement Agreement or Sections X or XI of the Janssen Agreement.

Pursuant to Exhibits O, Paragraphs 4, of the Distributor and Janssen Agreements, acceptance of this OR Allocation Agreement is a requirement to be an Initial Participating Subdivision.

2. Definitions

The following terms shall have the meaning set forth below when used in this OR Allocation Agreement. Additional terms defined within this OR Allocation Agreement shall have that meaning when used in this OR Allocation Agreement. In addition, terms used in this OR Allocation Agreement that are defined in the Distributor and Janssen Agreements will have that meaning unless otherwise defined in this OR Allocation Agreement.

- a) ***OR Participating Subdivision*** means (i) a governmental entity listed on Exhibit A to this OR Allocation Agreement that executes this OR Allocation Agreement and has taken all necessary steps under the Distributor and Janssen Agreements to be entitled to receive Settlement Funds, and (ii) any Additional Participant who becomes entitled to a share of the OR Subdivision Funds as described in Section 4(c)(ii) below.
- b) ***Opioid Defendant*** means any defendant (including but not limited to Johnson & Johnson, Janssen Pharmaceuticals, Inc., Purdue Pharma L.P., Cardinal Health, Inc., Amerisource Bergen Corporation, and McKesson Corporation) named in a lawsuit seeking damages, abatement, or other remedies related to or caused by the opioid public health crisis in any lawsuit brought by any state or local government on or before October 1, 2020.
- c) ***State of Oregon or State*** has the same meaning as “Executive Department” as set forth in ORS 174.112, but does not include the Oregon State Treasurer or the Office of the Oregon State Treasurer. When used in any provision of this OR Allocation Agreement the term State of Oregon or State means, as the context requires, an agency, department, division, board, commission or other entity within the Executive Department that has the authority to undertake the obligations or receive the benefit of the particular provision.
- d) ***Oregon*** means the geographic territory of Oregon and the State and its local governments therein.

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Pursuant to Exhibits O, Paragraphs 4, of the Distributor and Janssen Agreements, acceptance of this OR Allocation Agreement is a requirement to be an Initial Participating Subdivision.

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- a) ***OR Participating Subdivision*** means (i) a governmental entity listed on Exhibit A to this OR Allocation Agreement that executes this OR Allocation Agreement and has taken all necessary steps under the Distributor and Janssen Agreements to be entitled to receive Settlement Funds, and (ii) any Additional Participant who becomes entitled to a share of the OR Subdivision Funds as described in Section 4(c)(ii) below.
- b) ***Opioid Defendant*** means any defendant (including but not limited to Johnson & Johnson, Janssen Pharmaceuticals, Inc., Purdue Pharma L.P., Cardinal Health, Inc., Amerisource Bergen Corporation, and McKesson Corporation) named in a lawsuit seeking damages, abatement, or other remedies related to or caused by the opioid public health crisis in any lawsuit brought by any state or local government on or before October 1, 2020.
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- d) ***Oregon*** means the geographic territory of Oregon and the State and its local governments therein.

- e) ***Approved Abatement Uses*** means the Opioid Remediation activities described in Exhibits E to the Distributor and Janssen Agreements.
- f) ***Litigating Local Governments*** means the Counties of Clackamas, Clatsop, Columbia, Coos, Curry, Jackson, Josephine, Lane, Multnomah, Washington, Yamhill, and the City of Portland.

3. General Terms

This OR Allocation Agreement is subject to the requirements of the Distributor and Janssen Agreements, as well as applicable law. If the terms of this OR Allocation Agreement conflict with the terms of the Distributor Settlement Agreement or the Janssen Settlement Agreement the terms of the Distributor Settlement Agreement and/or the Janssen Settlement Agreement will take precedence over the inconsistent provisions of this OR Allocation Agreement.

4. Allocation of Settlement Funds

- a) **Allocation Generally.** The total Settlement Fund payments made to Oregon pursuant to the Distributor and Janssen Agreements (collectively, the “Oregon Settlement Funds”) shall be combined pursuant to this OR Allocation Agreement, and 45% of the Oregon Settlement Funds shall be allocated to the State of Oregon (such funds, the “OR State Funds”) and 55% of the Oregon Settlement Funds shall be allocated to the OR Participating Subdivisions (such funds, the “OR Subdivision Funds”).

b) State of Oregon Allocation

- i. For purposes of this OR Allocation Agreement, “Enabling Legislation” means legislation passed by the Oregon Legislative Assembly and presented to the Oregon Governor for signature, that establishes the authority within the State of Oregon to accept, administer, and expend the OR State Funds, and addresses other matters related to this OR Allocation Agreement. It is the intent of the Parties that the Enabling Legislation will provide, without limitation, that:
 - 1. The OR State Funds will be deposited in a Prevention, Treatment and Recovery Fund (the “PTR Fund”), overseen by a board (the “PTR Board”), which shall be used by the State solely for future Approved Abatement Uses as follows:
 - (i) Administration of the PTR Fund and PTR Board;
 - (ii) Development of a unified and evidence-based state system for collecting, analyzing and publishing data about the availability and efficacy of substance use prevention, treatment and recovery services across the state; and
 - (iii) Funding statewide and regional Approved Abatement Uses.
 - 2. The PTR Board is constituted and authorized so that the State and OR Participating Subdivisions shall have equal representation and voting power on the PTR Board, whether directly or by designated representatives.
 - 3. Effects a release of potential claims against the Settling Distributors and Janssen by local governments or local service districts, as those terms are defined in ORS 174.116, and special government bodies, as defined in ORS 174.117, that have not released their claims through execution of a Subdivision Settlement Participation Form in substantially the form set forth in Exhibit K of the Distributor and Janssen Agreements.
- ii. The OR State Funds will be accepted, administered, and spent in accordance with the Enabling Legislation when it becomes law. The State of Oregon will draft and promote passage of the

Enabling Legislation. The OR Participating Subdivisions acknowledge the need for the Enabling Legislation and will support passage of the Enabling Legislation consistent with Section 4(b)(i)(1)-(2) of this OR Allocation Agreement and will not oppose with respect to any portion of the Enabling Legislation reflecting Section 4(b)(i)(3) of this OR Allocation Agreement. Until the Enabling Legislation becomes law, the OR State Funds shall be deposited in the Oregon Department of Justice's Client Trust Account and may be expended or distributed by the Oregon Department of Justice for Approved Abatement Uses.

c) OR Subdivision Allocation

- i. The Settlement Fund Administrator will be instructed to allocate the OR Subdivision Funds to OR Participating Subdivisions 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 to receive Settlement Funds, based on population or litigation status. The percentage for each OR Participating Subdivision is set forth in Exhibit A in the column entitled "Abatement Percentage" (the "Local Allocation"). For the avoidance of doubt, non-litigating Oregon towns, cities, and counties with a population less than 10,000 are not eligible to receive an allocation of OR Subdivision Funds.
- ii. An OR Participating Subdivision will be allocated its Local Allocation share beginning on the date it becomes an OR Participating Subdivision but shall not be entitled to any Local Allocation share of Oregon Settlement Funds distributed by the Settlement Administrator before the date it becomes an OR Participating Subdivision.
- iii. The Local Allocation share for a city that is an OR Participating Subdivision will be paid to the county in which the city is located, rather than to the city, so long as: (a) the county is an OR 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. A Local Allocation share allocated to a city but paid to a county is not required to be spent exclusively for Approved Abatement Uses in that city but will become part of the county's share of the OR Subdivision Funds, which will be used in accordance with Section 4.c of this OR Allocation Agreement and reported on in accordance with Section 5 of this OR Allocation Agreement.
- iv. A city within a county that is an OR Participating Subdivision may opt in or out of direct payment at any time, and it may also elect direct payment of only a portion of its share, with the remainder going to the county, by providing notice to the Settlement Fund Administrator at least 60 days prior to a Payment Date. For purposes of this OR Allocation Agreement, the City of Portland will be deemed to have elected direct payment if it becomes an OR Participating Subdivision.
- v. The State will receive the Local Allocation share of any payment of Oregon Settlement Funds distributed on a Payment Date that would otherwise be paid to a county or city is eligible to become an OR Participating Subdivision but that has not, as of that Payment Date, become an OR Participating Subdivision.
- vi. Funds received by an OR Participating Subdivision, and not expended or encumbered within five years of receipt and in accordance with the Distributor and Janssen Agreements and this OR Allocation Agreement shall be transferred to the fund to which OR State Funds are paid pursuant to Section 4(b)(ii). OR Participating Subdivisions have seven years from receipt of funds to expend or encumber OR Subdivision Funds designated to support capital outlay projects before they must be transferred to the State.
- vii. Except as set forth in Sections 4.d and 4.e, Settlement Funds received by an OR Participating Subdivision shall be used for Approved Abatement Uses.

- viii. For the avoidance of doubt, and subject to the requirements of the Distributor and Janssen Agreements and applicable law, an OR Participating Subdivision may form agreements or ventures, or otherwise work in collaboration with, federal, state, local, tribal or private sector entities in pursuing Approved Abatement Uses funded from the OR Participating Subdivision's Local Allocation. Further, provided that OR Subdivision Funds are used for Approved Abatement Uses, a county and any cities or towns within the county may agree to reallocate their respective Local Allocation shares of OR Subdivision Funds among themselves, provided that any direct distribution may only be to an OR Participating Subdivision and any OR Participating Subdivision must agree to its share being reallocated.
- ix. Each OR Participating Subdivision is responsible for obtaining necessary budget or expenditure authority under applicable law for its distribution or expenditures of OR Subdivision Funds in accordance with this OR Allocation Agreement.

d) Provision for State Back-Stop Agreement

- i. The OR Participating Subdivisions will establish an Oregon attorney fee back-stop fund (the "OR Back-Stop Fund"). The OR Back-Stop Fund will be funded by and deducted from OR Subdivision Funds prior to the distribution of any Local Allocation share to any OR Participating Subdivisions, shall be equal to no more than \$2,500,000, and may be used only to pay the contingency fees due to Contingency Fee Counsel of the Litigating Local Governments, subject to the limitations set forth in Section 4(d)(ii).
- ii. The parties will notify the Settlement Fund Administrator to withhold and pay the OR Back-Stop Fund from the OR Subdivision Funds according to the national fee fund payment schedule, and the Parties will otherwise cooperate to so instruct the Settlement Fund Administrator. In addition, the Parties will notify the Settlement Fund Administrator to distribute the amounts in the OR Back-Stop Fund to private counsel seeking contingency fees from a Litigating Local Government ("Contingency Fee Counsel") in accordance with this OR Allocation Agreement.
- iii. Contingency Fee Counsel must first seek contingency fees and costs from the Attorney Fee Fund or Cost Funds created under the Distributor and Janssen Agreements and only upon receiving the maximum amount of fees available under the Distributor and Janssen Agreements may a Contingency Fee Counsel seek payment of any fees from the OR Back-Stop Fund. In addition, under no circumstances shall the cumulative fees paid from the Attorney Fee Fund and the OR Back-Stop Fund exceed 12% of the Litigating Local Government's Local Allocation share of 50% of the Oregon Settlement Funds. For the avoidance of doubt, below is the formula to calculate the amount any particular Contingency Fee Counsel for a Litigating Local Government may be paid from the OR Back-Stop Fund:

$[[\text{OR SETTLEMENT FUNDS}] \times .5 \times [\text{DIRECT ALLOCATION PERCENTAGE OF CONTINGENCY FEE COUNSEL'S LITIGATING LOCAL GOVERNMENT}] \times .12] \text{ minus } [\text{AMOUNT OBTAINED BY COUNSEL FROM ATTORNEY FEE FUND FOR COUNSEL'S LITIGATING LOCAL GOVERNMENT}]$

- iv. A Contingency Fee Counsel may only receive fees paid from the OR Back-Stop Fund pursuant to a written Oregon Back Stop Agreement, substantially in the form of attached hereto as Exhibit B, between the Contingency Fee Counsel, the Litigating Local Government it represents, and the Oregon Department of Justice.
- v. For the avoidance of doubt, this OR Allocation Agreement does not require a Litigating Local Government to request or enter into an Oregon Back-Stop Agreement, and no Oregon Back-Stop Agreement shall impose any duty or obligation on the State of Oregon or any of its agencies or officers, including without limitation the Oregon Department of Justice or the Oregon Attorney

General.

e) Additional Costs

- i. Each OR Participating Subdivision may contribute up to 5% of its Local Allocation to pay opioid related expenditures such as unreimbursed administrative expenses, costs, professional fees and attorney fees of outside legal counsel and in-house legal counsel employed by the OR Participating Subdivision (collectively, “Additional Costs”). Each OR Participating Subdivision is responsible for determining the amount of its Local Allocation that it uses to pay Additional Costs (subject to the limit in the previous sentence and as set forth in Section 4(e)(ii) below), and which Additional Costs it chooses to pay.
- ii. The Additional Costs may only be used consistent with the Distributor and Janssen Agreements, and pursuant to the August 6, 2021, order by Judge Polster of the US District Court for the Northern District of Ohio issued an Order (the Order), docket number 3814, in In Re National Prescription Opiate Litigation, MDL 2804, addressing contingent attorney fee contracts between political subdivisions eligible to participate in the Distributor and Janssen Agreements and their counsel. In addition, to the extent the Additional Costs are used to pay the attorney’s fees of Contingency Fee Counsel, the cumulative amount of such fees paid to the Contingency Fee Counsel for a Litigating Local Government from the Attorney Fee Fund, the Cost Fund, the OR Back-Stop Fund, and as Additional Costs may not exceed 15% of the Litigating Local Government’s share of 50% of the Oregon Settlement Funds.
- iii. Each OR Participating Subdivision that pays Additional Costs shall report such payments as required by the Distributor and Janssen Agreements and this OR Allocation Agreement.
- iv. Neither the State of Oregon, including the Oregon Department of Justice, nor the Oregon Attorney General shall have any responsibility for any Additional Costs, and shall have no responsibility or authority to resolve any disputes among the OR Participating Subdivisions, Contingency Fee Counsel of the Litigating Local Government, or any other parties with respect to any claims for payment of Additional Costs.

5. State and Subdivision Reporting and Oversight

- a) Prior to September 1 of each year each OR Participating Subdivision receiving payment of OR Subdivision Funds under this OR Allocation Agreement shall deliver an annual report to the Oregon Department of Justice, to the attention of the Deputy Attorney General regarding how it expended OR Subdivision Funds during the prior fiscal year (July 1 – June 30). The Oregon Department of Justice may share those reports with the PTR Board (or its equivalent as established by the Enabling Legislation) and other State entities to ensure expenditures of OR Subdivision Funds were made and will be made in accordance with the Distributor and Janssen Agreements and this OR Allocation Agreement. Each report delivered under this Section 5(a) will also include a certification that all OR Subdivision Funds received by the OR Participating Subdivision during the prior fiscal year have been used in compliance with the Distributor and Janssen Agreement and this OR Allocation Agreement. Each annual report delivered pursuant to this Section 5.a shall include, for the fiscal year that is the subject of the report, (1) the amount of the OR Subdivision Funds received by the reporting OR Participating Subdivision, (2) the allocation of any amounts of OR Subdivision Funds awarded or expended by the OR Participating Subdivision (by journal entry or substantially equivalent report, provided such report shall include, at a minimum, the amount awarded or expended, payee (if applicable) and a description of the expenditure), and (3) the amounts actually disbursed under any award reported under item 2. OR Participating Subdivisions may, for their convenience, adapt existing forms or reports otherwise used by the OR Participating Subdivision to meet the foregoing requirements.

- b) If the State has a reasonable basis to suspect that an OR Participating Subdivision's use of OR Subdivision Funds is inconsistent with the Distributor and Janssen Agreements or this OR Allocation Agreement the State may request from the OR Participating Subdivision, and the OR Participating Subdivision will provide, existing data or information about the use of the OR Subdivision Funds received by that OR Participation Subdivision. All requests for information must be reasonable.
- c) If an OR Participating Subdivision has a reasonable basis to suspect that the States' use of OR State Funds is inconsistent with the Distributor and Janssen Agreements or this OR Allocation Agreement an OR Participating Subdivision may request from the State, and the State will provide, existing data or information about the use of the OR State Funds received by the State. All requests for information must be reasonable.
- d) The State will prepare an annual written report regarding the use of Oregon Settlement Funds until those funds are fully expended and for one year thereafter. These reports will be made publicly available by the State.
- e) The State, the PTR Board (or its equivalent as established by the Enabling Legislation) and all OR Participating Subdivisions receiving OR Subdivision Funds will track all deposits and expenditures in accordance with Oregon laws each party is subject to. Each OR Participating Subdivision is responsible solely for the OR Subdivision Funds it receives. A county is not responsible for oversight, reporting, or monitoring of OR Subdivision Funds received by a city within that county that receives direct payment of OR Subdivision Funds.
- f) In each year in which the State prepares an annual report the State will also host a public meeting to discuss the annual report.

6. Audits

- a) If the State or any OR Participating Subdivision has a reasonable basis to suspect that an OR Participating Subdivision's use of OR Subdivision Funds or the State's use of the OR State Funds is inconsistent with the Distributor Settlement Agreement, the Janssen Settlement Agreement, or this OR Allocation Agreement, such Party may request the Oregon Secretary of State conduct an audit pursuant to ORS Chapter 297, provided, however, if the Oregon Secretary of State declines to conduct such an audit, the Parties will select a third party auditor mutually agreed to by the Parties.
- b) No audit may be commenced under Section 6(a) related to a specific expenditure of funds more than five years after the date on which the OR Participating Subdivision's expenditure of the funds subject to the audit was last reported to the State in an annual report submitted pursuant to Section 5(a).
- c) Notwithstanding the foregoing, this OR Allocation Agreement does not limit the statutory or constitutional authority of the State of Oregon or a local agency or official to conduct audits, investigations, or other oversight activities, or to pursue administrative, civil, or criminal enforcement actions.

7. Medicaid Clawback

The Parties understand that the United States may claim a portion of the OR Settlement Funds for Medicaid reimbursement pursuant to § 1903 (d)(3)(A) of the Social Security Act. The Parties agree that, to the extent a claim for Medicaid reimbursement is made, the Parties shall bear the liability for the reimbursement based upon the particular claims made by the United States pursuant to with § 1903 (d)(3)(A) of the Social Security Act. The Parties agree to meet, confer, and cooperate in good faith concerning the allocation of any such liability.

8. Applicability

This OR Allocation Agreement applies to all funds received by Oregon for the McKesson, Cardinal Health and AmerisourceBergen ("Distributors"), and manufacturer Janssen Pharmaceuticals, Inc. and its parent company Johnson & Johnson (collectively, "J&J") settlements. In addition, the allocation percentage contained herein (45% to the OR State Fund, 55% to OR Subdivision Fund), shall apply to future multistate opioid settlements with distributors, manufacturers, and pharmacies, subject to consideration of other terms of such settlements that impact allocation considerations. For the Purdue bankruptcy, the allocation of funds set forth in this Section 8, shall apply to Oregon's share of funds under the bankruptcy plan confirmed by Judge Drain on September 17, 2021 (the "Purdue Bankruptcy Plan"). However, any additional amounts paid under the Purdue bankruptcy resulting from Oregon and other states' appeal of the that plan's confirmation shall be paid directly to the State of Oregon, and any such additional amounts shall not be included in the calculation of the amount of the OR State Funds due to the State of Oregon under Section 4. The Parties acknowledge that in order to obtain settlement funds under the Purdue Bankruptcy Plan the Parties will need to file with the bankruptcy court that approved the Purdue Bankruptcy Plan a proposed allocation agreement that complies with the approved Purdue Bankruptcy Plan, and, to the extent permitted by the Purdue Bankruptcy Plan, the default allocation set forth in the proposed allocation agreement shall provide that 45% of the funds distributed to Oregon under the Purdue Bankruptcy Plan will be allocated to the State of Oregon, and 55% of the funds distributed to Oregon under the Purdue Bankruptcy Plan will be allocated to OR Participating Subdivisions. The Parties further agree that they will reasonably cooperate with one another to complete the timely filing of the allocation agreement within any deadlines established by the bankruptcy court. In addition, this OR Allocation Agreement, and allocation percentages set forth in this Section 8, shall not apply to any legal actions pursued by or settled by the State of Oregon as an individual state or any legal actions pursued by or settled by any OR Participating Subdivisions as individual cities or counties.

9. Releases

All Parties agree to release all claims as required to participate in the Distributor and Janssen Agreements as set forth in Exhibits K to the Distributor and Janssen Agreements and execution of such releases is a condition of receiving Oregon Settlement Funds under this OR Allocation Agreement.

10. Miscellaneous

- a) **Enforcement.** The State or any OR Participating Subdivision may bring a motion or action in any Oregon State court having competent jurisdiction to enforce the requirements of this OR Allocation Agreement. Before filing such a motion or action the Party intending to file the motion or action will meet and confer with the Party that is or will be the subject of the anticipated motion or action.
- b) **No Intended Third Parties.** Except as provided in the Distributor and Janssen Agreements, this OR Allocation Agreement is not enforceable by any party other than the State and the OR Participating Subdivisions. There are no intended third-party beneficiaries to this OR Allocation Agreement, and this OR Allocation Agreement does not confer any rights or remedies upon, and shall not be enforceable by, any person, legal entity, or public body that is not a Party to this OR Allocation Agreement.
- c) **Severability.** Except as provided in the OR Allocation Agreement, if any provision of this OR Allocation Agreement or the application thereof to any person, entity, or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this OR Allocation Agreement, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each other provision of this OR Allocation Agreement will be valid and enforceable to the fullest extent permitted by law. In the event any provision or part of this OR Allocation Agreement is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire OR Allocation Agreement, will be inoperative.

- d) **Additional Litigation.** Nothing in this OR Allocation Agreement alters or is intended to alter or change the right of the State of Oregon or any OR Participating Subdivision to pursue its own claims against any defendant, other than Janssen and the Settling Distributors, through separate opioid-related litigation.
- e) **Construction.** With regard to each and every term and condition of this OR Allocation Agreement, the Parties understand and agree that the same have or has been mutually negotiated, prepared and drafted. If at any time the Parties or any court, administrative hearings officer, mediator, arbitrator, or arbitration panel, are required to interpret or construe any such term or condition, no consideration shall be given to the issue of which Party actually prepared, drafted or requested any term or condition thereof.
- f) **Entire Agreement.** This OR Allocation Agreement contains the entire agreement between the Parties and supersedes and cancels all previous negotiations and agreements, if any.
- g) **Amendments.** Any and all amendments to this OR Allocation Agreement must be in writing and must be signed by all Parties.
- h) **Authority.** Each Party that enters into this OR Allocation Agreement represents that it has authority to enter into this OR Allocation Agreement and that all actions or authorizations by the Party's respective Commissions, Councils, Boards, or other governing bodies necessary to authorize the Party to enter into this OR Allocation Agreement have been completed or obtained.
- i) **Legal Advice.** Each Party to this OR Allocation Agreement acknowledges that it has been advised to seek legal counsel and has had the opportunity to have this OR Allocation Agreement reviewed by legal counsel.
- j) **Governing Law.** Except as provided in the Distributor and Janssen Agreements, this OR Allocation Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon.

Exhibit A
OR PARTICIPATING SUBDIVISIONS
AND LOCAL ALLOCATIONS

Participating Subdivision	Percentages
Albany City	1.1574421234%
Ashland City	0.5725593238%
Astoria City	0.1859283065%
Baker County	0.4771636205%
Beaverton City	0.9709676029%
Bend City	0.9443519043%
Benton County	1.0219885306%
Canby City	0.1716812437%
Central Point City	0.1718730043%
Clackamas County	7.7713142577%
Clatsop County	1.1423692099%
Columbia County	1.0096699413%
Coos Bay City	0.2538945929%
Coos County	1.5633002470%
Cornelius City	0.0949750265%
Corvallis City	0.6633711425%
Cottage Grove City	0.0910229575%
Crook County	0.3513229911%
Curry County	0.7612961295%
Dallas City	0.1606964683%
Deschutes County	2.2569753600%
Douglas County	2.5689481047%
Eugene City	2.7611039932%
Forest Grove City	0.2522169415%
Gladstone City	0.1181360032%
Grants Pass City	0.8232581895%
Gresham City	0.9831942718%
Happy Valley City	0.0103506009%
Hermiston City	0.1316304314%
Hillsboro City	1.5083519364%
Hood River County	0.3553687498%
Independence City	0.0808970601%
Jackson County	4.0769510640%
Jefferson County	0.3674692915%
Josephine County	1.6536523798%

Exhibit A

Keizer City	0.1916558451%
Klamath County	1.2169628601%
Klamath Falls City	0.3209275214%
La Grande City	0.2715648669%
Lake Oswego City	0.6934160342%
Lane County	6.3326808234%
Lebanon City	0.3269345282%
Lincoln County	1.5190343268%
Linn County	1.8185376689%
Malheur County	0.5014027023%
Marion County	4.1636475308%
McMinnville City	0.4803592635%
Medford City	1.5540758598%
Milwaukie City	0.2113647118%
Monmouth City	0.0706960930%
Morrow County	0.1351544937%
Multnomah County	13.9643815662%
Newberg City	0.4093257361%
Newport City	0.1908392623%
Ontario City	0.1869780182%
Oregon City	0.2765040475%
Pendleton City	0.3521049458%
Polk County	0.7074299681%
Portland City	8.2736702858%
Prineville City	0.0924861843%
Redmond City	0.1550311086%
Roseburg City	0.6370799877%
Salem City	3.0438221421%
Sandy City	0.0775015682%
Sherwood City	0.1404204928%
Silverton City	0.0775630731%
Springfield City	1.1667234659%
St. Helens City	0.1964453077%
The Dalles City	0.1723418738%
Tigard City	0.5049875956%
Tillamook County	0.9001228870%
Troutdale City	0.0899929610%
Tualatin City	0.1551565618%
Umatilla County	0.9738633884%

Exhibit A

Union County	0.4153841374%
Wasco County	0.4116278731%
Washington County	7.2167622210%
West Linn City	0.1600504983%
Wilsonville City	0.1383351396%
Woodburn City	0.2069349266%
Yamhill County	1.4120246444%

EXHIBIT B

OREGON BACK-STOP AGREEMENT

On August 6, 2021, Judge Polster of the US District Court for the Northern District of Ohio issued an Order (the Order), docket number 3814, in In Re National Prescription Opiate Litigation, MDL 2804, addressing contingent attorney fee contracts between political subdivisions eligible to participate in the Distributor and Janssen Agreements and their counsel.

In light of the Order, and at the request of [SUBDIVISION], the [SUBDIVISION], its counsel [COUNSEL], and the Oregon Department of Justice, on behalf of the State of Oregon, are entering into this Oregon Back-Stop Agreement (Back-Stop Agreement). Terms used herein have the meaning set forth in the Distributor and Janssen Agreements or the OR Allocation Agreement, as applicable.

[SUBDIVISION] and [COUNSEL] intend this Back-Stop Agreement to constitute a State Back-Stop Agreement as that term is used in the Order and in Exhibits R (Agreement on Attorneys' Fees, Expenses and Costs) of the Distributor and Janssen Agreements.

[COUNSEL] certify that they first sought fees and costs from the Attorney Fee Funds and Cost Funds created under the Distributor and Janssen Agreements before seeking or accepting payment under this backstop agreement. [COUNSEL] further certify that they are not seeking and will not accept payment under this Back-Stop Agreement of any litigation fees or costs that have been reimbursed through prior settlements or judgments.

[COUNSEL] certify that it is requesting [\$ _____] ("Requested Amount") from the OR Back-Stop Fund, which amount is to be paid in equal payments over the first seven Payment Dates set forth in the Distributor and Janssen Agreements. Counsel certify that the Requested Amount does not exceed an amount equal to:

[[OR SETTLEMENT FUNDS]*.5*[DIRECT ALLOCATION PERCENTAGE OF CONTINGENCY FEE COUNSEL'S LITIGATING LOCAL GOVERNMENT]*.12] minus [AMOUNT OBTAINED BY COUNSEL FROM ATTORNEY FEE FUND FOR COUNSEL'S LITIGATING LOCAL GOVERNMENT]

Notwithstanding the provisions of this Backstop Agreement, [SUBDIVISION] may pay to [COUNSEL] additional fees consistent with the provision of Section 4(e)(i) and (ii) of the OR Allocation Agreement.

The Oregon Department of Justice is executing this agreement solely because the definition of "State Back-Stop Agreement" in Exhibits R of the Distributor and Janssen Agreements requires such agreements to be between "a Settling State" and private counsel for a Participating Subdivision. Neither the Oregon Department of Justice nor the State of Oregon have any obligations under this Back-Stop Agreement, and this Back-Stop Agreement does not require the payment of any funds of the State of Oregon, including OR State Funds (as defined in the OR Allocation Agreement) to [SUBDIVISION], [COUNSEL], or any other party.

[DATE]

[SUBDIVISION SIGNATURE BLOCK]

[DATE]

[COUNSEL SIGNATURE BLOCK]

[DATE]

[OREGON DOJ SIGNATURE BLOCK]

PARTICIPATION INSTRUCTIONS

Thank you for registering your subdivision on the national settlement website and for considering participating in the proposed Settlement Agreement with McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation (collectively “Settling Distributors”). This virtual envelope contains a Participation Form for the settlement including a release of claims and a separate Signature Page for Oregon’s Proposed State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds. Both documents in this envelope must be executed, without alteration, and submitted in order for your subdivision to be considered “participating.”

The sign-on period for subdivisions ends on January 2, 2022. On or after that date, the states (in consultation with the subdivisions) and the Settling Distributors will determine whether the subdivision participation rate is sufficient for the settlement to move forward. If the deal moves forward, your release will become effective. If it does not, it will not.

As a reminder, if you have not already started your review of the settlement documentation, detailed information about the Settlements may be found at: <https://nationalopioidsettlement.com/>. This national settlement website also includes links to information about how the Settlements are being implemented in your state and how settlement funds will be allocated within your state, including information about, and links to, any applicable allocation agreement or legislation. This website will be supplemented as additional documents are created.

Settlement Participation Form

Governmental Entity: Forest Grove city	State: OR
Authorized Signatory: Jesse Vanderzanden	
Address 1: 1924 Council Street	
Address 2:	
City, State, Zip: Forest Grove	Oregon 97116
Phone: 503-992-3236	
Email: jvanderzanden@forestgrove-or.gov	

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. 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 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.

DocuSigned by:
Jesse Vanderzanden
23E1C26EFF73412...

Signature: _____

Name: Jesse VanderZanden

Title: City Manager

Date: 12/21/2021



**State of Oregon Subdivision Agreement
Regarding Distribution and Use of
Settlement Funds**

1. Introduction

Pursuant to the Distributor Settlement Agreement, dated as of July 21, 2021, and any revision thereto (the “Distributor Settlement Agreement”), and the Janssen Settlement, dated as of July 21, 2021, and any revision thereto (the “Janssen Settlement Agreement, and collectively with the Distributor Settlement Agreement, the “Distributor and Janssen Agreements”), including Sections V and Exhibits O to the Distributor and Janssen Agreements, this agreement (the “OR Allocation Agreement”) is entered into between the State of Oregon and the OR Participating Subdivisions (the State of Oregon and OR Participating Subdivisions each a “Party,” and, collectively, the “Parties”) and governs the allocation, distribution, and use of Settlement Fund payments made to Oregon pursuant to Sections IV and V of the Distributor Settlement Agreement and Sections V and VI of the Janssen Agreement. For the avoidance of doubt, this OR Allocation Agreement does not apply to payments made pursuant to Sections IX or X of the Distributor Settlement Agreement or Sections X or XI of the Janssen Agreement.

Pursuant to Exhibits O, Paragraphs 4, of the Distributor and Janssen Agreements, acceptance of this OR Allocation Agreement is a requirement to be an Initial Participating Subdivision.

2. Definitions

The following terms shall have the meaning set forth below when used in this OR Allocation Agreement. Additional terms defined within this OR Allocation Agreement shall have that meaning when used in this OR Allocation Agreement. In addition, terms used in this OR Allocation Agreement that are defined in the Distributor and Janssen Agreements will have that meaning unless otherwise defined in this OR Allocation Agreement.

- a) ***OR Participating Subdivision*** means (i) a governmental entity listed on Exhibit A to this OR Allocation Agreement that executes this OR Allocation Agreement and has taken all necessary steps under the Distributor and Janssen Agreements to be entitled to receive Settlement Funds, and (ii) any Additional Participant who becomes entitled to a share of the OR Subdivision Funds as described in Section 4(c)(ii) below.
- b) ***Opioid Defendant*** means any defendant (including but not limited to Johnson & Johnson, Janssen Pharmaceuticals, Inc., Purdue Pharma L.P., Cardinal Health, Inc., Amerisource Bergen Corporation, and McKesson Corporation) named in a lawsuit seeking damages, abatement, or other remedies related to or caused by the opioid public health crisis in any lawsuit brought by any state or local government on or before October 1, 2020.
- c) ***State of Oregon or State*** has the same meaning as “Executive Department” as set forth in ORS 174.112, but does not include the Oregon State Treasurer or the Office of the Oregon State Treasurer. When used in any provision of this OR Allocation Agreement the term State of Oregon or State means, as the context requires, an agency, department, division, board, commission or other entity within the Executive Department that has the authority to undertake the obligations or receive the benefit of the particular provision.
- d) ***Oregon*** means the geographic territory of Oregon and the State and its local governments therein.

- e) ***Approved Abatement Uses*** means the Opioid Remediation activities described in Exhibits E to the Distributor and Janssen Agreements.
- f) ***Litigating Local Governments*** means the Counties of Clackamas, Clatsop, Columbia, Coos, Curry, Jackson, Josephine, Lane, Multnomah, Washington, Yamhill, and the City of Portland.

3. General Terms

This OR Allocation Agreement is subject to the requirements of the Distributor and Janssen Agreements, as well as applicable law. If the terms of this OR Allocation Agreement conflict with the terms of the Distributor Settlement Agreement or the Janssen Settlement Agreement the terms of the Distributor Settlement Agreement and/or the Janssen Settlement Agreement will take precedence over the inconsistent provisions of this OR Allocation Agreement.

4. Allocation of Settlement Funds

- a) **Allocation Generally.** The total Settlement Fund payments made to Oregon pursuant to the Distributor and Janssen Agreements (collectively, the “Oregon Settlement Funds”) shall be combined pursuant to this OR Allocation Agreement, and 45% of the Oregon Settlement Funds shall be allocated to the State of Oregon (such funds, the “OR State Funds”) and 55% of the Oregon Settlement Funds shall be allocated to the OR Participating Subdivisions (such funds, the “OR Subdivision Funds”).

b) State of Oregon Allocation

- i. For purposes of this OR Allocation Agreement, “Enabling Legislation” means legislation passed by the Oregon Legislative Assembly and presented to the Oregon Governor for signature, that establishes the authority within the State of Oregon to accept, administer, and expend the OR State Funds, and addresses other matters related to this OR Allocation Agreement. It is the intent of the Parties that the Enabling Legislation will provide, without limitation, that:
 - 1. The OR State Funds will be deposited in a Prevention, Treatment and Recovery Fund (the “PTR Fund”), overseen by a board (the “PTR Board”), which shall be used by the State solely for future Approved Abatement Uses as follows:
 - (i) Administration of the PTR Fund and PTR Board;
 - (ii) Development of a unified and evidence-based state system for collecting, analyzing and publishing data about the availability and efficacy of substance use prevention, treatment and recovery services across the state; and
 - (iii) Funding statewide and regional Approved Abatement Uses.
 - 2. The PTR Board is constituted and authorized so that the State and OR Participating Subdivisions shall have equal representation and voting power on the PTR Board, whether directly or by designated representatives.
 - 3. Effects a release of potential claims against the Settling Distributors and Janssen by local governments or local service districts, as those terms are defined in ORS 174.116, and special government bodies, as defined in ORS 174.117, that have not released their claims through execution of a Subdivision Settlement Participation Form in substantially the form set forth in Exhibit K of the Distributor and Janssen Agreements.
- ii. The OR State Funds will be accepted, administered, and spent in accordance with the Enabling Legislation when it becomes law. The State of Oregon will draft and promote passage of the

Enabling Legislation. The OR Participating Subdivisions acknowledge the need for the Enabling Legislation and will support passage of the Enabling Legislation consistent with Section 4(b)(i)(1)-(2) of this OR Allocation Agreement and will not oppose with respect to any portion of the Enabling Legislation reflecting Section 4(b)(i)(3) of this OR Allocation Agreement. Until the Enabling Legislation becomes law, the OR State Funds shall be deposited in the Oregon Department of Justice's Client Trust Account and may be expended or distributed by the Oregon Department of Justice for Approved Abatement Uses.

c) OR Subdivision Allocation

- i. The Settlement Fund Administrator will be instructed to allocate the OR Subdivision Funds to OR Participating Subdivisions 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 to receive Settlement Funds, based on population or litigation status. The percentage for each OR Participating Subdivision is set forth in Exhibit A in the column entitled "Abatement Percentage" (the "Local Allocation"). For the avoidance of doubt, non-litigating Oregon towns, cities, and counties with a population less than 10,000 are not eligible to receive an allocation of OR Subdivision Funds.
- ii. An OR Participating Subdivision will be allocated its Local Allocation share beginning on the date it becomes an OR Participating Subdivision but shall not be entitled to any Local Allocation share of Oregon Settlement Funds distributed by the Settlement Administrator before the date it becomes an OR Participating Subdivision.
- iii. The Local Allocation share for a city that is an OR Participating Subdivision will be paid to the county in which the city is located, rather than to the city, so long as: (a) the county is an OR 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. A Local Allocation share allocated to a city but paid to a county is not required to be spent exclusively for Approved Abatement Uses in that city but will become part of the county's share of the OR Subdivision Funds, which will be used in accordance with Section 4.c of this OR Allocation Agreement and reported on in accordance with Section 5 of this OR Allocation Agreement.
- iv. A city within a county that is an OR Participating Subdivision may opt in or out of direct payment at any time, and it may also elect direct payment of only a portion of its share, with the remainder going to the county, by providing notice to the Settlement Fund Administrator at least 60 days prior to a Payment Date. For purposes of this OR Allocation Agreement, the City of Portland will be deemed to have elected direct payment if it becomes an OR Participating Subdivision.
- v. The State will receive the Local Allocation share of any payment of Oregon Settlement Funds distributed on a Payment Date that would otherwise be paid to a county or city is eligible to become an OR Participating Subdivision but that has not, as of that Payment Date, become an OR Participating Subdivision.
- vi. Funds received by an OR Participating Subdivision, and not expended or encumbered within five years of receipt and in accordance with the Distributor and Janssen Agreements and this OR Allocation Agreement shall be transferred to the fund to which OR State Funds are paid pursuant to Section 4(b)(ii). OR Participating Subdivisions have seven years from receipt of funds to expend or encumber OR Subdivision Funds designated to support capital outlay projects before they must be transferred to the State.
- vii. Except as set forth in Sections 4.d and 4.e, Settlement Funds received by an OR Participating Subdivision shall be used for Approved Abatement Uses.

- viii. For the avoidance of doubt, and subject to the requirements of the Distributor and Janssen Agreements and applicable law, an OR Participating Subdivision may form agreements or ventures, or otherwise work in collaboration with, federal, state, local, tribal or private sector entities in pursuing Approved Abatement Uses funded from the OR Participating Subdivision's Local Allocation. Further, provided that OR Subdivision Funds are used for Approved Abatement Uses, a county and any cities or towns within the county may agree to reallocate their respective Local Allocation shares of OR Subdivision Funds among themselves, provided that any direct distribution may only be to an OR Participating Subdivision and any OR Participating Subdivision must agree to its share being reallocated.
- ix. Each OR Participating Subdivision is responsible for obtaining necessary budget or expenditure authority under applicable law for its distribution or expenditures of OR Subdivision Funds in accordance with this OR Allocation Agreement.

d) Provision for State Back-Stop Agreement

- i. The OR Participating Subdivisions will establish an Oregon attorney fee back-stop fund (the "OR Back-Stop Fund"). The OR Back-Stop Fund will be funded by and deducted from OR Subdivision Funds prior to the distribution of any Local Allocation share to any OR Participating Subdivisions, shall be equal to no more than \$2,500,000, and may be used only to pay the contingency fees due to Contingency Fee Counsel of the Litigating Local Governments, subject to the limitations set forth in Section 4(d)(ii).
- ii. The parties will notify the Settlement Fund Administrator to withhold and pay the OR Back-Stop Fund from the OR Subdivision Funds according to the national fee fund payment schedule, and the Parties will otherwise cooperate to so instruct the Settlement Fund Administrator. In addition, the Parties will notify the Settlement Fund Administrator to distribute the amounts in the OR Back-Stop Fund to private counsel seeking contingency fees from a Litigating Local Government ("Contingency Fee Counsel") in accordance with this OR Allocation Agreement.
- iii. Contingency Fee Counsel must first seek contingency fees and costs from the Attorney Fee Fund or Cost Funds created under the Distributor and Janssen Agreements and only upon receiving the maximum amount of fees available under the Distributor and Janssen Agreements may a Contingency Fee Counsel seek payment of any fees from the OR Back-Stop Fund. In addition, under no circumstances shall the cumulative fees paid from the Attorney Fee Fund and the OR Back-Stop Fund exceed 12% of the Litigating Local Government's Local Allocation share of 50% of the Oregon Settlement Funds. For the avoidance of doubt, below is the formula to calculate the amount any particular Contingency Fee Counsel for a Litigating Local Government may be paid from the OR Back-Stop Fund:

$[[\text{OR SETTLEMENT FUNDS}] \times .5 \times [\text{DIRECT ALLOCATION PERCENTAGE OF CONTINGENCY FEE COUNSEL'S LITIGATING LOCAL GOVERNMENT}] \times .12] \text{ minus } [\text{AMOUNT OBTAINED BY COUNSEL FROM ATTORNEY FEE FUND FOR COUNSEL'S LITIGATING LOCAL GOVERNMENT}]$

- iv. A Contingency Fee Counsel may only receive fees paid from the OR Back-Stop Fund pursuant to a written Oregon Back Stop Agreement, substantially in the form of attached hereto as Exhibit B, between the Contingency Fee Counsel, the Litigating Local Government it represents, and the Oregon Department of Justice.
- v. For the avoidance of doubt, this OR Allocation Agreement does not require a Litigating Local Government to request or enter into an Oregon Back-Stop Agreement, and no Oregon Back-Stop Agreement shall impose any duty or obligation on the State of Oregon or any of its agencies or officers, including without limitation the Oregon Department of Justice or the Oregon Attorney

General.

e) Additional Costs

- i. Each OR Participating Subdivision may contribute up to 5% of its Local Allocation to pay opioid related expenditures such as unreimbursed administrative expenses, costs, professional fees and attorney fees of outside legal counsel and in-house legal counsel employed by the OR Participating Subdivision (collectively, “Additional Costs”). Each OR Participating Subdivision is responsible for determining the amount of its Local Allocation that it uses to pay Additional Costs (subject to the limit in the previous sentence and as set forth in Section 4(e)(ii) below), and which Additional Costs it chooses to pay.
- ii. The Additional Costs may only be used consistent with the Distributor and Janssen Agreements, and pursuant to the August 6, 2021, order by Judge Polster of the US District Court for the Northern District of Ohio issued an Order (the Order), docket number 3814, in In Re National Prescription Opiate Litigation, MDL 2804, addressing contingent attorney fee contracts between political subdivisions eligible to participate in the Distributor and Janssen Agreements and their counsel. In addition, to the extent the Additional Costs are used to pay the attorney’s fees of Contingency Fee Counsel, the cumulative amount of such fees paid to the Contingency Fee Counsel for a Litigating Local Government from the Attorney Fee Fund, the Cost Fund, the OR Back-Stop Fund, and as Additional Costs may not exceed 15% of the Litigating Local Government’s share of 50% of the Oregon Settlement Funds.
- iii. Each OR Participating Subdivision that pays Additional Costs shall report such payments as required by the Distributor and Janssen Agreements and this OR Allocation Agreement.
- iv. Neither the State of Oregon, including the Oregon Department of Justice, nor the Oregon Attorney General shall have any responsibility for any Additional Costs, and shall have no responsibility or authority to resolve any disputes among the OR Participating Subdivisions, Contingency Fee Counsel of the Litigating Local Government, or any other parties with respect to any claims for payment of Additional Costs.

5. State and Subdivision Reporting and Oversight

- a) Prior to September 1 of each year each OR Participating Subdivision receiving payment of OR Subdivision Funds under this OR Allocation Agreement shall deliver an annual report to the Oregon Department of Justice, to the attention of the Deputy Attorney General regarding how it expended OR Subdivision Funds during the prior fiscal year (July 1 – June 30). The Oregon Department of Justice may share those reports with the PTR Board (or its equivalent as established by the Enabling Legislation) and other State entities to ensure expenditures of OR Subdivision Funds were made and will be made in accordance with the Distributor and Janssen Agreements and this OR Allocation Agreement. Each report delivered under this Section 5(a) will also include a certification that all OR Subdivision Funds received by the OR Participating Subdivision during the prior fiscal year have been used in compliance with the Distributor and Janssen Agreement and this OR Allocation Agreement. Each annual report delivered pursuant to this Section 5.a shall include, for the fiscal year that is the subject of the report, (1) the amount of the OR Subdivision Funds received by the reporting OR Participating Subdivision, (2) the allocation of any amounts of OR Subdivision Funds awarded or expended by the OR Participating Subdivision (by journal entry or substantially equivalent report, provided such report shall include, at a minimum, the amount awarded or expended, payee (if applicable) and a description of the expenditure), and (3) the amounts actually disbursed under any award reported under item 2. OR Participating Subdivisions may, for their convenience, adapt existing forms or reports otherwise used by the OR Participating Subdivision to meet the foregoing requirements.

- b) If the State has a reasonable basis to suspect that an OR Participating Subdivision's use of OR Subdivision Funds is inconsistent with the Distributor and Janssen Agreements or this OR Allocation Agreement the State may request from the OR Participating Subdivision, and the OR Participating Subdivision will provide, existing data or information about the use of the OR Subdivision Funds received by that OR Participation Subdivision. All requests for information must be reasonable.
- c) If an OR Participating Subdivision has a reasonable basis to suspect that the States' use of OR State Funds is inconsistent with the Distributor and Janssen Agreements or this OR Allocation Agreement an OR Participating Subdivision may request from the State, and the State will provide, existing data or information about the use of the OR State Funds received by the State. All requests for information must be reasonable.
- d) The State will prepare an annual written report regarding the use of Oregon Settlement Funds until those funds are fully expended and for one year thereafter. These reports will be made publicly available by the State.
- e) The State, the PTR Board (or its equivalent as established by the Enabling Legislation) and all OR Participating Subdivisions receiving OR Subdivision Funds will track all deposits and expenditures in accordance with Oregon laws each party is subject to. Each OR Participating Subdivision is responsible solely for the OR Subdivision Funds it receives. A county is not responsible for oversight, reporting, or monitoring of OR Subdivision Funds received by a city within that county that receives direct payment of OR Subdivision Funds.
- f) In each year in which the State prepares an annual report the State will also host a public meeting to discuss the annual report.

6. Audits

- a) If the State or any OR Participating Subdivision has a reasonable basis to suspect that an OR Participating Subdivision's use of OR Subdivision Funds or the State's use of the OR State Funds is inconsistent with the Distributor Settlement Agreement, the Janssen Settlement Agreement, or this OR Allocation Agreement, such Party may request the Oregon Secretary of State conduct an audit pursuant to ORS Chapter 297, provided, however, if the Oregon Secretary of State declines to conduct such an audit, the Parties will select a third party auditor mutually agreed to by the Parties.
- b) No audit may be commenced under Section 6(a) related to a specific expenditure of funds more than five years after the date on which the OR Participating Subdivision's expenditure of the funds subject to the audit was last reported to the State in an annual report submitted pursuant to Section 5(a).
- c) Notwithstanding the foregoing, this OR Allocation Agreement does not limit the statutory or constitutional authority of the State of Oregon or a local agency or official to conduct audits, investigations, or other oversight activities, or to pursue administrative, civil, or criminal enforcement actions.

7. Medicaid Clawback

The Parties understand that the United States may claim a portion of the OR Settlement Funds for Medicaid reimbursement pursuant to § 1903 (d)(3)(A) of the Social Security Act. The Parties agree that, to the extent a claim for Medicaid reimbursement is made, the Parties shall bear the liability for the reimbursement based upon the particular claims made by the United States pursuant to with § 1903 (d)(3)(A) of the Social Security Act. The Parties agree to meet, confer, and cooperate in good faith concerning the allocation of any such liability.

8. Applicability

This OR Allocation Agreement applies to all funds received by Oregon for the McKesson, Cardinal Health and AmerisourceBergen ("Distributors"), and manufacturer Janssen Pharmaceuticals, Inc. and its parent company Johnson & Johnson (collectively, "J&J") settlements. In addition, the allocation percentage contained herein (45% to the OR State Fund, 55% to OR Subdivision Fund), shall apply to future multistate opioid settlements with distributors, manufacturers, and pharmacies, subject to consideration of other terms of such settlements that impact allocation considerations. For the Purdue bankruptcy, the allocation of funds set forth in this Section 8, shall apply to Oregon's share of funds under the bankruptcy plan confirmed by Judge Drain on September 17, 2021 (the "Purdue Bankruptcy Plan"). However, any additional amounts paid under the Purdue bankruptcy resulting from Oregon and other states' appeal of the that plan's confirmation shall be paid directly to the State of Oregon, and any such additional amounts shall not be included in the calculation of the amount of the OR State Funds due to the State of Oregon under Section 4. The Parties acknowledge that in order to obtain settlement funds under the Purdue Bankruptcy Plan the Parties will need to file with the bankruptcy court that approved the Purdue Bankruptcy Plan a proposed allocation agreement that complies with the approved Purdue Bankruptcy Plan, and, to the extent permitted by the Purdue Bankruptcy Plan, the default allocation set forth in the proposed allocation agreement shall provide that 45% of the funds distributed to Oregon under the Purdue Bankruptcy Plan will be allocated to the State of Oregon, and 55% of the funds distributed to Oregon under the Purdue Bankruptcy Plan will be allocated to OR Participating Subdivisions. The Parties further agree that they will reasonably cooperate with one another to complete the timely filing of the allocation agreement within any deadlines established by the bankruptcy court. In addition, this OR Allocation Agreement, and allocation percentages set forth in this Section 8, shall not apply to any legal actions pursued by or settled by the State of Oregon as an individual state or any legal actions pursued by or settled by any OR Participating Subdivisions as individual cities or counties.

9. Releases

All Parties agree to release all claims as required to participate in the Distributor and Janssen Agreements as set forth in Exhibits K to the Distributor and Janssen Agreements and execution of such releases is a condition of receiving Oregon Settlement Funds under this OR Allocation Agreement.

10. Miscellaneous

- a) **Enforcement.** The State or any OR Participating Subdivision may bring a motion or action in any Oregon State court having competent jurisdiction to enforce the requirements of this OR Allocation Agreement. Before filing such a motion or action the Party intending to file the motion or action will meet and confer with the Party that is or will be the subject of the anticipated motion or action.
- b) **No Intended Third Parties.** Except as provided in the Distributor and Janssen Agreements, this OR Allocation Agreement is not enforceable by any party other than the State and the OR Participating Subdivisions. There are no intended third-party beneficiaries to this OR Allocation Agreement, and this OR Allocation Agreement does not confer any rights or remedies upon, and shall not be enforceable by, any person, legal entity, or public body that is not a Party to this OR Allocation Agreement.
- c) **Severability.** Except as provided in the OR Allocation Agreement, if any provision of this OR Allocation Agreement or the application thereof to any person, entity, or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this OR Allocation Agreement, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each other provision of this OR Allocation Agreement will be valid and enforceable to the fullest extent permitted by law. In the event any provision or part of this OR Allocation Agreement is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire OR Allocation Agreement, will be inoperative.

- d) **Additional Litigation.** Nothing in this OR Allocation Agreement alters or is intended to alter or change the right of the State of Oregon or any OR Participating Subdivision to pursue its own claims against any defendant, other than Janssen and the Settling Distributors, through separate opioid-related litigation.
- e) **Construction.** With regard to each and every term and condition of this OR Allocation Agreement, the Parties understand and agree that the same have or has been mutually negotiated, prepared and drafted. If at any time the Parties or any court, administrative hearings officer, mediator, arbitrator, or arbitration panel, are required to interpret or construe any such term or condition, no consideration shall be given to the issue of which Party actually prepared, drafted or requested any term or condition thereof.
- f) **Entire Agreement.** This OR Allocation Agreement contains the entire agreement between the Parties and supersedes and cancels all previous negotiations and agreements, if any.
- g) **Amendments.** Any and all amendments to this OR Allocation Agreement must be in writing and must be signed by all Parties.
- h) **Authority.** Each Party that enters into this OR Allocation Agreement represents that it has authority to enter into this OR Allocation Agreement and that all actions or authorizations by the Party's respective Commissions, Councils, Boards, or other governing bodies necessary to authorize the Party to enter into this OR Allocation Agreement have been completed or obtained.
- i) **Legal Advice.** Each Party to this OR Allocation Agreement acknowledges that it has been advised to seek legal counsel and has had the opportunity to have this OR Allocation Agreement reviewed by legal counsel.
- j) **Governing Law.** Except as provided in the Distributor and Janssen Agreements, this OR Allocation Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon.

Exhibit A
OR PARTICIPATING SUBDIVISIONS
AND LOCAL ALLOCATIONS

Participating Subdivision	Percentages
Albany City	1.1574421234%
Ashland City	0.5725593238%
Astoria City	0.1859283065%
Baker County	0.4771636205%
Beaverton City	0.9709676029%
Bend City	0.9443519043%
Benton County	1.0219885306%
Canby City	0.1716812437%
Central Point City	0.1718730043%
Clackamas County	7.7713142577%
Clatsop County	1.1423692099%
Columbia County	1.0096699413%
Coos Bay City	0.2538945929%
Coos County	1.5633002470%
Cornelius City	0.0949750265%
Corvallis City	0.6633711425%
Cottage Grove City	0.0910229575%
Crook County	0.3513229911%
Curry County	0.7612961295%
Dallas City	0.1606964683%
Deschutes County	2.2569753600%
Douglas County	2.5689481047%
Eugene City	2.7611039932%
Forest Grove City	0.2522169415%
Gladstone City	0.1181360032%
Grants Pass City	0.8232581895%
Gresham City	0.9831942718%
Happy Valley City	0.0103506009%
Hermiston City	0.1316304314%
Hillsboro City	1.5083519364%
Hood River County	0.3553687498%
Independence City	0.0808970601%
Jackson County	4.0769510640%
Jefferson County	0.3674692915%
Josephine County	1.6536523798%

Exhibit A

Keizer City	0.1916558451%
Klamath County	1.2169628601%
Klamath Falls City	0.3209275214%
La Grande City	0.2715648669%
Lake Oswego City	0.6934160342%
Lane County	6.3326808234%
Lebanon City	0.3269345282%
Lincoln County	1.5190343268%
Linn County	1.8185376689%
Malheur County	0.5014027023%
Marion County	4.1636475308%
McMinnville City	0.4803592635%
Medford City	1.5540758598%
Milwaukie City	0.2113647118%
Monmouth City	0.0706960930%
Morrow County	0.1351544937%
Multnomah County	13.9643815662%
Newberg City	0.4093257361%
Newport City	0.1908392623%
Ontario City	0.1869780182%
Oregon City	0.2765040475%
Pendleton City	0.3521049458%
Polk County	0.7074299681%
Portland City	8.2736702858%
Prineville City	0.0924861843%
Redmond City	0.1550311086%
Roseburg City	0.6370799877%
Salem City	3.0438221421%
Sandy City	0.0775015682%
Sherwood City	0.1404204928%
Silverton City	0.0775630731%
Springfield City	1.1667234659%
St. Helens City	0.1964453077%
The Dalles City	0.1723418738%
Tigard City	0.5049875956%
Tillamook County	0.9001228870%
Troutdale City	0.0899929610%
Tualatin City	0.1551565618%
Umatilla County	0.9738633884%

Exhibit A

Union County	0.4153841374%
Wasco County	0.4116278731%
Washington County	7.2167622210%
West Linn City	0.1600504983%
Wilsonville City	0.1383351396%
Woodburn City	0.2069349266%
Yamhill County	1.4120246444%

EXHIBIT B

OREGON BACK-STOP AGREEMENT

On August 6, 2021, Judge Polster of the US District Court for the Northern District of Ohio issued an Order (the Order), docket number 3814, in In Re National Prescription Opiate Litigation, MDL 2804, addressing contingent attorney fee contracts between political subdivisions eligible to participate in the Distributor and Janssen Agreements and their counsel.

In light of the Order, and at the request of [SUBDIVISION], the [SUBDIVISION], its counsel [COUNSEL], and the Oregon Department of Justice, on behalf of the State of Oregon, are entering into this Oregon Back-Stop Agreement (Back-Stop Agreement). Terms used herein have the meaning set forth in the Distributor and Janssen Agreements or the OR Allocation Agreement, as applicable.

[SUBDIVISION] and [COUNSEL] intend this Back-Stop Agreement to constitute a State Back-Stop Agreement as that term is used in the Order and in Exhibits R (Agreement on Attorneys’ Fees, Expenses and Costs) of the Distributor and Janssen Agreements.

[COUNSEL] certify that they first sought fees and costs from the Attorney Fee Funds and Cost Funds created under the Distributor and Janssen Agreements before seeking or accepting payment under this backstop agreement. [COUNSEL] further certify that they are not seeking and will not accept payment under this Back-Stop Agreement of any litigation fees or costs that have been reimbursed through prior settlements or judgments.

[COUNSEL] certify that it is requesting [\$ _____] (“Requested Amount”) from the OR Back-Stop Fund, which amount is to be paid in equal payments over the first seven Payment Dates set forth in the Distributor and Janssen Agreements. Counsel certify that the Requested Amount does not exceed an amount equal to:

[[OR SETTLEMENT FUNDS]*.5*[DIRECT ALLOCATION PERCENTAGE OF CONTINGENCY FEE COUNSEL’S LITIGATING LOCAL GOVERNMENT]*.12] minus [AMOUNT OBTAINED BY COUNSEL FROM ATTORNEY FEE FUND FOR COUNSEL’S LITIGATING LOCAL GOVERNMENT]

Notwithstanding the provisions of this Backstop Agreement, [SUBDIVISION] may pay to [COUNSEL] additional fees consistent with the provision of Section 4(e)(i) and (ii) of the OR Allocation Agreement.

The Oregon Department of Justice is executing this agreement solely because the definition of “State Back-Stop Agreement” in Exhibits R of the Distributor and Janssen Agreements requires such agreements to be between “a Settling State” and private counsel for a Participating Subdivision. Neither the Oregon Department of Justice nor the State of Oregon have any obligations under this Back-Stop Agreement, and this Back-Stop Agreement does not require the payment of any funds of the State of Oregon, including OR State Funds (as defined in the OR Allocation Agreement) to [SUBDIVISION], [COUNSEL], or any other party.

[DATE]

[SUBDIVISION SIGNATURE BLOCK]

[DATE]

[COUNSEL SIGNATURE BLOCK]

[DATE]

[OREGON DOJ SIGNATURE BLOCK]

The undersigned, Forest Grove city, OR, ACKNOWLEDGES acceptance of this Proposed Oregon State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds - Distributor Settlement is a requirement to be an Initial Participating Subdivision in the Distributor Settlement and ACCEPTS this Proposed Oregon State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds - Distributor Settlement.

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:

DocuSigned by:
Jesse Vanderzanden
23E1C26EFF73412...

Name:

Jesse VanderZanden

Title:

City Manager

Date:

12/21/2021



The undersigned, Forest Grove city, OR, ACKNOWLEDGES acceptance of this Proposed Oregon State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds is a requirement to be an Initial Participating Subdivision in the Janssen Settlement and ACCEPTS this Proposed Oregon State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds.

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:

DocuSigned by:
Jesse Vanderzanden
23E1C26EFF73412...

Name:

Jesse VanderZanden

Title:

City Manager

Date:

12/22/2021





A place where families and businesses thrive.

<i>CITY RECORDER USE ONLY:</i>	
AGENDA ITEM #:	_____
MEETING DATE:	12/31/2021
FINAL ACTION:	RESO 2021-65

CITY COUNCIL STAFF MEMORANDUM

TO: City Council

FROM: Jesse VanderZanden, City Manager
Ashley Driscoll, City Attorney

MEETING DATE: December 13, 2021

SUBJECT TITLE: Resolution authorizing the City Manager to participate in the intra-state opioid distributor/manufacturer settlement; to sign a release whereby the City would waive the right to file future claims against the named distributors and manufacturer; and to sign the intra-state settlement agreement on behalf of the City; both of which are contingent on the City Attorney’s review and approval.

ACTION REQUESTED:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Ordinance	Order	X	Resolution	X	Motion	Informational

X all that apply

BACKGROUND:

Local governments throughout the country have filed lawsuits against various opioid manufacturers and distributors due to their actions that resulted in an uncontrolled and misleading distribution of millions of addicting opioid pills.

The lawsuits allege that these actions have directly resulted in and caused an epidemic level crisis in cities and counties. In Oregon, ten counties and one city (Clackamas County, Clatsop County, Columbia County, Curry County, Jackson County, Josephine County, Lane County, Multnomah County, Washington County, Yamhill County and the City of Portland) filed suit and are part of the national MultiDistrict Litigation (MDL), which includes the combination of over 3,000 federal court cases.

The litigating entities, both from Oregon and across the country, have reached a proposed settlement agreement with opioid distributors as well as one manufacturer, Janssen (Johnson & Johnson). Other potential settlements (such as with Purdue Pharma, which is currently in Chapter 11 bankruptcy) may be forthcoming.

The terms of the proposed settlement agreements reached to date include direct monetary payments to states and local governments. The proposed settlements provide an incentive based model to get as many local governments to participate in the terms of the settlement as possible. In

short, the more local governments that participate in the agreement from a particular state, the greater amount of the overall settlement pool that the state and those local governments receive.

The incentive model provides various means for achieving 100% funding, including receiving a release from jurisdictions with populations in excess of 30,000 as well as a different process when releases are received from all jurisdictions with a population in excess of 10,000. Currently, Oregon is seeking to receive participation and releases from all cities with a population in excess of 10,000 based on July 2019 population estimates. Non-litigating entities that wish to participate must agree to do so no later than January 2, 2022 which is why this is being brought to Council tonight.

CURRENT STATUS:

Since Forest Grove has a population in excess of 10,000, we have been invited to participate in the settlement process even though we were not originally a part of the underlying litigation. To participate in the settlement program, the city will need to sign two sets of documents for each settlement agreement: (1) a release waiving our right to file future claims related to these issues; and (2) an intra-state agreement that will govern how the funds are distributed in Oregon.

If the city accepts this invitation, it has to sign a release, which would preclude us from later filing suit against the distributors and/or Janssen on claims related to the opioid epidemic. In exchange for participation, local governments will receive a monetary payment based on the intra-state agreement. Under the proposed intra-state agreement, the state will retain 45% of the settlement money and the remaining 55% will go to local governments.

The money set aside for local governments will be distributed based upon population levels. As of now, If Oregon receives 100% of the funding based on the incentives described above, then it is currently estimated that Forest Grove will receive around \$444,776 to spend on opioid abatement. As with almost every funding program, the city will need to maintain detailed records of expenditures and participate in a yet to be determined reporting program. The payments will be made over an 18 year period.

The purposes for which the settlement money can be used is set forth in Exhibit E of the settlement agreement(s) and is attached here for your review. Such uses include treatment and prevention programs, education and training for first responders and other staff members, and research. If a city does not have the ability to expend the funds on these authorized purposes, the city can direct their payments to Washington County to ensure that the money is spent locally.

SUMMARY:

The city is being presented with the option to participate in a settlement agreement with the entities that distributed opioids as well as one opioid manufacturer. If the city decides to participate, it will receive a monetary payment that must be used for opioid abatement purposes. But the city will have to sign a release waiving its rights to file future claims against the one manufacturer and the distributors.

RECOMMENDATION:

Staff recommends the Council approve the resolution authorizing the City Manager to participate in the intra-state opioid distributor/manufacturer settlement, specifically: to sign a release whereby the City would waive the right to file future claims against the named distributors and manufacturer and to sign the intra-state settlement agreement on behalf of the City both of which would be contingent on the City Attorney's review and approval.

ATTACHMENTS:

1. Exhibit E to the Settlement Agreement (Allowed Uses of Opioid Remediation Uses)

EXHIBIT E

List of Opioid Remediation Uses

**Schedule A
Core Strategies**

States and Qualifying Block Grantees shall choose from among the abatement strategies listed in Schedule B. However, priority shall be given to the following core abatement strategies (“*Core Strategies*”).¹⁴

- A. **NALOXONE OR OTHER FDA-APPROVED DRUG TO REVERSE OPIOID OVERDOSES**
1. Expand training for first responders, schools, community support groups and families; and
 2. Increase distribution to individuals who are uninsured or whose insurance does not cover the needed service.
- B. **MEDICATION-ASSISTED TREATMENT (“MAT”) DISTRIBUTION AND OTHER OPIOID-RELATED TREATMENT**
1. Increase distribution of MAT to individuals who are uninsured or whose insurance does not cover the needed service;
 2. Provide education to school-based and youth-focused programs that discourage or prevent misuse;
 3. Provide MAT education and awareness training to healthcare providers, EMTs, law enforcement, and other first responders; and
 4. Provide treatment and recovery support services such as residential and inpatient treatment, intensive outpatient treatment, outpatient therapy or counseling, and recovery housing that allow or integrate medication and with other support services.

¹⁴ As used in this Schedule A, words like “expand,” “fund,” “provide” or the like shall not indicate a preference for new or existing programs.

C. **PREGNANT & POSTPARTUM WOMEN**

1. Expand Screening, Brief Intervention, and Referral to Treatment (“*SBIRT*”) services to non-Medicaid eligible or uninsured pregnant women;
2. Expand comprehensive evidence-based treatment and recovery services, including MAT, for women with co-occurring Opioid Use Disorder (“*OUD*”) and other Substance Use Disorder (“*SUD*”)/Mental Health disorders for uninsured individuals for up to 12 months postpartum; and
3. Provide comprehensive wrap-around services to individuals with OUD, including housing, transportation, job placement/training, and childcare.

D. **EXPANDING TREATMENT FOR NEONATAL ABSTINENCE SYNDROME (“*NAS*”)**

1. Expand comprehensive evidence-based and recovery support for NAS babies;
2. Expand services for better continuum of care with infant-need dyad; and
3. Expand long-term treatment and services for medical monitoring of NAS babies and their families.

E. **EXPANSION OF WARM HAND-OFF PROGRAMS AND RECOVERY SERVICES**

1. Expand services such as navigators and on-call teams to begin MAT in hospital emergency departments;
2. Expand warm hand-off services to transition to recovery services;
3. Broaden scope of recovery services to include co-occurring SUD or mental health conditions;
4. Provide comprehensive wrap-around services to individuals in recovery, including housing, transportation, job placement/training, and childcare; and
5. Hire additional social workers or other behavioral health workers to facilitate expansions above.

F. **TREATMENT FOR INCARCERATED POPULATION**

1. Provide evidence-based treatment and recovery support, including MAT for persons with OUD and co-occurring SUD/MH disorders within and transitioning out of the criminal justice system; and
2. Increase funding for jails to provide treatment to inmates with OUD.

G. **PREVENTION PROGRAMS**

1. Funding for media campaigns to prevent opioid use (similar to the FDA's "Real Cost" campaign to prevent youth from misusing tobacco);
2. Funding for evidence-based prevention programs in schools;
3. Funding for medical provider education and outreach regarding best prescribing practices for opioids consistent with the 2016 CDC guidelines, including providers at hospitals (academic detailing);
4. Funding for community drug disposal programs; and
5. Funding and training for first responders to participate in pre-arrest diversion programs, post-overdose response teams, or similar strategies that connect at-risk individuals to behavioral health services and supports.

H. **EXPANDING SYRINGE SERVICE PROGRAMS**

1. Provide comprehensive syringe services programs with more wrap-around services, including linkage to OUD treatment, access to sterile syringes and linkage to care and treatment of infectious diseases.

I. **EVIDENCE-BASED DATA COLLECTION AND RESEARCH ANALYZING THE EFFECTIVENESS OF THE ABATEMENT STRATEGIES WITHIN THE STATE**

Schedule B
Approved Uses

Support treatment of Opioid Use Disorder (OUD) and any co-occurring Substance Use Disorder or Mental Health (SUD/MH) conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

PART ONE: TREATMENT

A. TREAT OPIOID USE DISORDER (OUD)

Support treatment of Opioid Use Disorder (“OUD”) and any co-occurring Substance Use Disorder or Mental Health (“SUD/MH”) conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:¹⁵

1. Expand availability of treatment for OUD and any co-occurring SUD/MH conditions, including all forms of Medication-Assisted Treatment (“MAT”) approved by the U.S. Food and Drug Administration.
2. Support and reimburse evidence-based services that adhere to the American Society of Addiction Medicine (“ASAM”) continuum of care for OUD and any co-occurring SUD/MH conditions.
3. Expand telehealth to increase access to treatment for OUD and any co-occurring SUD/MH conditions, including MAT, as well as counseling, psychiatric support, and other treatment and recovery support services.
4. Improve oversight of Opioid Treatment Programs (“OTPs”) to assure evidence-based or evidence-informed practices such as adequate methadone dosing and low threshold approaches to treatment.
5. Support mobile intervention, treatment, and recovery services, offered by qualified professionals and service providers, such as peer recovery coaches, for persons with OUD and any co-occurring SUD/MH conditions and for persons who have experienced an opioid overdose.
6. Provide treatment of trauma for individuals with OUD (*e.g.*, violence, sexual assault, human trafficking, or adverse childhood experiences) and family members (*e.g.*, surviving family members after an overdose or overdose fatality), and training of health care personnel to identify and address such trauma.
7. Support evidence-based withdrawal management services for people with OUD and any co-occurring mental health conditions.

¹⁵ As used in this Schedule B, words like “expand,” “fund,” “provide” or the like shall not indicate a preference for new or existing programs.

8. Provide training on MAT for health care providers, first responders, students, or other supporting professionals, such as peer recovery coaches or recovery outreach specialists, including telementoring to assist community-based providers in rural or underserved areas.
9. Support workforce development for addiction professionals who work with persons with OUD and any co-occurring SUD/MH conditions.
10. Offer fellowships for addiction medicine specialists for direct patient care, instructors, and clinical research for treatments.
11. Offer scholarships and supports for behavioral health practitioners or workers involved in addressing OUD and any co-occurring SUD/MH or mental health conditions, including, but not limited to, training, scholarships, fellowships, loan repayment programs, or other incentives for providers to work in rural or underserved areas.
12. Provide funding and training for clinicians to obtain a waiver under the federal Drug Addiction Treatment Act of 2000 (“*DATA 2000*”) to prescribe MAT for OUD, and provide technical assistance and professional support to clinicians who have obtained a *DATA 2000* waiver.
13. Disseminate of web-based training curricula, such as the American Academy of Addiction Psychiatry’s Provider Clinical Support Service–Opioids web-based training curriculum and motivational interviewing.
14. Develop and disseminate new curricula, such as the American Academy of Addiction Psychiatry’s Provider Clinical Support Service for Medication–Assisted Treatment.

B. SUPPORT PEOPLE IN TREATMENT AND RECOVERY

Support people in recovery from OUD and any co-occurring SUD/MH conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the programs or strategies that:

1. Provide comprehensive wrap-around services to individuals with OUD and any co-occurring SUD/MH conditions, including housing, transportation, education, job placement, job training, or childcare.
2. Provide the full continuum of care of treatment and recovery services for OUD and any co-occurring SUD/MH conditions, including supportive housing, peer support services and counseling, community navigators, case management, and connections to community-based services.
3. Provide counseling, peer-support, recovery case management and residential treatment with access to medications for those who need it to persons with OUD and any co-occurring SUD/MH conditions.

4. Provide access to housing for people with OUD and any co-occurring SUD/MH conditions, including supportive housing, recovery housing, housing assistance programs, training for housing providers, or recovery housing programs that allow or integrate FDA-approved medication with other support services.
5. Provide community support services, including social and legal services, to assist in deinstitutionalizing persons with OUD and any co-occurring SUD/MH conditions.
6. Support or expand peer-recovery centers, which may include support groups, social events, computer access, or other services for persons with OUD and any co-occurring SUD/MH conditions.
7. Provide or support transportation to treatment or recovery programs or services for persons with OUD and any co-occurring SUD/MH conditions.
8. Provide employment training or educational services for persons in treatment for or recovery from OUD and any co-occurring SUD/MH conditions.
9. Identify successful recovery programs such as physician, pilot, and college recovery programs, and provide support and technical assistance to increase the number and capacity of high-quality programs to help those in recovery.
10. Engage non-profits, faith-based communities, and community coalitions to support people in treatment and recovery and to support family members in their efforts to support the person with OUD in the family.
11. Provide training and development of procedures for government staff to appropriately interact and provide social and other services to individuals with or in recovery from OUD, including reducing stigma.
12. Support stigma reduction efforts regarding treatment and support for persons with OUD, including reducing the stigma on effective treatment.
13. Create or support culturally appropriate services and programs for persons with OUD and any co-occurring SUD/MH conditions, including new Americans.
14. Create and/or support recovery high schools.
15. Hire or train behavioral health workers to provide or expand any of the services or supports listed above.

C. CONNECT PEOPLE WHO NEED HELP TO THE HELP THEY NEED
(CONNECTIONS TO CARE)

Provide connections to care for people who have—or are at risk of developing—OUD and any co-occurring SUD/MH conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:

1. Ensure that health care providers are screening for OUD and other risk factors and know how to appropriately counsel and treat (or refer if necessary) a patient for OUD treatment.
2. Fund SBIRT programs to reduce the transition from use to disorders, including SBIRT services to pregnant women who are uninsured or not eligible for Medicaid.
3. Provide training and long-term implementation of SBIRT in key systems (health, schools, colleges, criminal justice, and probation), with a focus on youth and young adults when transition from misuse to opioid disorder is common.
4. Purchase automated versions of SBIRT and support ongoing costs of the technology.
5. Expand services such as navigators and on-call teams to begin MAT in hospital emergency departments.
6. Provide training for emergency room personnel treating opioid overdose patients on post-discharge planning, including community referrals for MAT, recovery case management or support services.
7. Support hospital programs that transition persons with OUD and any co-occurring SUD/MH conditions, or persons who have experienced an opioid overdose, into clinically appropriate follow-up care through a bridge clinic or similar approach.
8. Support crisis stabilization centers that serve as an alternative to hospital emergency departments for persons with OUD and any co-occurring SUD/MH conditions or persons that have experienced an opioid overdose.
9. Support the work of Emergency Medical Systems, including peer support specialists, to connect individuals to treatment or other appropriate services following an opioid overdose or other opioid-related adverse event.
10. Provide funding for peer support specialists or recovery coaches in emergency departments, detox facilities, recovery centers, recovery housing, or similar settings; offer services, supports, or connections to care to persons with OUD and any co-occurring SUD/MH conditions or to persons who have experienced an opioid overdose.
11. Expand warm hand-off services to transition to recovery services.
12. Create or support school-based contacts that parents can engage with to seek immediate treatment services for their child; and support prevention, intervention, treatment, and recovery programs focused on young people.
13. Develop and support best practices on addressing OUD in the workplace.

14. Support assistance programs for health care providers with OUD.
15. Engage non-profits and the faith community as a system to support outreach for treatment.
16. Support centralized call centers that provide information and connections to appropriate services and supports for persons with OUD and any co-occurring SUD/MH conditions.

D. ADDRESS THE NEEDS OF CRIMINAL JUSTICE-INVOLVED PERSONS

Address the needs of persons with OUD and any co-occurring SUD/MH conditions who are involved in, are at risk of becoming involved in, or are transitioning out of the criminal justice system through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:

1. Support pre-arrest or pre-arraignment diversion and deflection strategies for persons with OUD and any co-occurring SUD/MH conditions, including established strategies such as:
 1. Self-referral strategies such as the Angel Programs or the Police Assisted Addiction Recovery Initiative (“*PAARF*”);
 2. Active outreach strategies such as the Drug Abuse Response Team (“*DART*”) model;
 3. “Naloxone Plus” strategies, which work to ensure that individuals who have received naloxone to reverse the effects of an overdose are then linked to treatment programs or other appropriate services;
 4. Officer prevention strategies, such as the Law Enforcement Assisted Diversion (“*LEAD*”) model;
 5. Officer intervention strategies such as the Leon County, Florida Adult Civil Citation Network or the Chicago Westside Narcotics Diversion to Treatment Initiative; or
 6. Co-responder and/or alternative responder models to address OUD-related 911 calls with greater SUD expertise.
2. Support pre-trial services that connect individuals with OUD and any co-occurring SUD/MH conditions to evidence-informed treatment, including MAT, and related services.
3. Support treatment and recovery courts that provide evidence-based options for persons with OUD and any co-occurring SUD/MH conditions.

4. Provide evidence-informed treatment, including MAT, recovery support, harm reduction, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions who are incarcerated in jail or prison.
5. Provide evidence-informed treatment, including MAT, recovery support, harm reduction, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions who are leaving jail or prison or have recently left jail or prison, are on probation or parole, are under community corrections supervision, or are in re-entry programs or facilities.
6. Support critical time interventions (“CTI”), particularly for individuals living with dual-diagnosis OUD/serious mental illness, and services for individuals who face immediate risks and service needs and risks upon release from correctional settings.
7. Provide training on best practices for addressing the needs of criminal justice-involved persons with OUD and any co-occurring SUD/MH conditions to law enforcement, correctional, or judicial personnel or to providers of treatment, recovery, harm reduction, case management, or other services offered in connection with any of the strategies described in this section.

E. ADDRESS THE NEEDS OF PREGNANT OR PARENTING WOMEN AND THEIR FAMILIES, INCLUDING BABIES WITH NEONATAL ABSTINENCE SYNDROME

Address the needs of pregnant or parenting women with OUD and any co-occurring SUD/MH conditions, and the needs of their families, including babies with neonatal abstinence syndrome (“NAS”), through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:

1. Support evidence-based or evidence-informed treatment, including MAT, recovery services and supports, and prevention services for pregnant women—or women who could become pregnant—who have OUD and any co-occurring SUD/MH conditions, and other measures to educate and provide support to families affected by Neonatal Abstinence Syndrome.
2. Expand comprehensive evidence-based treatment and recovery services, including MAT, for uninsured women with OUD and any co-occurring SUD/MH conditions for up to 12 months postpartum.
3. Provide training for obstetricians or other healthcare personnel who work with pregnant women and their families regarding treatment of OUD and any co-occurring SUD/MH conditions.
4. Expand comprehensive evidence-based treatment and recovery support for NAS babies; expand services for better continuum of care with infant-need dyad; and expand long-term treatment and services for medical monitoring of NAS babies and their families.

5. Provide training to health care providers who work with pregnant or parenting women on best practices for compliance with federal requirements that children born with NAS get referred to appropriate services and receive a plan of safe care.
6. Provide child and family supports for parenting women with OUD and any co-occurring SUD/MH conditions.
7. Provide enhanced family support and child care services for parents with OUD and any co-occurring SUD/MH conditions.
8. Provide enhanced support for children and family members suffering trauma as a result of addiction in the family; and offer trauma-informed behavioral health treatment for adverse childhood events.
9. Offer home-based wrap-around services to persons with OUD and any co-occurring SUD/MH conditions, including, but not limited to, parent skills training.
10. Provide support for Children's Services—Fund additional positions and services, including supportive housing and other residential services, relating to children being removed from the home and/or placed in foster care due to custodial opioid use.

PART TWO: PREVENTION

F. PREVENT OVER-PRESCRIBING AND ENSURE APPROPRIATE PRESCRIBING AND DISPENSING OF OPIOIDS

Support efforts to prevent over-prescribing and ensure appropriate prescribing and dispensing of opioids through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Funding medical provider education and outreach regarding best prescribing practices for opioids consistent with the Guidelines for Prescribing Opioids for Chronic Pain from the U.S. Centers for Disease Control and Prevention, including providers at hospitals (academic detailing).
2. Training for health care providers regarding safe and responsible opioid prescribing, dosing, and tapering patients off opioids.
3. Continuing Medical Education (CME) on appropriate prescribing of opioids.
4. Providing Support for non-opioid pain treatment alternatives, including training providers to offer or refer to multi-modal, evidence-informed treatment of pain.
5. Supporting enhancements or improvements to Prescription Drug Monitoring Programs (“PDMPs”), including, but not limited to, improvements that:

1. Increase the number of prescribers using PDMPs;
2. Improve point-of-care decision-making by increasing the quantity, quality, or format of data available to prescribers using PDMPs, by improving the interface that prescribers use to access PDMP data, or both; or
3. Enable states to use PDMP data in support of surveillance or intervention strategies, including MAT referrals and follow-up for individuals identified within PDMP data as likely to experience OUD in a manner that complies with all relevant privacy and security laws and rules.
6. Ensuring PDMPs incorporate available overdose/naloxone deployment data, including the United States Department of Transportation's Emergency Medical Technician overdose database in a manner that complies with all relevant privacy and security laws and rules.
7. Increasing electronic prescribing to prevent diversion or forgery.
8. Educating dispensers on appropriate opioid dispensing.

G. PREVENT MISUSE OF OPIOIDS

Support efforts to discourage or prevent misuse of opioids through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Funding media campaigns to prevent opioid misuse.
2. Corrective advertising or affirmative public education campaigns based on evidence.
3. Public education relating to drug disposal.
4. Drug take-back disposal or destruction programs.
5. Funding community anti-drug coalitions that engage in drug prevention efforts.
6. Supporting community coalitions in implementing evidence-informed prevention, such as reduced social access and physical access, stigma reduction—including staffing, educational campaigns, support for people in treatment or recovery, or training of coalitions in evidence-informed implementation, including the Strategic Prevention Framework developed by the U.S. Substance Abuse and Mental Health Services Administration (“SAMHSA”).
7. Engaging non-profits and faith-based communities as systems to support prevention.

8. Funding evidence-based prevention programs in schools or evidence-informed school and community education programs and campaigns for students, families, school employees, school athletic programs, parent-teacher and student associations, and others.
9. School-based or youth-focused programs or strategies that have demonstrated effectiveness in preventing drug misuse and seem likely to be effective in preventing the uptake and use of opioids.
10. Create or support community-based education or intervention services for families, youth, and adolescents at risk for OUD and any co-occurring SUD/MH conditions.
11. Support evidence-informed programs or curricula to address mental health needs of young people who may be at risk of misusing opioids or other drugs, including emotional modulation and resilience skills.
12. Support greater access to mental health services and supports for young people, including services and supports provided by school nurses, behavioral health workers or other school staff, to address mental health needs in young people that (when not properly addressed) increase the risk of opioid or another drug misuse.

H. PREVENT OVERDOSE DEATHS AND OTHER HARMS (HARM REDUCTION)

Support efforts to prevent or reduce overdose deaths or other opioid-related harms through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Increased availability and distribution of naloxone and other drugs that treat overdoses for first responders, overdose patients, individuals with OUD and their friends and family members, schools, community navigators and outreach workers, persons being released from jail or prison, or other members of the general public.
2. Public health entities providing free naloxone to anyone in the community.
3. Training and education regarding naloxone and other drugs that treat overdoses for first responders, overdose patients, patients taking opioids, families, schools, community support groups, and other members of the general public.
4. Enabling school nurses and other school staff to respond to opioid overdoses, and provide them with naloxone, training, and support.
5. Expanding, improving, or developing data tracking software and applications for overdoses/naloxone revivals.
6. Public education relating to emergency responses to overdoses.

7. Public education relating to immunity and Good Samaritan laws.
8. Educating first responders regarding the existence and operation of immunity and Good Samaritan laws.
9. Syringe service programs and other evidence-informed programs to reduce harms associated with intravenous drug use, including supplies, staffing, space, peer support services, referrals to treatment, fentanyl checking, connections to care, and the full range of harm reduction and treatment services provided by these programs.
10. Expanding access to testing and treatment for infectious diseases such as HIV and Hepatitis C resulting from intravenous opioid use.
11. Supporting mobile units that offer or provide referrals to harm reduction services, treatment, recovery supports, health care, or other appropriate services to persons that use opioids or persons with OUD and any co-occurring SUD/MH conditions.
12. Providing training in harm reduction strategies to health care providers, students, peer recovery coaches, recovery outreach specialists, or other professionals that provide care to persons who use opioids or persons with OUD and any co-occurring SUD/MH conditions.
13. Supporting screening for fentanyl in routine clinical toxicology testing.

PART THREE: OTHER STRATEGIES

I. FIRST RESPONDERS

In addition to items in section C, D and H relating to first responders, support the following:

1. Education of law enforcement or other first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs.
2. Provision of wellness and support services for first responders and others who experience secondary trauma associated with opioid-related emergency events.

J. LEADERSHIP, PLANNING AND COORDINATION

Support efforts to provide leadership, planning, coordination, facilitations, training and technical assistance to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Statewide, regional, local or community regional planning to identify root causes of addiction and overdose, goals for reducing harms related to the opioid epidemic, and areas and populations with the greatest needs for treatment

intervention services, and to support training and technical assistance and other strategies to abate the opioid epidemic described in this opioid abatement strategy list.

2. A dashboard to (a) share reports, recommendations, or plans to spend opioid settlement funds; (b) to show how opioid settlement funds have been spent; (c) to report program or strategy outcomes; or (d) to track, share or visualize key opioid- or health-related indicators and supports as identified through collaborative statewide, regional, local or community processes.
3. Invest in infrastructure or staffing at government or not-for-profit agencies to support collaborative, cross-system coordination with the purpose of preventing overprescribing, opioid misuse, or opioid overdoses, treating those with OUD and any co-occurring SUD/MH conditions, supporting them in treatment or recovery, connecting them to care, or implementing other strategies to abate the opioid epidemic described in this opioid abatement strategy list.
4. Provide resources to staff government oversight and management of opioid abatement programs.

K. TRAINING

In addition to the training referred to throughout this document, support training to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, those that:

1. Provide funding for staff training or networking programs and services to improve the capability of government, community, and not-for-profit entities to abate the opioid crisis.
2. Support infrastructure and staffing for collaborative cross-system coordination to prevent opioid misuse, prevent overdoses, and treat those with OUD and any co-occurring SUD/MH conditions, or implement other strategies to abate the opioid epidemic described in this opioid abatement strategy list (*e.g.*, health care, primary care, pharmacies, PDMPs, etc.).

L. RESEARCH

Support opioid abatement research that may include, but is not limited to, the following:

1. Monitoring, surveillance, data collection and evaluation of programs and strategies described in this opioid abatement strategy list.
2. Research non-opioid treatment of chronic pain.
3. Research on improved service delivery for modalities such as SBIRT that demonstrate promising but mixed results in populations vulnerable to opioid use disorders.

4. Research on novel harm reduction and prevention efforts such as the provision of fentanyl test strips.
5. Research on innovative supply-side enforcement efforts such as improved detection of mail-based delivery of synthetic opioids.
6. Expanded research on swift/certain/fair models to reduce and deter opioid misuse within criminal justice populations that build upon promising approaches used to address other substances (*e.g.*, Hawaii HOPE and Dakota 24/7).
7. Epidemiological surveillance of OUD-related behaviors in critical populations, including individuals entering the criminal justice system, including, but not limited to approaches modeled on the Arrestee Drug Abuse Monitoring (“ADAM”) system.
8. Qualitative and quantitative research regarding public health risks and harm reduction opportunities within illicit drug markets, including surveys of market participants who sell or distribute illicit opioids.
9. Geospatial analysis of access barriers to MAT and their association with treatment engagement and treatment outcomes.

- e) ***Approved Abatement Uses*** means the Opioid Remediation activities described in Exhibits E to the Distributor and Janssen Agreements.
- f) ***Litigating Local Governments*** means the Counties of Clackamas, Clatsop, Columbia, Coos, Curry, Jackson, Josephine, Lane, Multnomah, Washington, Yamhill, and the City of Portland.

3. General Terms

This OR Allocation Agreement is subject to the requirements of the Distributor and Janssen Agreements, as well as applicable law. If the terms of this OR Allocation Agreement conflict with the terms of the Distributor Settlement Agreement or the Janssen Settlement Agreement the terms of the Distributor Settlement Agreement and/or the Janssen Settlement Agreement will take precedence over the inconsistent provisions of this OR Allocation Agreement.

4. Allocation of Settlement Funds

- a) **Allocation Generally.** The total Settlement Fund payments made to Oregon pursuant to the Distributor and Janssen Agreements (collectively, the “Oregon Settlement Funds”) shall be combined pursuant to this OR Allocation Agreement, and 45% of the Oregon Settlement Funds shall be allocated to the State of Oregon (such funds, the “OR State Funds”) and 55% of the Oregon Settlement Funds shall be allocated to the OR Participating Subdivisions (such funds, the “OR Subdivision Funds”).

b) State of Oregon Allocation

- i. For purposes of this OR Allocation Agreement, “Enabling Legislation” means legislation passed by the Oregon Legislative Assembly and presented to the Oregon Governor for signature, that establishes the authority within the State of Oregon to accept, administer, and expend the OR State Funds, and addresses other matters related to this OR Allocation Agreement. It is the intent of the Parties that the Enabling Legislation will provide, without limitation, that:
 - 1. The OR State Funds will be deposited in a Prevention, Treatment and Recovery Fund (the “PTR Fund”), overseen by a board (the “PTR Board”), which shall be used by the State solely for future Approved Abatement Uses as follows:
 - (i) Administration of the PTR Fund and PTR Board;
 - (ii) Development of a unified and evidence-based state system for collecting, analyzing and publishing data about the availability and efficacy of substance use prevention, treatment and recovery services across the state; and
 - (iii) Funding statewide and regional Approved Abatement Uses.
 - 2. The PTR Board is constituted and authorized so that the State and OR Participating Subdivisions shall have equal representation and voting power on the PTR Board, whether directly or by designated representatives.
 - 3. Effects a release of potential claims against the Settling Distributors and Janssen by local governments or local service districts, as those terms are defined in ORS 174.116, and special government bodies, as defined in ORS 174.117, that have not released their claims through execution of a Subdivision Settlement Participation Form in substantially the form set forth in Exhibit K of the Distributor and Janssen Agreements.
- ii. The OR State Funds will be accepted, administered, and spent in accordance with the Enabling Legislation when it becomes law. The State of Oregon will draft and promote passage of the

Enabling Legislation. The OR Participating Subdivisions acknowledge the need for the Enabling Legislation and will support passage of the Enabling Legislation consistent with Section 4(b)(i)(1)-(2) of this OR Allocation Agreement and will not oppose with respect to any portion of the Enabling Legislation reflecting Section 4(b)(i)(3) of this OR Allocation Agreement. Until the Enabling Legislation becomes law, the OR State Funds shall be deposited in the Oregon Department of Justice's Client Trust Account and may be expended or distributed by the Oregon Department of Justice for Approved Abatement Uses.

c) OR Subdivision Allocation

- i. The Settlement Fund Administrator will be instructed to allocate the OR Subdivision Funds to OR Participating Subdivisions 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 to receive Settlement Funds, based on population or litigation status. The percentage for each OR Participating Subdivision is set forth in Exhibit A in the column entitled "Abatement Percentage" (the "Local Allocation"). For the avoidance of doubt, non-litigating Oregon towns, cities, and counties with a population less than 10,000 are not eligible to receive an allocation of OR Subdivision Funds.
- ii. An OR Participating Subdivision will be allocated its Local Allocation share beginning on the date it becomes an OR Participating Subdivision but shall not be entitled to any Local Allocation share of Oregon Settlement Funds distributed by the Settlement Administrator before the date it becomes an OR Participating Subdivision.
- iii. The Local Allocation share for a city that is an OR Participating Subdivision will be paid to the county in which the city is located, rather than to the city, so long as: (a) the county is an OR 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. A Local Allocation share allocated to a city but paid to a county is not required to be spent exclusively for Approved Abatement Uses in that city but will become part of the county's share of the OR Subdivision Funds, which will be used in accordance with Section 4.c of this OR Allocation Agreement and reported on in accordance with Section 5 of this OR Allocation Agreement.
- iv. A city within a county that is an OR Participating Subdivision may opt in or out of direct payment at any time, and it may also elect direct payment of only a portion of its share, with the remainder going to the county, by providing notice to the Settlement Fund Administrator at least 60 days prior to a Payment Date. For purposes of this OR Allocation Agreement, the City of Portland will be deemed to have elected direct payment if it becomes an OR Participating Subdivision.
- v. The State will receive the Local Allocation share of any payment of Oregon Settlement Funds distributed on a Payment Date that would otherwise be paid to a county or city is eligible to become an OR Participating Subdivision but that has not, as of that Payment Date, become an OR Participating Subdivision.
- vi. Funds received by an OR Participating Subdivision, and not expended or encumbered within five years of receipt and in accordance with the Distributor and Janssen Agreements and this OR Allocation Agreement shall be transferred to the fund to which OR State Funds are paid pursuant to Section 4(b)(ii). OR Participating Subdivisions have seven years from receipt of funds to expend or encumber OR Subdivision Funds designated to support capital outlay projects before they must be transferred to the State.
- vii. Except as set forth in Sections 4.d and 4.e, Settlement Funds received by an OR Participating Subdivision shall be used for Approved Abatement Uses.

- viii. For the avoidance of doubt, and subject to the requirements of the Distributor and Janssen Agreements and applicable law, an OR Participating Subdivision may form agreements or ventures, or otherwise work in collaboration with, federal, state, local, tribal or private sector entities in pursuing Approved Abatement Uses funded from the OR Participating Subdivision's Local Allocation. Further, provided that OR Subdivision Funds are used for Approved Abatement Uses, a county and any cities or towns within the county may agree to reallocate their respective Local Allocation shares of OR Subdivision Funds among themselves, provided that any direct distribution may only be to an OR Participating Subdivision and any OR Participating Subdivision must agree to its share being reallocated.
- ix. Each OR Participating Subdivision is responsible for obtaining necessary budget or expenditure authority under applicable law for its distribution or expenditures of OR Subdivision Funds in accordance with this OR Allocation Agreement.

d) Provision for State Back-Stop Agreement

- i. The OR Participating Subdivisions will establish an Oregon attorney fee back-stop fund (the "OR Back-Stop Fund"). The OR Back-Stop Fund will be funded by and deducted from OR Subdivision Funds prior to the distribution of any Local Allocation share to any OR Participating Subdivisions, shall be equal to no more than \$2,500,000, and may be used only to pay the contingency fees due to Contingency Fee Counsel of the Litigating Local Governments, subject to the limitations set forth in Section 4(d)(ii).
- ii. The parties will notify the Settlement Fund Administrator to withhold and pay the OR Back-Stop Fund from the OR Subdivision Funds according to the national fee fund payment schedule, and the Parties will otherwise cooperate to so instruct the Settlement Fund Administrator. In addition, the Parties will notify the Settlement Fund Administrator to distribute the amounts in the OR Back-Stop Fund to private counsel seeking contingency fees from a Litigating Local Government ("Contingency Fee Counsel") in accordance with this OR Allocation Agreement.
- iii. Contingency Fee Counsel must first seek contingency fees and costs from the Attorney Fee Fund or Cost Funds created under the Distributor and Janssen Agreements and only upon receiving the maximum amount of fees available under the Distributor and Janssen Agreements may a Contingency Fee Counsel seek payment of any fees from the OR Back-Stop Fund. In addition, under no circumstances shall the cumulative fees paid from the Attorney Fee Fund and the OR Back-Stop Fund exceed 12% of the Litigating Local Government's Local Allocation share of 50% of the Oregon Settlement Funds. For the avoidance of doubt, below is the formula to calculate the amount any particular Contingency Fee Counsel for a Litigating Local Government may be paid from the OR Back-Stop Fund:

$[[\text{OR SETTLEMENT FUNDS}] \times .5 \times [\text{DIRECT ALLOCATION PERCENTAGE OF CONTINGENCY FEE COUNSEL'S LITIGATING LOCAL GOVERNMENT}] \times .12] \text{ minus } [\text{AMOUNT OBTAINED BY COUNSEL FROM ATTORNEY FEE FUND FOR COUNSEL'S LITIGATING LOCAL GOVERNMENT}]$

- iv. A Contingency Fee Counsel may only receive fees paid from the OR Back-Stop Fund pursuant to a written Oregon Back Stop Agreement, substantially in the form of attached hereto as Exhibit B, between the Contingency Fee Counsel, the Litigating Local Government it represents, and the Oregon Department of Justice.
- v. For the avoidance of doubt, this OR Allocation Agreement does not require a Litigating Local Government to request or enter into an Oregon Back-Stop Agreement, and no Oregon Back-Stop Agreement shall impose any duty or obligation on the State of Oregon or any of its agencies or officers, including without limitation the Oregon Department of Justice or the Oregon Attorney

General.

e) Additional Costs

- i. Each OR Participating Subdivision may contribute up to 5% of its Local Allocation to pay opioid related expenditures such as unreimbursed administrative expenses, costs, professional fees and attorney fees of outside legal counsel and in-house legal counsel employed by the OR Participating Subdivision (collectively, “Additional Costs”). Each OR Participating Subdivision is responsible for determining the amount of its Local Allocation that it uses to pay Additional Costs (subject to the limit in the previous sentence and as set forth in Section 4(e)(ii) below), and which Additional Costs it chooses to pay.
- ii. The Additional Costs may only be used consistent with the Distributor and Janssen Agreements, and pursuant to the August 6, 2021, order by Judge Polster of the US District Court for the Northern District of Ohio issued an Order (the Order), docket number 3814, in In Re National Prescription Opiate Litigation, MDL 2804, addressing contingent attorney fee contracts between political subdivisions eligible to participate in the Distributor and Janssen Agreements and their counsel. In addition, to the extent the Additional Costs are used to pay the attorney’s fees of Contingency Fee Counsel, the cumulative amount of such fees paid to the Contingency Fee Counsel for a Litigating Local Government from the Attorney Fee Fund, the Cost Fund, the OR Back-Stop Fund, and as Additional Costs may not exceed 15% of the Litigating Local Government’s share of 50% of the Oregon Settlement Funds.
- iii. Each OR Participating Subdivision that pays Additional Costs shall report such payments as required by the Distributor and Janssen Agreements and this OR Allocation Agreement.
- iv. Neither the State of Oregon, including the Oregon Department of Justice, nor the Oregon Attorney General shall have any responsibility for any Additional Costs, and shall have no responsibility or authority to resolve any disputes among the OR Participating Subdivisions, Contingency Fee Counsel of the Litigating Local Government, or any other parties with respect to any claims for payment of Additional Costs.

5. State and Subdivision Reporting and Oversight

- a) Prior to September 1 of each year each OR Participating Subdivision receiving payment of OR Subdivision Funds under this OR Allocation Agreement shall deliver an annual report to the Oregon Department of Justice, to the attention of the Deputy Attorney General regarding how it expended OR Subdivision Funds during the prior fiscal year (July 1 – June 30). The Oregon Department of Justice may share those reports with the PTR Board (or its equivalent as established by the Enabling Legislation) and other State entities to ensure expenditures of OR Subdivision Funds were made and will be made in accordance with the Distributor and Janssen Agreements and this OR Allocation Agreement. Each report delivered under this Section 5(a) will also include a certification that all OR Subdivision Funds received by the OR Participating Subdivision during the prior fiscal year have been used in compliance with the Distributor and Janssen Agreement and this OR Allocation Agreement. Each annual report delivered pursuant to this Section 5.a shall include, for the fiscal year that is the subject of the report, (1) the amount of the OR Subdivision Funds received by the reporting OR Participating Subdivision, (2) the allocation of any amounts of OR Subdivision Funds awarded or expended by the OR Participating Subdivision (by journal entry or substantially equivalent report, provided such report shall include, at a minimum, the amount awarded or expended, payee (if applicable) and a description of the expenditure), and (3) the amounts actually disbursed under any award reported under item 2. OR Participating Subdivisions may, for their convenience, adapt existing forms or reports otherwise used by the OR Participating Subdivision to meet the foregoing requirements.

- b) If the State has a reasonable basis to suspect that an OR Participating Subdivision's use of OR Subdivision Funds is inconsistent with the Distributor and Janssen Agreements or this OR Allocation Agreement the State may request from the OR Participating Subdivision, and the OR Participating Subdivision will provide, existing data or information about the use of the OR Subdivision Funds received by that OR Participation Subdivision. All requests for information must be reasonable.
- c) If an OR Participating Subdivision has a reasonable basis to suspect that the States' use of OR State Funds is inconsistent with the Distributor and Janssen Agreements or this OR Allocation Agreement an OR Participating Subdivision may request from the State, and the State will provide, existing data or information about the use of the OR State Funds received by the State. All requests for information must be reasonable.
- d) The State will prepare an annual written report regarding the use of Oregon Settlement Funds until those funds are fully expended and for one year thereafter. These reports will be made publicly available by the State.
- e) The State, the PTR Board (or its equivalent as established by the Enabling Legislation) and all OR Participating Subdivisions receiving OR Subdivision Funds will track all deposits and expenditures in accordance with Oregon laws each party is subject to. Each OR Participating Subdivision is responsible solely for the OR Subdivision Funds it receives. A county is not responsible for oversight, reporting, or monitoring of OR Subdivision Funds received by a city within that county that receives direct payment of OR Subdivision Funds.
- f) In each year in which the State prepares an annual report the State will also host a public meeting to discuss the annual report.

6. Audits

- a) If the State or any OR Participating Subdivision has a reasonable basis to suspect that an OR Participating Subdivision's use of OR Subdivision Funds or the State's use of the OR State Funds is inconsistent with the Distributor Settlement Agreement, the Janssen Settlement Agreement, or this OR Allocation Agreement, such Party may request the Oregon Secretary of State conduct an audit pursuant to ORS Chapter 297, provided, however, if the Oregon Secretary of State declines to conduct such an audit, the Parties will select a third party auditor mutually agreed to by the Parties.
- b) No audit may be commenced under Section 6(a) related to a specific expenditure of funds more than five years after the date on which the OR Participating Subdivision's expenditure of the funds subject to the audit was last reported to the State in an annual report submitted pursuant to Section 5(a).
- c) Notwithstanding the foregoing, this OR Allocation Agreement does not limit the statutory or constitutional authority of the State of Oregon or a local agency or official to conduct audits, investigations, or other oversight activities, or to pursue administrative, civil, or criminal enforcement actions.

7. Medicaid Clawback

The Parties understand that the United States may claim a portion of the OR Settlement Funds for Medicaid reimbursement pursuant to § 1903 (d)(3)(A) of the Social Security Act. The Parties agree that, to the extent a claim for Medicaid reimbursement is made, the Parties shall bear the liability for the reimbursement based upon the particular claims made by the United States pursuant to with § 1903 (d)(3)(A) of the Social Security Act. The Parties agree to meet, confer, and cooperate in good faith concerning the allocation of any such liability.

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This OR Allocation Agreement applies to all funds received by Oregon for the McKesson, Cardinal Health and AmerisourceBergen ("Distributors"), and manufacturer Janssen Pharmaceuticals, Inc. and its parent company Johnson & Johnson (collectively, "J&J") settlements. In addition, the allocation percentage contained herein (45% to the OR State Fund, 55% to OR Subdivision Fund), shall apply to future multistate opioid settlements with distributors, manufacturers, and pharmacies, subject to consideration of other terms of such settlements that impact allocation considerations. For the Purdue bankruptcy, the allocation of funds set forth in this Section 8, shall apply to Oregon's share of funds under the bankruptcy plan confirmed by Judge Drain on September 17, 2021 (the "Purdue Bankruptcy Plan"). However, any additional amounts paid under the Purdue bankruptcy resulting from Oregon and other states' appeal of the that plan's confirmation shall be paid directly to the State of Oregon, and any such additional amounts shall not be included in the calculation of the amount of the OR State Funds due to the State of Oregon under Section 4. The Parties acknowledge that in order to obtain settlement funds under the Purdue Bankruptcy Plan the Parties will need to file with the bankruptcy court that approved the Purdue Bankruptcy Plan a proposed allocation agreement that complies with the approved Purdue Bankruptcy Plan, and, to the extent permitted by the Purdue Bankruptcy Plan, the default allocation set forth in the proposed allocation agreement shall provide that 45% of the funds distributed to Oregon under the Purdue Bankruptcy Plan will be allocated to the State of Oregon, and 55% of the funds distributed to Oregon under the Purdue Bankruptcy Plan will be allocated to OR Participating Subdivisions. The Parties further agree that they will reasonably cooperate with one another to complete the timely filing of the allocation agreement within any deadlines established by the bankruptcy court. In addition, this OR Allocation Agreement, and allocation percentages set forth in this Section 8, shall not apply to any legal actions pursued by or settled by the State of Oregon as an individual state or any legal actions pursued by or settled by any OR Participating Subdivisions as individual cities or counties.

9. Releases

All Parties agree to release all claims as required to participate in the Distributor and Janssen Agreements as set forth in Exhibits K to the Distributor and Janssen Agreements and execution of such releases is a condition of receiving Oregon Settlement Funds under this OR Allocation Agreement.

10. Miscellaneous

- a) **Enforcement.** The State or any OR Participating Subdivision may bring a motion or action in any Oregon State court having competent jurisdiction to enforce the requirements of this OR Allocation Agreement. Before filing such a motion or action the Party intending to file the motion or action will meet and confer with the Party that is or will be the subject of the anticipated motion or action.
- b) **No Intended Third Parties.** Except as provided in the Distributor and Janssen Agreements, this OR Allocation Agreement is not enforceable by any party other than the State and the OR Participating Subdivisions. There are no intended third-party beneficiaries to this OR Allocation Agreement, and this OR Allocation Agreement does not confer any rights or remedies upon, and shall not be enforceable by, any person, legal entity, or public body that is not a Party to this OR Allocation Agreement.
- c) **Severability.** Except as provided in the OR Allocation Agreement, if any provision of this OR Allocation Agreement or the application thereof to any person, entity, or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this OR Allocation Agreement, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each other provision of this OR Allocation Agreement will be valid and enforceable to the fullest extent permitted by law. In the event any provision or part of this OR Allocation Agreement is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire OR Allocation Agreement, will be inoperative.

**State of Oregon Subdivision Agreement
Regarding Distribution and Use of
Settlement Funds**

1. Introduction

Pursuant to the Distributor Settlement Agreement, dated as of July 21, 2021, and any revision thereto (the “Distributor Settlement Agreement”), and the Janssen Settlement, dated as of July 21, 2021, and any revision thereto (the “Janssen Settlement Agreement, and collectively with the Distributor Settlement Agreement, the “Distributor and Janssen Agreements”), including Sections V and Exhibits O to the Distributor and Janssen Agreements, this agreement (the “OR Allocation Agreement”) is entered into between the State of Oregon and the OR Participating Subdivisions (the State of Oregon and OR Participating Subdivisions each a “Party,” and, collectively, the “Parties”) and governs the allocation, distribution, and use of Settlement Fund payments made to Oregon pursuant to Sections IV and V of the Distributor Settlement Agreement and Sections V and VI of the Janssen Agreement. For the avoidance of doubt, this OR Allocation Agreement does not apply to payments made pursuant to Sections IX or X of the Distributor Settlement Agreement or Sections X or XI of the Janssen Agreement.

Pursuant to Exhibits O, Paragraphs 4, of the Distributor and Janssen Agreements, acceptance of this OR Allocation Agreement is a requirement to be an Initial Participating Subdivision.

2. Definitions

The following terms shall have the meaning set forth below when used in this OR Allocation Agreement. Additional terms defined within this OR Allocation Agreement shall have that meaning when used in this OR Allocation Agreement. In addition, terms used in this OR Allocation Agreement that are defined in the Distributor and Janssen Agreements will have that meaning unless otherwise defined in this OR Allocation Agreement.

- a) ***OR Participating Subdivision*** means (i) a governmental entity listed on Exhibit A to this OR Allocation Agreement that executes this OR Allocation Agreement and has taken all necessary steps under the Distributor and Janssen Agreements to be entitled to receive Settlement Funds, and (ii) any Additional Participant who becomes entitled to a share of the OR Subdivision Funds as described in Section 4(c)(ii) below.
- b) ***Opioid Defendant*** means any defendant (including but not limited to Johnson & Johnson, Janssen Pharmaceuticals, Inc., Purdue Pharma L.P., Cardinal Health, Inc., Amerisource Bergen Corporation, and McKesson Corporation) named in a lawsuit seeking damages, abatement, or other remedies related to or caused by the opioid public health crisis in any lawsuit brought by any state or local government on or before October 1, 2020.
- c) ***State of Oregon or State*** has the same meaning as “Executive Department” as set forth in ORS 174.112, but does not include the Oregon State Treasurer or the Office of the Oregon State Treasurer. When used in any provision of this OR Allocation Agreement the term State of Oregon or State means, as the context requires, an agency, department, division, board, commission or other entity within the Executive Department that has the authority to undertake the obligations or receive the benefit of the particular provision.
- d) ***Oregon*** means the geographic territory of Oregon and the State and its local governments therein.

- e) ***Approved Abatement Uses*** means the Opioid Remediation activities described in Exhibits E to the Distributor and Janssen Agreements.
- f) ***Litigating Local Governments*** means the Counties of Clackamas, Clatsop, Columbia, Coos, Curry, Jackson, Josephine, Lane, Multnomah, Washington, Yamhill, and the City of Portland.

3. General Terms

This OR Allocation Agreement is subject to the requirements of the Distributor and Janssen Agreements, as well as applicable law. If the terms of this OR Allocation Agreement conflict with the terms of the Distributor Settlement Agreement or the Janssen Settlement Agreement the terms of the Distributor Settlement Agreement and/or the Janssen Settlement Agreement will take precedence over the inconsistent provisions of this OR Allocation Agreement.

4. Allocation of Settlement Funds

- a) **Allocation Generally.** The total Settlement Fund payments made to Oregon pursuant to the Distributor and Janssen Agreements (collectively, the “Oregon Settlement Funds”) shall be combined pursuant to this OR Allocation Agreement, and 45% of the Oregon Settlement Funds shall be allocated to the State of Oregon (such funds, the “OR State Funds”) and 55% of the Oregon Settlement Funds shall be allocated to the OR Participating Subdivisions (such funds, the “OR Subdivision Funds”).

b) State of Oregon Allocation

- i. For purposes of this OR Allocation Agreement, “Enabling Legislation” means legislation passed by the Oregon Legislative Assembly and presented to the Oregon Governor for signature, that establishes the authority within the State of Oregon to accept, administer, and expend the OR State Funds, and addresses other matters related to this OR Allocation Agreement. It is the intent of the Parties that the Enabling Legislation will provide, without limitation, that:
 - 1. The OR State Funds will be deposited in a Prevention, Treatment and Recovery Fund (the “PTR Fund”), overseen by a board (the “PTR Board”), which shall be used by the State solely for future Approved Abatement Uses as follows:
 - (i) Administration of the PTR Fund and PTR Board;
 - (ii) Development of a unified and evidence-based state system for collecting, analyzing and publishing data about the availability and efficacy of substance use prevention, treatment and recovery services across the state; and
 - (iii) Funding statewide and regional Approved Abatement Uses.
 - 2. The PTR Board is constituted and authorized so that the State and OR Participating Subdivisions shall have equal representation and voting power on the PTR Board, whether directly or by designated representatives.
 - 3. Effects a release of potential claims against the Settling Distributors and Janssen by local governments or local service districts, as those terms are defined in ORS 174.116, and special government bodies, as defined in ORS 174.117, that have not released their claims through execution of a Subdivision Settlement Participation Form in substantially the form set forth in Exhibit K of the Distributor and Janssen Agreements.
- ii. The OR State Funds will be accepted, administered, and spent in accordance with the Enabling Legislation when it becomes law. The State of Oregon will draft and promote passage of the

Enabling Legislation. The OR Participating Subdivisions acknowledge the need for the Enabling Legislation and will support passage of the Enabling Legislation consistent with Section 4(b)(i)(1)-(2) of this OR Allocation Agreement and will not oppose with respect to any portion of the Enabling Legislation reflecting Section 4(b)(i)(3) of this OR Allocation Agreement. Until the Enabling Legislation becomes law, the OR State Funds shall be deposited in the Oregon Department of Justice's Client Trust Account and may be expended or distributed by the Oregon Department of Justice for Approved Abatement Uses.

c) OR Subdivision Allocation

- i. The Settlement Fund Administrator will be instructed to allocate the OR Subdivision Funds to OR Participating Subdivisions 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 to receive Settlement Funds, based on population or litigation status. The percentage for each OR Participating Subdivision is set forth in Exhibit A in the column entitled "Abatement Percentage" (the "Local Allocation"). For the avoidance of doubt, non-litigating Oregon towns, cities, and counties with a population less than 10,000 are not eligible to receive an allocation of OR Subdivision Funds.
- ii. An OR Participating Subdivision will be allocated its Local Allocation share beginning on the date it becomes an OR Participating Subdivision but shall not be entitled to any Local Allocation share of Oregon Settlement Funds distributed by the Settlement Administrator before the date it becomes an OR Participating Subdivision.
- iii. The Local Allocation share for a city that is an OR Participating Subdivision will be paid to the county in which the city is located, rather than to the city, so long as: (a) the county is an OR 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. A Local Allocation share allocated to a city but paid to a county is not required to be spent exclusively for Approved Abatement Uses in that city but will become part of the county's share of the OR Subdivision Funds, which will be used in accordance with Section 4.c of this OR Allocation Agreement and reported on in accordance with Section 5 of this OR Allocation Agreement.
- iv. A city within a county that is an OR Participating Subdivision may opt in or out of direct payment at any time, and it may also elect direct payment of only a portion of its share, with the remainder going to the county, by providing notice to the Settlement Fund Administrator at least 60 days prior to a Payment Date. For purposes of this OR Allocation Agreement, the City of Portland will be deemed to have elected direct payment if it becomes an OR Participating Subdivision.
- v. The State will receive the Local Allocation share of any payment of Oregon Settlement Funds distributed on a Payment Date that would otherwise be paid to a county or city is eligible to become an OR Participating Subdivision but that has not, as of that Payment Date, become an OR Participating Subdivision.
- vi. Funds received by an OR Participating Subdivision, and not expended or encumbered within five years of receipt and in accordance with the Distributor and Janssen Agreements and this OR Allocation Agreement shall be transferred to the fund to which OR State Funds are paid pursuant to Section 4(b)(ii). OR Participating Subdivisions have seven years from receipt of funds to expend or encumber OR Subdivision Funds designated to support capital outlay projects before they must be transferred to the State.
- vii. Except as set forth in Sections 4.d and 4.e, Settlement Funds received by an OR Participating Subdivision shall be used for Approved Abatement Uses.

- viii. For the avoidance of doubt, and subject to the requirements of the Distributor and Janssen Agreements and applicable law, an OR Participating Subdivision may form agreements or ventures, or otherwise work in collaboration with, federal, state, local, tribal or private sector entities in pursuing Approved Abatement Uses funded from the OR Participating Subdivision's Local Allocation. Further, provided that OR Subdivision Funds are used for Approved Abatement Uses, a county and any cities or towns within the county may agree to reallocate their respective Local Allocation shares of OR Subdivision Funds among themselves, provided that any direct distribution may only be to an OR Participating Subdivision and any OR Participating Subdivision must agree to its share being reallocated.
- ix. Each OR Participating Subdivision is responsible for obtaining necessary budget or expenditure authority under applicable law for its distribution or expenditures of OR Subdivision Funds in accordance with this OR Allocation Agreement.

d) Provision for State Back-Stop Agreement

- i. The OR Participating Subdivisions will establish an Oregon attorney fee back-stop fund (the "OR Back-Stop Fund"). The OR Back-Stop Fund will be funded by and deducted from OR Subdivision Funds prior to the distribution of any Local Allocation share to any OR Participating Subdivisions, shall be equal to no more than \$2,500,000, and may be used only to pay the contingency fees due to Contingency Fee Counsel of the Litigating Local Governments, subject to the limitations set forth in Section 4(d)(ii).
- ii. The parties will notify the Settlement Fund Administrator to withhold and pay the OR Back-Stop Fund from the OR Subdivision Funds according to the national fee fund payment schedule, and the Parties will otherwise cooperate to so instruct the Settlement Fund Administrator. In addition, the Parties will notify the Settlement Fund Administrator to distribute the amounts in the OR Back-Stop Fund to private counsel seeking contingency fees from a Litigating Local Government ("Contingency Fee Counsel") in accordance with this OR Allocation Agreement.
- iii. Contingency Fee Counsel must first seek contingency fees and costs from the Attorney Fee Fund or Cost Funds created under the Distributor and Janssen Agreements and only upon receiving the maximum amount of fees available under the Distributor and Janssen Agreements may a Contingency Fee Counsel seek payment of any fees from the OR Back-Stop Fund. In addition, under no circumstances shall the cumulative fees paid from the Attorney Fee Fund and the OR Back-Stop Fund exceed 12% of the Litigating Local Government's Local Allocation share of 50% of the Oregon Settlement Funds. For the avoidance of doubt, below is the formula to calculate the amount any particular Contingency Fee Counsel for a Litigating Local Government may be paid from the OR Back-Stop Fund:

$[[\text{OR SETTLEMENT FUNDS}] \times .5 \times [\text{DIRECT ALLOCATION PERCENTAGE OF CONTINGENCY FEE COUNSEL'S LITIGATING LOCAL GOVERNMENT}] \times .12] \text{ minus } [\text{AMOUNT OBTAINED BY COUNSEL FROM ATTORNEY FEE FUND FOR COUNSEL'S LITIGATING LOCAL GOVERNMENT}]$

- iv. A Contingency Fee Counsel may only receive fees paid from the OR Back-Stop Fund pursuant to a written Oregon Back Stop Agreement, substantially in the form of attached hereto as Exhibit B, between the Contingency Fee Counsel, the Litigating Local Government it represents, and the Oregon Department of Justice.
- v. For the avoidance of doubt, this OR Allocation Agreement does not require a Litigating Local Government to request or enter into an Oregon Back-Stop Agreement, and no Oregon Back-Stop Agreement shall impose any duty or obligation on the State of Oregon or any of its agencies or officers, including without limitation the Oregon Department of Justice or the Oregon Attorney

General.

e) Additional Costs

- i. Each OR Participating Subdivision may contribute up to 5% of its Local Allocation to pay opioid related expenditures such as unreimbursed administrative expenses, costs, professional fees and attorney fees of outside legal counsel and in-house legal counsel employed by the OR Participating Subdivision (collectively, “Additional Costs”). Each OR Participating Subdivision is responsible for determining the amount of its Local Allocation that it uses to pay Additional Costs (subject to the limit in the previous sentence and as set forth in Section 4(e)(ii) below), and which Additional Costs it chooses to pay.
- ii. The Additional Costs may only be used consistent with the Distributor and Janssen Agreements, and pursuant to the August 6, 2021, order by Judge Polster of the US District Court for the Northern District of Ohio issued an Order (the Order), docket number 3814, in In Re National Prescription Opiate Litigation, MDL 2804, addressing contingent attorney fee contracts between political subdivisions eligible to participate in the Distributor and Janssen Agreements and their counsel. In addition, to the extent the Additional Costs are used to pay the attorney’s fees of Contingency Fee Counsel, the cumulative amount of such fees paid to the Contingency Fee Counsel for a Litigating Local Government from the Attorney Fee Fund, the Cost Fund, the OR Back-Stop Fund, and as Additional Costs may not exceed 15% of the Litigating Local Government’s share of 50% of the Oregon Settlement Funds.
- iii. Each OR Participating Subdivision that pays Additional Costs shall report such payments as required by the Distributor and Janssen Agreements and this OR Allocation Agreement.
- iv. Neither the State of Oregon, including the Oregon Department of Justice, nor the Oregon Attorney General shall have any responsibility for any Additional Costs, and shall have no responsibility or authority to resolve any disputes among the OR Participating Subdivisions, Contingency Fee Counsel of the Litigating Local Government, or any other parties with respect to any claims for payment of Additional Costs.

5. State and Subdivision Reporting and Oversight

- a) Prior to September 1 of each year each OR Participating Subdivision receiving payment of OR Subdivision Funds under this OR Allocation Agreement shall deliver an annual report to the Oregon Department of Justice, to the attention of the Deputy Attorney General regarding how it expended OR Subdivision Funds during the prior fiscal year (July 1 – June 30). The Oregon Department of Justice may share those reports with the PTR Board (or its equivalent as established by the Enabling Legislation) and other State entities to ensure expenditures of OR Subdivision Funds were made and will be made in accordance with the Distributor and Janssen Agreements and this OR Allocation Agreement. Each report delivered under this Section 5(a) will also include a certification that all OR Subdivision Funds received by the OR Participating Subdivision during the prior fiscal year have been used in compliance with the Distributor and Janssen Agreement and this OR Allocation Agreement. Each annual report delivered pursuant to this Section 5.a shall include, for the fiscal year that is the subject of the report, (1) the amount of the OR Subdivision Funds received by the reporting OR Participating Subdivision, (2) the allocation of any amounts of OR Subdivision Funds awarded or expended by the OR Participating Subdivision (by journal entry or substantially equivalent report, provided such report shall include, at a minimum, the amount awarded or expended, payee (if applicable) and a description of the expenditure), and (3) the amounts actually disbursed under any award reported under item 2. OR Participating Subdivisions may, for their convenience, adapt existing forms or reports otherwise used by the OR Participating Subdivision to meet the foregoing requirements.

- b) If the State has a reasonable basis to suspect that an OR Participating Subdivision's use of OR Subdivision Funds is inconsistent with the Distributor and Janssen Agreements or this OR Allocation Agreement the State may request from the OR Participating Subdivision, and the OR Participating Subdivision will provide, existing data or information about the use of the OR Subdivision Funds received by that OR Participation Subdivision. All requests for information must be reasonable.
- c) If an OR Participating Subdivision has a reasonable basis to suspect that the States' use of OR State Funds is inconsistent with the Distributor and Janssen Agreements or this OR Allocation Agreement an OR Participating Subdivision may request from the State, and the State will provide, existing data or information about the use of the OR State Funds received by the State. All requests for information must be reasonable.
- d) The State will prepare an annual written report regarding the use of Oregon Settlement Funds until those funds are fully expended and for one year thereafter. These reports will be made publicly available by the State.
- e) The State, the PTR Board (or its equivalent as established by the Enabling Legislation) and all OR Participating Subdivisions receiving OR Subdivision Funds will track all deposits and expenditures in accordance with Oregon laws each party is subject to. Each OR Participating Subdivision is responsible solely for the OR Subdivision Funds it receives. A county is not responsible for oversight, reporting, or monitoring of OR Subdivision Funds received by a city within that county that receives direct payment of OR Subdivision Funds.
- f) In each year in which the State prepares an annual report the State will also host a public meeting to discuss the annual report.

6. Audits

- a) If the State or any OR Participating Subdivision has a reasonable basis to suspect that an OR Participating Subdivision's use of OR Subdivision Funds or the State's use of the OR State Funds is inconsistent with the Distributor Settlement Agreement, the Janssen Settlement Agreement, or this OR Allocation Agreement, such Party may request the Oregon Secretary of State conduct an audit pursuant to ORS Chapter 297, provided, however, if the Oregon Secretary of State declines to conduct such an audit, the Parties will select a third party auditor mutually agreed to by the Parties.
- b) No audit may be commenced under Section 6(a) related to a specific expenditure of funds more than five years after the date on which the OR Participating Subdivision's expenditure of the funds subject to the audit was last reported to the State in an annual report submitted pursuant to Section 5(a).
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- c) **Severability.** Except as provided in the OR Allocation Agreement, if any provision of this OR Allocation Agreement or the application thereof to any person, entity, or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this OR Allocation Agreement, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each other provision of this OR Allocation Agreement will be valid and enforceable to the fullest extent permitted by law. In the event any provision or part of this OR Allocation Agreement is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire OR Allocation Agreement, will be inoperative.