

VILLAGE OF SOUTH LEBANON, OHIO
Ordinance No. 2021-24

AN ORDINANCE AUTHORIZING THE MAYOR TO ACCEPT THE MATERIAL TERMS OF THE ONE OHIO SUBDIVISION SETTLEMENT PURSUANT TO THE ONE OHIO MEMORANDUM OF UNDERSTANDING AND CONSISTENT WITH THE TERMS OF THE JULY 21, 2021 NATIONAL OPIOID SETTLEMENT AGREEMENT AND TO SIGN THE ONEOHIO SUBDIVISION PARTICIPATION FORM, AND DECLARING AN EMERGENCY

THIS IS AN EMERGENCY ORDINANCE AUTHORIZING the Mayor to execute the Participation Agreement, attached as Exhibit 1, for the OneOhio Subdivision Settlement with McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation (“Settling Distributors”) pursuant to the OneOhio Memorandum of Understanding regarding the pursuit and use of potential opioid litigation settlement funds and consistent with the material terms of the July 21, 2021 proposed National Opioid Distributor Settlement Agreement available at <https://nationalopioidsettlement.com/>.

WHEREAS, the Village of South Lebanon, Ohio (“the Village”) is a municipal entity formed and organized pursuant to the Constitution and laws of the State of Ohio; and

WHEREAS, the people of the State of Ohio and its communities have been harmed by misfeasance, nonfeasance and malfeasance committed by certain entities within the Opioid Pharmaceutical Supply Chain; and

WHEREAS, the State of Ohio, through its Attorney General, and certain Local Governments, through their elected representatives and counsel, are separately engaged in litigation seeking to hold Opioid Pharmaceutical Supply Chain Participants accountable for the damage caused by their misfeasance, nonfeasance and malfeasance; and

WHEREAS, the State of Ohio, through its Governor and Attorney General, and its Local Governments share a common desire to abate and alleviate the impacts of that misfeasance, nonfeasance and malfeasance throughout the State of Ohio; and

WHEREAS, the State and its Local Governments, subject to completing formal documents effectuating the Parties Agreements, have drafted and the Village has adopted, and hereby reaffirms its adoption of, a OneOhio Memorandum of

Understanding (“MOU”) relating to the allocation and the use of the proceeds of any potential settlements described; and

WHEREAS, the MOU has been collaboratively drafted to maintain all individual claims while allowing the State and Local Governments to cooperate in exploring all possible means of resolution; and

WHEREAS, the Council understands that an additional purpose of the MOU is to create an effective means of distributing any potential settlement funds obtained under the MOU between the State of Ohio and Local Governments in a manner and means that would promote an effective and meaningful use of the funds in abating the opioid epidemic throughout Ohio, as well as to permit collaboration and explore potentially effectuation earlier resolution of the Opioid Litigation against Opioid Pharmaceutical Supply Chain Participants; and

WHEREAS, nothing in the MOU binds any party to a specific outcome, but rather, any resolution under the MOU requires acceptance by the State of Ohio and the Local Governments; and

WHEREAS, a settlement proposal is being presented to the State of Ohio and Local Governments by distributors AmerisourceBergen, Cardinal, and McKesson (collectively the “Settling Distributors”) to resolve governmental entity claims in the State of Ohio using the structure of the OneOhio MOU and consistent with the material terms of the July 21, 2021 proposed National Opioid Distributor Settlement Agreement; and

WHEREAS, the Council desires to agree to the material terms of the proposed National Opioid Distributor Settlement Agreement with the Settling Distributors (the “Proposed Settlement”), as summarized in Exhibits 2 and 3.


NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF SOUTH LEBANON, OHIO, at least two-thirds of all members elected thereto concurring:

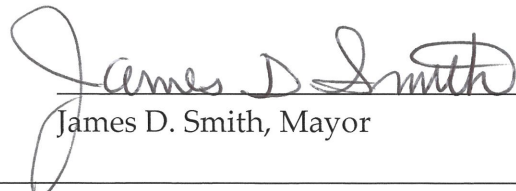
Section 1. That the Mayor is authorized to accept and agree to material terms of the Proposed Settlement, as summarized in Exhibits 2 and 3 and pursuant to the terms of the OneOhio MOU, and to sign the OneOhio Subdivision Participation Form on behalf of the Village of South Lebanon, which is attached as Exhibit 1 and incorporated as if fully rewritten herein.

Section 2. That it is found and determined that all formal actions of the Council relating to the adoption of this resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.

Section 3. This Ordinance is hereby declared to be an emergency measure, necessary for the preservation of the public peace, health, welfare and safety of the residents of the Village and for the further reason that the Participation Form must be signed by August 13, 2021 to ensure prompt pursuit of funds to assist in abating the opioid epidemic throughout Ohio. It shall therefore become immediately effective upon its passage.

Adopted this 5th day of August, 2021.

Attest: 
Petrina D. Williams, Fiscal Officer/Clerk


James D. Smith, Mayor

Rules Suspended: / /2021 (if applicable)	Effective Date – / /2021
Vote - <u>6</u> Yeas ___ Nays	
First Reading – / /2021	Effective Date – / /2021
Second Reading – / /2021	
Third Reading– / /2021	
Vote - ___ Yeas ___ Nays	

Prepared by and approved as to form:

ANDREW P. MEIER
VILLAGE SOLICITOR
SOUTH LEBANON, OHIO


By: 
Date: 8 / 5 /2021

EXHIBIT 1

OneOhio Summary of Proposed Settlement with AmerisourceBergen, Cardinal Health and McKesson

A settlement proposal is being presented to you for your consideration concerning the opioid litigation with AmerisourceBergen, Cardinal Health and McKesson (the Distributors). The settlement is being offered by the Distributors for resolution of governmental entity claims in the State of Ohio. The proposal utilizes the structure of the OneOhio agreement between the State of Ohio and its subdivisions, subject to one modification discussed below

Under the proposal, the Distributors will pay up to an estimated \$804,865,429 to the State of Ohio and its subdivisions over 18 years. Under the OneOhio agreement, these funds will be distributed according to the following allocation: 15% directly to the State of Ohio; 30% directly to subdivisions; and 55% to the OneOhio Foundation (to be utilized for the benefit of the subdivisions across the State of Ohio). Most of the money will be restricted in use and specifically earmarked for abatement of the Opioid Epidemic. Developed in consultation with the nation's leading public health experts, the list of pre-approved uses includes a wide range of intervention, treatment, education, and recovery services so that the state and its subdivisions can decide what will serve their communities.

Participation levels (the percentage of Ohio cities and counties who agree to the deal) will affect how much money the State of Ohio and its subdivisions will receive. About 45% of abatement funds are in the form of "incentive payments" which provide incentives for higher levels of participation. With the goal of getting funds to the community as fast as possible, if 95% participation is reached, abatement funds will begin flowing to the State of Ohio and its subdivisions as early as this year. Portions of the annual payment to each state may be subject to "suspension" (i.e., placed in escrow) in the event primary subdivisions bring or expand litigation against the distributors past specified suspension deadlines.

Because 45% of the funds are paid in the form of incentive payments, in order for the State of Ohio and its subdivisions to maximize recovery under the proposed settlement, it is critical that participation meets or exceeds 95%. The following is a summary of the base payment and incentive structure:

- Once a state agrees to participate, it is eligible to receive 55% of the funds as a "base payment."
- The remaining 45% can be obtained through a combination of "incentive payments."
- "Incentive A" is up to 40% of the remaining funds. Incentive A is paid if the State of Ohio enacts legislation to release all pending claims and prohibit subdivisions who have not brought claims from bringing them in the future. To allow time for the State to enact legislation, Incentive A will be paid in the first two payments, regardless of whether the legislation has been passed. Any overpayment in year one and two will offset future

payment. If Incentive A is not achieved, the State of Ohio can obtain the same amount of funds through Incentives B and C. Incentives B and C are alternatives to Incentive A.

- “Incentive B” is up to 25% off the remaining funds. Incentive B is paid on a sliding scale depending on the population of Litigating Subdivisions that are Participating Subdivisions compared to total population of all Litigating Subdivisions in the State. Must have at least 85% to get any share of Incentive B.
- “Incentive C” is up to 15% of the remaining funds. Incentive C is paid on a sliding scale depending on the population of Litigating Subdivisions and of Non Litigating Subdivisions that have a population over 30,000 that are Participating Subdivisions compared to the total population of all Litigating Subdivisions and of all Non Litigating Subdivisions with a population over 30,000 in the state. Must have at least 60% to get any share of Incentive C.
- “Incentive D” is 5% of the remaining funds. Incentive D is paid at the end of 5 years if the State of Ohio has had no later Litigating Subdivisions bring suit and proceed past preliminary motions in the prior 5 years.

To reach an agreement with the Distributors, our short-term goal is to have 95% of Litigating Subdivisions participate. If the 95% threshold is achieved, the floor for Ohio recovery is 70% of the estimated \$804,865,429.

Regardless of the participation level, Distributors will make the first two years’ payments at 95% of the estimated \$804,865,429, with adjustments occurring in year 3 and beyond.

During the two period, our goal is to either achieve Incentive A or Incentives B & C, for a continued 95% payout.

The settlement is only open to governmental entities. Claims brought on behalf of private individuals and businesses (including third-party payers like health and welfare funds and insurers) are not included (and are not released), although individuals, businesses and payers will benefit from the Opioid Remediation funding and injunctive relief provided in the settlements.

In an effort to reduce attorney fees for the subdivisions and potentially increase recovery to the Foundation, attorneys for the subdivisions have agreed to amend OneOhio such that any attorney fees paid by the Distributors for contingency contracts and funding of the Local Government Fee Fund (“LGFF”) from OneOhio will be used to satisfy contingency contracts. Previously OneOhio called for 60% of the LGFF to be utilized for common benefit assessment in the national litigation. By utilizing 100% the LGFF for the contingency fees, there becomes a greater likelihood that the LGFF will have a surplus, which, would revert to the Foundation for the benefit of all subdivisions. Any attorney or law firm receiving fees through this settlement would have their contingency fees capped at no more than a 25% and be required to waive enforcement against their client of any amounts owed in excess of fees recovered through the LGFF.

In addition to money to be used for abatement of the effects of the Opioid epidemic, the settlement provides robust injunctive relief that will require the Distributors make significant changes in the way they conduct their business. Among other changes, the Distributors must follow substantially increased and improved measures to identify suspicious orders and pharmacy customers, under the oversight of an independent third-party monitor. The Distributors each must begin using a clearinghouse that accounts not only for their own opioid shipments, but the shipments of the other distributors. This enables, for the first time, a truer picture of overall opioids distribution and requires drug distributors to alter their shipments based on the shipments by others. This clearinghouse will use the Distributors’ collective data to establish pharmacy-specific opioid shipment limits that each Distributor must follow.

Finally, we ask that you review “Allocations to Ohio Municipalities” (Exhibit 5) to understand the amount of money your subdivision would receive as their direct 30% share through this proposal. Attorneys fees have already been deducted in Exhibit 5. You will note that there are two numbers listed as direct payment allocations. The lower number is the amount your subdivision is estimated to recover if we reach the short-term threshold of 95% of Litigating Subdivisions participating. This will result in a 70% payout. The higher number represents the amount your subdivision is estimated to recover if we meet Incentive A or the 100% participation level. You will also note two numbers under the heading “Foundation Regional Total” at both 70% and 100% allocation payouts. These numbers represent the total allocation to your region.

The following is an example of Region 2 at 100% allocation:

City of Cincinnati – Direct Allocation	\$3,872,795.76
Hamilton County – Direct Allocation	\$11,796,568.08
Other subdivisions in Hamilton County – Direct Allocation	\$3,219,273.16
Cincinnati / Hamilton Region 2 – Foundation Allocation	\$36,396,145.01
Total to Cincinnati / Hamilton Region 2:	\$55,284,782.01

EXHIBIT 2

Base/Bonus Structure

Base Payment – 55%

Option 1:

- **Bonus A** – Legislative bar to subdivision litigation – 40%

Option 2:

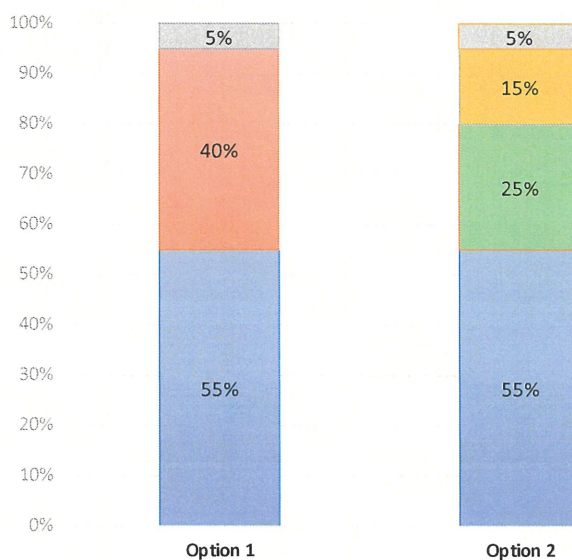
- **Bonus B** – Sign-on of currently litigating subdivisions – up to 25%
- **Bonus C** – Sliding scale based on sign-on by 60% or more litigating and non-litigating subdivisions with population above 30,000 – up to 15%

Either Option:

- **Bonus D** – Paid if no future subdivision litigation for 5 years after settlement agreement – 5%

Distributors

(McKesson, Cardinal Health & AmerisourceBergen)



OneOhio Subdivision Participation Form

Governmental Entity:	State:
Authorized Official:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above ("*Governmental Entity*"), in order to obtain and in consideration for the benefits provided to the Governmental Entity consistent with the material terms of the National Settlement Agreement dated July 21, 2021 ("*National Distributor Settlement*"), and acting through the undersigned authorized official, hereby elects to participate in the material terms of the National Settlement Agreement 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 National Distributor Settlement, understands that all terms in this Participation Form have the meanings defined therein, and agrees that by signing this Participation Form, the Governmental Entity elects to participate consistent with the material terms of the National Distributor Settlement and become a Participating Subdivision as provided therein pursuant to the terms of the final OneOhio Memorandum of Understanding dated July 28, 2021.
2. The Governmental Entity's election to participate is specifically conditioned on participation by 95% or more of the Litigating Subdivisions in Ohio. Should less than 95% of the Litigating Subdivisions in Ohio participate, this election shall be deemed void and no claims shall be released.
3. The Governmental Entity shall, prior to the filing of the Consent Judgment, secure the dismissal with prejudice of any Released Claims that it has filed.
4. The Governmental Entity agrees to the material terms of the National Distributor Settlement pertaining to Subdivisions as defined therein.
5. By agreeing to the material terms of the National 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.
6. The Governmental Entity agrees to use any monies it receives through the material terms of the National Distributor Settlement solely for the purposes provided therein.

7. The Governmental Entity submits to the jurisdiction of the Madison County Court of Common Pleas where the Consent Judgment is filed for purposes limited to the court's role as provided in, and for resolving disputes to the extent provided in, the material terms of the National Distributor Settlement Agreement. If the National Distributor Settlement is finalized, 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 National Distributor Settlement.
8. The Governmental Entity has the right to enforce the material terms of the National Distributor Settlement as provided therein.
9. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the material terms of the National 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 material terms of the National 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 material terms of National Distributor Settlement shall be a complete bar to any Released Claim.
10. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision consistent with the material terms of the National Distributor Settlement.
11. In connection with the releases provided for in the material terms of the National 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:

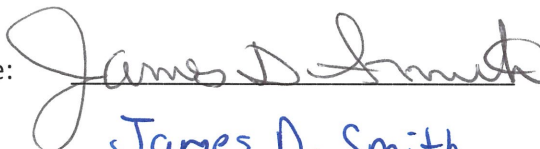
General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by

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 material terms of the National Distributor Settlement.

12. Nothing herein is intended to modify in any way the terms of the material terms of the National Distributor Settlement to which Governmental Entity hereby agrees, with the exception of the requisite Litigating Government participation level. If the National Settlement becomes effective by July 1, 2022 its terms will supersede the terms of the Ohio Settlement Agreement and will control with regard to all provisions except for Dismissal of Claims as set forth in the Ohio Settlement Agreement. If it is not effective by July 1, 2022, the Ohio Specific Distributor Settlement will control. To the extent this Participation Form is interpreted differently from the Ohio Specific Distributor Settlement in any respect, the Ohio Specific Distributor Settlement controls.

I have all necessary power and authorization to execute this Participation Form on behalf of the Governmental Entity and have been afforded the opportunity to review this matter with counsel.

Signature: 
Name: James D. Smith
Title: Mayor
Date: 8/5/21