

ELIZABETHTOWN BOROUGH
Lancaster County, Pennsylvania

RESOLUTION NO. 2022-01

A RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF ELIZABETHTOWN AUTHORIZING THE BOROUGH OF ELIZABETHTOWN TO ENTER INTO THE SETTLEMENT AGREEMENTS WITH MCKESSON CORPORATION, JOHNSON & JOHNSON, JANSSEN PHARMACEUTICALS, INC., ORTHO-McNEIL-JANSSEN PHARMACEUTICALS, INC., AND JANSSEN PHARMACEUTICA, INC., AND AGREE TO THE TERMS OF THE PENNSYLVANIA OPIOID MISUSE AND ADDICTION ABATEMENT TRUST.

WHEREAS, the United States is facing an ongoing public health crisis of opioid abuse, addiction, overdose, and death. The Commonwealth of Pennsylvania and Pennsylvania local governments spend billions of dollars each year to address the direct consequences of this crisis; and

WHEREAS, since at least 2017, state and local governments in Pennsylvania and around the United States have been pursuing investigations and litigation against certain manufacturers, distributors, and retailers of opioid pharmaceuticals (the “Opioid Defendants”) in an effort to hold the Opioid Defendants financially responsible for the impact on of the Opioid Epidemic on the Borough of Elizabethtown, Lancaster County and resources necessary to combat the opioid epidemic; and

WHEREAS, negotiations to settle claims against several of the Opioid Defendants, specifically McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (the “Settling Defendants”) have been ongoing for several years; and

WHEREAS, negotiations with the Settling Defendants have resulted in proposed nationwide settlements of state and local government claims to settle the Litigation; and

WHEREAS, the proposed terms of those proposed nationwide settlements have been set forth in the Distributors Master Settlement Agreement and the J&J Master Settlement Agreement (collectively “Settlement Agreements”); and

WHEREAS, copies of the Settlement Agreements as well as summaries of the main terms of the Settlement Agreements have been provided to the Borough of Elizabethtown with this Resolution; and

WHEREAS, the Settlement Agreements provide, among other things, for the payment of a certain sum to settling government entities in Pennsylvania including to the Commonwealth of Pennsylvania and Participating Subdivisions upon occurrence of certain events as defined in the Settlement Agreements (“Pennsylvania Opioid Funds”); and

WHEREAS, Pennsylvania local governments as well as the attorneys representing those local governments have engaged in extensive discussions with the Commonwealth’s Office of Attorney General (“OAG”) as to how the Pennsylvania Opioid Funds will be allocated, which has resulted in the Proposed Pennsylvania Opioid Misuse and Addiction Abatement Trust (the “Trust”); and

WHEREAS, a copy of the Trust has been provided with this Resolution; and

WHEREAS, the Trust proposes to allocate the Pennsylvania Opioid Funds 15% to a Commonwealth Account; 70% to local governments in a County Abatement Account; and 15% to a Litigating Subdivision Account. For the avoidance of doubt, all funds allocated to Pennsylvania from the Settlements will be combined pursuant to the Trust, and 15% of that total shall be allocated to the Commonwealth of Pennsylvania (the “Commonwealth of Pennsylvania Account”), 70% to the County Abatement Account (“County Abatement Account Allocation”), and 15% to the Litigating Subdivision Account (“Litigating Subdivision Account”); and

WHEREAS, the Counties and Litigating Subdivisions, their Associations, such as the County Commissioners Association of Pennsylvania, [other] Association and Counsel for the Subdivisions have participated in a series of meetings to draft allocation formulas. Those meetings have resulted in allocation formulas for the County Abatement Account and the Litigating Subdivision Account and establish a Local Allocation Share under each Account for Eligible Local Subdivisions. The funds in the County Abatement Account have been allocated to each County as described in Exhibit 1 to the resolution. The funds in the Litigating Subdivision Account have been allocated to the Litigating Subdivision or described in Exhibit 2 to the Resolution; and

WHEREAS, the Borough of Elizabethtown is an Eligible Local Government will receive its Local Allocation share only when it becomes a Participating Subdivision by signing the Participation Agreements to the Settlements; and

NOW, THEREFORE, BE IT RESOLVED: the Borough of Elizabethtown hereby approves and authorizes Rebecca S. Denlinger, Borough Manager, to settle and release the Borough of Elizabethtown’s claims against the Settling Defendants in exchange for the consideration set forth in the Settlement Agreements and Trust Agreement including taking the following measures:

1. The execution of the Participation Agreement to the Distributors Settlement Agreement and any and all documents ancillary thereto.

2. The execution of the Participation Agreement to the Janssen Settlement Agreement and any and all documents ancillary thereto.

The execution of the Memorandum of Understanding agreeing to the allocations to the County Abatement and Litigating Subdivision Accounts and agreeing to be a beneficiary of the Trust under the terms set forth in the Trust. Proposed Pennsylvania Opioid Misuse and Addiction Abatement Trust by executing the signature pages to that Trust Agreement.

BE IT FURTHER RESOLVED that all actions heretofore taken by the Council and other appropriate public officers and agents of the Borough of Elizabethtown with respect to the matters contemplated under this Resolution are hereby ratified, confirmed and approved.

DULY ADOPTED this 6th day of January, 2022 by Borough Council of Elizabethtown Borough, Lancaster County, Pennsylvania, in lawful session duly assembled.

ELIZABETHTOWN BOROUGH
Lancaster County, Pennsylvania

Attest: Rebecca S. Dargatzis
(Assistant) Secretary

By: Jeff M. Hertz
(Vice) President
Borough Council

[BOROUGH SEAL]