



CITY OF WESTFIELD, IN
Board of Public Works_Special Meeting_Agenda_04_26_2022

Tuesday, April 26, 2022 at 09:30 AM

BOARD OR COMMISSION: Board of Public Works and Safety

MEETING DATE: Tuesday, April 26, 2022 at 09:30 AM

MEETING PLACE: City Services Center- Lower Level Conference Room

***THE FOLLOWING AGENDA IS SUBJECT TO CHANGE AT THE DISCRETION OF THE
BOARD OF PUBLIC WORKS AND SAFETY***

AGENDA ITEMS

Resolution

Action Item #1:

Resolution #22-107 City of Westfield to Opt Back in to Opioids Settlement

Documents: [Resolution #22-107](#) | [Amendment to Agreement](#)

RESOLUTION NO. 22-107

**RESOLUTION TO OPT BACK IN TO OPIOIDS SETTLEMENT
PURSUANT TO INDIANA CODE 4-6-15-2**

WHEREAS, the City of Westfield, Indiana has been actively engaged in pursuing damages caused by the manufacture, sale, and distribution of opioids through outside counsel in multidistrict litigation; and

WHEREAS, recent legislation amending Indiana Code 4-6-15 (House Bill No. 1193) has been adopted by the Indiana legislature and is awaiting the Governor's signature; and

WHEREAS, The City of Westfield, Indiana, after due consideration of said legislation, has determined that it is in the best interest of its citizens to opt back in to the opioids' settlements under Indiana Code 4-6-15-2.

NOW, THEREFORE, BE IT RESOLVED by The City of Westfield, Indiana that The City of Westfield, Indiana, having considered whether to elect to opt back in to the opioids settlements under Indiana Code 4-6-15-2, hereby resolves that The City of Westfield now exercises its election to opt back in to the opioid settlements, and orders its duly authorized agent to submit a certified copy of this Resolution to the Indiana Attorney General by July 15, 2022. This Resolution shall be effective upon the date amended Indiana Code 4-6-15 (House Bill No. 1193) becomes law.

Duly adopted by the following vote of the members of said The City of Westfield, Indiana this _____ day of _____, 2022.

The City of Westfield, INDIANA

Name and Title

Name and Title

Name and Title

ATTEST:

Name and Title

APPROVED AS TO LEGAL FORM:

_____, Attorney

Resolution to Opt Back In To Opioids Settlement Pursuant to Indiana Code 4-6-15

The City of Westfield, having considered whether to elect to opt back in to the opioids settlements under Indiana Code 4-6-15-2, hereby resolves that the The City of Westfield now exercises its election to opt back in to the opioids settlements, and orders its duly authorized agent to submit a certified copy of this resolution to the Indiana Attorney General by July 15, 2022.

Dated this ____ day of _____, 2022.

The City of Westfield

By: _____
Name and Title

Notice of Election to Opt Back In to Opioids Settlement Under Indiana Code 4-6-15-2

The City of Westfield hereby submits notice to the Indiana Attorney General that it elects to opt back in to opioids settlement pursuant Indiana Code 4-6-15-2(d). The City of Westfield hereby submits the following information pursuant to Indiana Code 4-6-15-2(d):

- (1) The name of the political subdivision electing to opt back in is The City of Westfield:
- (2) The contact information for an individual at this political subdivision who can provide information regarding the decision to opt back in is: _____. Because this political subdivision is represented by counsel in this matter, the political subdivision requests that all communications relating to this decision to opt out be directed to its counsel as follows:

Peter J. Mougey
Levin, Papantonio, Rafferty, Proctor, Buchanan, O'Brien, Barr, & Mougey, P.A.
316 S. Baylen St., suite 600
Pensacola, FL 32503
opioidsettlement@levinlaw.com

- (3) A certified copy of the resolution adopted by this political subdivision evidencing its election to opt back in of the opioids settlement pursuant to Indiana Code 4-6-15-2(d) is attached hereto.
- (4) A copy of the agreement executed between the political subdivision and its private legal counsel that includes a term setting the amount of attorney's fees owed to the private legal counsel is attached hereto.

Dated this ____ day of _____, 2022.

The City of Westfield

By: _____
Name and Title

CERTIFICATION

I, _____, do hereby certify that I have compared the attached copy of the Resolution _____: Resolution to Opt Back In to Opioids Settlement Under Indiana Code 4-6-15-2 with the original which remains of record in my office, and that said copy is a true and complete copy of the original.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of The City of Westfield, Indiana, this ____ day of _____, 2022.

By: _____
Name and Title

City of Westfield, Indiana ("Political Subdivision")

Amendment to Agreement for Professional Services Relating to Opioids Settlements with McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation and the Johnson & Johnson Defendants

Whereas, the Political Subdivision entered into an Agreement for Professional Services with Counsel to pursue litigation against various entities, including McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation and the Johnson & Johnson Defendants, to recover damages caused by the manufacture, sale, and distribution of opioids, and,

Whereas, the Political Subdivision has entered into an Agreement for Professional Services that provides for payment of attorneys' contingency fees from the Political Subdivision's gross recovery from the Opioids' Litigation, and,

Whereas, the presiding Judge over the opioids Multi-District Litigation No. 2804 titled *In Re: National Prescription Opiate Litigation*, the Honorable Dan Aaron Polster, entered an Order allowing enforcement of such contingent fee contracts directly from political subdivisions up to a maximum of 15% ("Order"), and encourages the establishment of a "Back Stop" fund by agreement or legislation, which is designed to incentivize Counsel to waive their right to enforce their contingent fee contracts and apply to the Contingent Fee Fund established under the Current Opioids Settlements and to receive payment from a "Back Stop" Fund and,

Whereas, the State of Indiana created a "Back Stop" Fund in Indiana Code 4-6-15, and,

Whereas, the opioids settlements with McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation and the Johnson & Johnson Defendants (the "Current Opioids Settlements") permit Counsel also to seek payment of attorneys' fees separately from a Contingent Fee Fund established by those settlements, and,

Whereas, Counsel is waiving their right to enforce their attorneys' fees under the Agreement for Professional Services as to the Current Opioids Settlements and will instead accept payment of a Reduced Attorneys' Fee in connection with the Current Opioids Settlements in the amount of 8.7% of the Political Subdivision's total gross recovery under these settlements to be withheld by the Budget Agency as provided by Indiana Code 4-6-15-5 and paid per the same schedule as the attorney fee payments from the Contingent Fee Fund established under the Current Opioids Settlements and will seek additional payments as provided under the Current Opioids Settlements, and,

Whereas, the Political Subdivision desires to pay the Reduced Attorneys' Fee in connection with the Current Opioids Settlements, to be withheld from its recovery by the Budget Agency as provided by Indiana Code 4-6-15-5, and paid to Counsel by the Budget Agency on the same schedule as the attorney fee payments from the Contingent Fee Fund established under the Current Opioids Settlements, and,

Whereas, it is estimated that the total fee paid to Counsel will represent a substantial discount from the amount owed under the Agreement for Professional Services.

Now therefore, the Political Subdivision and undersigned Counsel, pursuant to Indiana Code 4-6-15, enter into this Agreement to provide for Counsel to receive payment of the Reduced Attorney Fee as set forth in this Agreement as follows:

A. Definitions

As used in this Agreement:

1. "Agreement for Professional Services" means the contingency fee contract entered into by the Political Subdivision and its Counsel for Counsel's representation of the Political Subdivision in Opioid litigation.
2. "Budget Agency" means the budget agency referred to under Indiana Code 4-6-15-5.
3. "Contingent Fee Fund" means the contingency fee fund established in the Current Opioids Settlements.
4. "Counsel" means the private legal counsel on the Agreement for Professional Services.
5. "Current Opioids Settlements" means the Distributor Settlement Agreement with McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation, and the Janssen Settlement Agreement with the Johnson & Johnson Defendants.
6. "Johnson & Johnson Defendants" means Johnson & Johnson, Janssen Pharmaceuticals, Inc., OrthoMcNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.
7. "Opioid(s) Litigation" has the meaning set forth in Indiana Code 4-6-15.
8. "Opioid(s)" has the meaning set forth in Indiana Code 4-6-15.
9. "Political Subdivision" means that County, City, or Town identified at the beginning of this Agreement.
10. "Reduced Attorneys' Fee" means the amount of 8.7% of the Political Subdivision's total gross share of the Current Opioids Settlements to be received under Indiana Code 4-6-15-4(a)(2) and Indiana Code 4-6-15-4(a)(4).

B. Scope

1. This Agreement applies only to the Current Opioids Settlements with McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation and the Johnson & Johnson Defendants. Any amendments to this Agreement shall be submitted to the Budget Agency to withhold and make payments to Counsel as provided by Indiana Code 4-6-15-5.

C. Payment of Attorneys' Fees to Counsel.

1. The foregoing recitals are hereby incorporated into this Agreement.
2. Prior to distributing the Political Subdivision's share of any recovery under the Current Opioids Settlements, the Budget Agency shall withhold the Reduced Attorneys' Fee to be paid to Counsel as provided by Indiana Code 4-6-15-5. The Budget Agency shall compute the amount of the total Reduced Attorneys' Fee for each of the Current Opioids Settlements by multiplying the total gross amount to which the Political Subdivision is entitled under Indiana Code 4-6-15-4(a)(2) and Indiana Code 4-6-15-4(a)(4) for that settlement by 8.7%.
3. For the Current Opioids Settlement with McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation, the total gross amount to which the Political Subdivision is entitled under Indiana Code 4-6-15-4(a)(2) and Indiana Code 4-6-15-4(a)(4) is **\$227,623.84**. The Budget Agency shall pay Counsel the Reduced Attorney Fee in the amount of and on the schedule as follows:

Payment No.	Total Fee to Be Paid
1	\$2,084.74
2	\$2,312.92
3	\$4,150.12
4	\$2,813.87
5	\$2,813.87
6	\$2,813.87
7	\$2,813.88
Total	\$19,803.27

4. For the Current Opioids Settlement with the Johnson & Johnson Defendants, the total gross amount to which the Political Subdivision is entitled under Indiana Code 4-6-15-4(a)(2) and Indiana Code 4-6-15-4(a)(4) is **\$53,377.57**. The Budget Agency shall pay Counsel the Reduced Attorney Fee in the amounts and on the schedule as follows:

Payment No.	Total Fee Paid to be Paid
1	\$488.87
2	\$542.38
3	\$973.20
4	\$659.85
5	\$659.85
6	\$659.85
7	\$659.85
Total	\$4,643.85

5. Political Subdivision shall have no further obligation to pay attorneys' fees as to the Current Opioids Settlements.
6. If the amounts paid under a Current Opioids Settlement vary from those set forth in paragraphs C.3 and C.4, the fee and payment schedules shall be updated accordingly to provide accurate payment of the 8.7% Reduced Attorneys Fee.
7. The name, address, telephone number, and email address of the Counsel designated to receive payments of the Reduced Attorneys' Fee from the Budget Agency is:

Peter J. Mougey

Levin, Papantonio, Rafferty, Proctor, Buchanan, O'Brien, Barr, & Mougey, P.A.

316 S. Baylen St., suite 600

Pensacola, FL 32503

opioidsettlement@levinlaw.com

8. All other terms of the Agreement for Professional Services remain in effect.

[This space intentionally left blank.]

Dated this ____ day of _____, 2022.

Political Subdivision: _____

By: _____
Name and Title

By: _____
Name and Title

