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3 Settlement of Ohio MDL Opioid Lawsuit, by recommending adoption of the following:
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5 **A RESOLUTION**
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7 WHEREAS, in adopted File No. 17-722, the Milwaukee County Board of
8 Supervisors authorized Milwaukee County (the County) to enter into an Engagement
9 Agreement with outside counsel (the Law Firms) as deemed appropriate by the Office of
10 Corporation Counsel (OCC) to pursue litigation against certain manufacturers,
11 distributors, and retailers of opioid pharmaceuticals (the Opioid Defendants), in an effort
12 to hold the Opioid Defendants financially responsible for the County's expenditure of
13 vast money and resources to combat the opioid epidemic; and
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15 WHEREAS, on behalf of the County, the Law Firms filed a lawsuit against the
16 Opioid Defendants; and
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18 WHEREAS, the Law Firms filed similar lawsuits on behalf of other State of
19 Wisconsin (the State) counties, and all Wisconsin cases were coordinated with
20 thousands of other lawsuits filed against the same, or substantially similar parties, as
21 the Opioid Defendants in the Northern District of Ohio, captioned *In re: Opioid Litigation*,
22 Multidistrict Litigation 2804 (the Litigation); and
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24 WHEREAS, in total, 71 of 72 of the State's counties hired counsel, and joined the
25 Litigation; and
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27 WHEREAS, since the inception of the Litigation, the Law Firms have coordinated
28 with counsel from around the country (including counsel Dane and Waukesha Counties,
29 along with counsel for the remaining 68 Counties), to prepare the County's case for trial,
30 and engage in extensive settlement discussions with the Opioid Defendants; and
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32 WHEREAS, the settlement discussions with McKesson Corporation, Cardinal
33 Health, Incorporated, AmerisourceBergen Corporation, Johnson & Johnson, Janssen
34 Pharmaceuticals, Incorporated, Ortho-McNeil-Janssen Pharmaceuticals, Incorporated,
35 and Janssen Pharmaceutica, Incorporated (the Settling Defendants), resulted in a
36 tentative agreement as to settlement terms, pending agreement from the County, and
37 other plaintiffs involved in the Litigation; and
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39 WHEREAS, copies of the Distributors Settlement Agreement and the Janssen
40 Settlement Agreement (collectively Settlement Agreements), representing the terms of
41 the tentative settlement agreements with the Settling Defendants, have been provided
42 with this Resolution; and
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WHEREAS, the Settlement Agreements provide, among other things, for the payment of certain sums to Participating Subdivisions (as defined in the Settlement Agreements), upon the occurrence of certain events detailed in the Settlement Agreements; and

WHEREAS, the County is a Participating Subdivision in the Settlement Agreements, and has the opportunity to participate in the benefits associated with the Settlement Agreement, provided the County:

- (a) approves the Settlement Agreements;
- (b) approves the Memorandum of Understanding (MOU) allocating proceeds from the Settlement Agreements among the various Wisconsin Participating Subdivisions, a copy of which is attached to this Resolution (the Allocation MOU);
- (c) approves the MOU with the State Attorney General (AG) regarding allocation of settlement proceeds, a copy of which is attached to this Resolution (the AG MOU); and
- (d) the State Legislature's Joint Committee on Finance (Joint Committee) approves the terms of the Settlement Agreements and the AG MOU

; and

WHEREAS, 2021 State Act 57 created Section 165.12, Wisconsin State Statutes (State Statutes), relating to the settlement of all or part of the Litigation; and

WHEREAS, pursuant Section 165.12(2), State Statutes, the State Legislature's Joint Committee is required to approve the Settlement Agreements and the AG MOU; and

WHEREAS, pursuant to Section 165.12(2), State Statutes, the proceeds from any settlement of all or part of the Litigation are distributed 70 percent to local governments in the State that are parties to the Litigation, and 30 percent to the State; and

WHEREAS, Section 165.12(4)(b)2, State Statutes, provides the proceeds from the Settlement Agreement must be deposited in a segregated account (the Opioid Abatement Account), and may be expended only for approved uses for opioid abatement, as provided in the Settlement Agreements; and

WHEREAS, Section 165.12(7), State Statutes, bars claims from any State local government, against the Opioid Defendants, filed after June 1, 2021; and

WHEREAS, the definition of Participating Subdivisions in the Settlement Agreements recognizes a statutory bar on claims, such as that set forth in Section 165.12(7), State Statutes, and, as a result, the only Participating Subdivisions in the

90 State are those counties and municipalities that were parties to the Litigation (or
91 otherwise actively litigating a claim against one, some, or all of the Opioid Defendants),
92 as of June 1, 2021; and
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94 WHEREAS, the State Legislature’s Joint Committee is not statutorily authorized
95 or required to approve the allocation of proceeds of the Settlement Agreements among
96 State Participating Subdivisions; and
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98 WHEREAS, the Law Firms have engaged in extensive discussions with counsel
99 for all other State Participating Subdivisions, resulting in the proposed Allocation MOU,
100 which is an agreement between all of the entities identified in the Allocation MOU, as to
101 how the proceeds payable to those entities under the Settlement Agreements will be
102 allocated; and
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104 WHEREAS, there is provided with this resolution a summary of the essential
105 terms of the Settlement Agreements, the deadlines related to the effective dates of the
106 Settlement Agreements, the ramifications associated with the County’s refusal to enter
107 into the Settlement Agreements, the form of the Allocation MOU, the form of the AG
108 MOU, and an overview of the process for finalizing the Settlement Agreements; and
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110 WHEREAS, the County, by this Resolution, shall establish the Opioid Abatement
111 Account for the receipt of the proceeds of the Settlement Agreements, consistent with
112 the terms of this Resolution; and
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114 WHEREAS, the County’s Opioid Abatement Account shall be separate from the
115 County’s general fund, shall not be commingled with any other County funds, and shall
116 be dedicated to funding opioid abatement measures, as provided in the Settlement
117 Agreements; and
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119 WHEREAS, pursuant to the County’s engagement agreement with the Law
120 Firms, the County shall pay up to an amount equal to 25 percent of the proceeds from
121 successful Resolution of all or part of the Litigation, whether through settlement or
122 otherwise, plus the Law Firms’ costs and disbursements, to the Law Firms as
123 compensation for the Law Firms’ efforts in the Litigation and any settlement; and
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125 WHEREAS, the Law Firms anticipate making application to the national fee fund
126 established in the Settlement Agreements seeking payment, in whole or part, of the
127 fees, costs, and disbursements owed the Law Firms, pursuant to the engagement
128 agreement with the County; and
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130 WHEREAS, it is anticipated the amount of any award from the fee fund
131 established in the Settlement Agreements will be insufficient to satisfy the County’s
132 obligations under the engagement agreement with the Law Firms; and
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134 WHEREAS, the County, by this Resolution, and pursuant to the authority granted
135 the County in the applicable Order emanating from the Litigation in relation to the
136 Settlement Agreements and payment of attorney fees, shall execute an Escrow
137 Agreement, which shall among other things, direct the escrow agent responsible for the
138 receipt and distribution of the proceeds from the Settlement Agreements to establish an
139 account for the purpose of segregating funds to pay the fees, costs, and disbursements
140 of the Law Firms owed by the County (the Attorney Fees Account), in order to fund a
141 State-level “backstop” for payment of the fees, costs, and disbursements of the Law
142 Firms; and

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144 WHEREAS, in no event, shall payments to the Law Firms out of the Attorney
145 Fees Account and the fee fund established in the Settlement Agreements, exceed an
146 amount equal to 25 percent of the amounts allocated to the County in the Allocation
147 MOU; and

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149 WHEREAS, the intent of this Resolution is to authorize the County to enter into
150 the Settlement Agreements, the Allocation MOU, and the AG MOU, establish the
151 County’s Opioid Abatement Account, and establish the Attorney Fees Account; and

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153 WHEREAS, the County, by this Resolution, shall authorize the OCC to finalize
154 and execute any escrow agreement, and other document or agreement necessary, to
155 effectuate the Settlement Agreements and the other agreements referenced herein; and

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157 WHEREAS, the Committee on Judiciary, Safety, and General Services (JSGS) at
158 its December 21, 2021, Special Joint Virtual Meeting with the Committee on Finance
159 recommended adoption of File No. 21-1127 (vote 4-0); and

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161 WHEREAS, the Committee on Finance, at its December 21, 2021, Special
162 Virtual Joint Meeting with the Committee on JSGS, recommended adoption of
163 File No. 21-1127 (vote 7-0); now, therefore,
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BE IT RESOLVED, the Milwaukee County Board of Supervisors (County Board) hereby authorizes the Office of Corporation Counsel (OCC) to execute, as soon as possible, and no later than December 31, 2021:

1. The execution of the Distributors Settlement Agreement, and any, and all documents ancillary thereto, and authorizes the Board Chair to execute same.
2. The execution of the Janssen Settlement Agreement, and any and all documents ancillary thereto, and authorizes the Board Chair to execute same.
3. The final negotiation and execution of the Allocation Memorandum of Understanding (Allocation MOU), in form substantially similar to that presented with this Resolution, and any and all documents ancillary thereto, and authorizes the Board Chair to execute same upon finalization, provided the percentage share identified as allocated to Milwaukee County (the County) is substantially similar to that identified in the Allocation MOU, provided to the County Board with this resolution.
4. The final negotiation and execution of the State of Wisconsin Attorney General Memorandum of Understanding, in form substantially similar to that presented with this Resolution, and any and all documents ancillary thereto, and authorizes the Board Chair to execute same.
5. The OCC's negotiation and execution of the Escrow Agreement for the receipt and disbursement of the proceeds of the Settlement Agreements, as referenced in the Allocation MOU

; and

BE IT FURTHER RESOLVED, the County hereby establishes an account separate and distinct from the County's general fund, which shall be titled Opioid Abatement Account, and all proceeds from the Settlement Agreements not otherwise directed to the Attorney Fees Account, established under the Escrow Agreement, shall be deposited in the Opioid Abatement Account, and the Opioid Abatement Account shall be administered consistent with the terms of this Resolution, Section 165.12(4), Wisconsin State Statutes, and the Settlement Agreements; and

BE IT FURTHER RESOLVED, the County hereby authorizes the escrow agent, under the Escrow Agreement, to establish an account separate and distinct from any account containing funds allocated or allocable to the County, which shall be referred to by the County as the Attorney Fees Account, and the escrow agent shall deposit a sum equal to up to, but in no event exceeding, an amount equal to 20 percent of the County's proceeds from the Settlement Agreements into the Attorney Fees Account,

211 and ff the payments to the County are not enough to fully fund the Attorney Fees
212 Account as provided herein, because such payments are made over time, the Attorney
213 Fees Account shall be funded by placing up to, but in no event exceeding, an amount
214 equal to 20 percent of the proceeds from the Settlement Agreements, attributable to
215 Local Governments (as that term is defined in the Allocation MOU), into the Attorney
216 Fees Account for each payment, and funds in the Attorney Fees Account shall be
217 utilized to pay the fees, costs, and disbursements owed to the Law Firms pursuant to
218 the Engagement Agreement between the County and the Law Firms provided, however,
219 the Law Firms shall receive no more than that to which they are entitled under their fee
220 contract, when considering the amounts paid the Law Firms, from the fee fund
221 established in the Settlement Agreements and allocable to the County, and the Law
222 Firms may make application for payment from the Attorney Fees Account at any time,
223 and the County shall cooperate with the Law Firms in executing any documents
224 necessary for the escrow agent to make payments out of the Attorney Fees Account;
225 and
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227 BE IT FURTHER RESOLVED, all actions heretofore taken by the County Board
228 and other appropriate public officers and agents of the County, with respect to the
229 matters contemplated under this Resolution, are hereby ratified, confirmed and
230 approved.
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232 Adopted by the Milwaukee County Board of Supervisors this ____ day of _____,
233 2021.
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238 _____
239 County Clerk

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241 ars
242 12/21/21
243 S:\Committees\2021\Dec\JSGS Special Joint with Finance 122121\Resolution\21-1127 Opioid Settlement Special
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