

EXHIBIT A

MEMORANDUM

To: CITY COUNCIL
FROM: JARED SHEPHERD, LITIGATION COUNSEL
DATE: DECEMBER 8, 2021
RE: PRESCRIPTION OPIOID LITIGATION SETTLEMENT



CAMPBELL KNUTSON
PROFESSIONAL ASSOCIATION

For several years, state and local governments have been in civil litigation with manufacturers and distributors of prescription opioids related to the opioid crisis (“Prescription Opioid Litigation”). The lawsuits largely allege facts that the pharmaceutical industry has promoted opioid use to treat chronic pains at unprecedented rates, while ignoring or downplaying the addictive properties of opioids and ignoring evidence of over-prescription and misuse. The lawsuits allege that this activity resulted in mass addiction in opioid use and other illegal drugs, crime, rising health care and insurance premiums, and other costs borne by public entities, including cities. While jurisdictions impacts are unique, counties have largely experienced severe impacts on social services (such as child protection) and public health programming and cities have experienced impacts in public safety.

In April 2019, the City of Duluth filed its own lawsuit against manufacturers and distributors of prescription opioids (Case No. 0:19-cv-01077, MDL No. 1:17-MD-2804) and joined the Prescription Opioid Litigation. The State of Minnesota and 26 Minnesota counties and 6 other cities filed suit against a variety of opioid manufacturers and distributors. The political subdivisions filed their lawsuits in Federal District Court, which the federal court system consolidated in a Multi-District Litigation action in Ohio. Several of the companies have filed for bankruptcy since the onset of litigation (e.g., Purdue Pharma).

There are two proposed nationwide settlements (“Opioid Litigation Settlements”) intended to resolve all litigation brought by state and local governments four entities: McKesson, Cardinal Health and Amerisource Bergen (“Settling Distributors”), and Janssen Pharmaceutical/Johnson & Johnson (“Settling Manufacturer”). The total settlement amount for both settlements is \$26 billion. Importantly, in addition to monetary payments to abate the opioid epidemic, the settlements contains injunctive relief provisions designed to target opioid marketing and sale and distribution practices.

The negotiating parties structured the monetary component to incentivize states to promote local government participation (for both litigating and non-litigating cities). The projected settlement amount for Minnesota is \$250 million+. The more political subdivisions participate, however, the greater the amount of funds that flow to Minnesota and participating subdivisions. The process requires all entities participating in the settlement to sign on by January 2, 2022. If the City participates in the Opioid Litigation Settlements, it will be releasing all potential claims against the Settling Distributors and Settling Manufacturer.

Over the last month or so, State and political subdivisions have worked through the allocation that will occur when settlement money flows to the state. The Attorney General's office is consulting with various stakeholders, including litigating entities, public health officials, the League of Minnesota Cities, the Coalition of Greater Minnesota Cities, and the Association of Minnesota Counties. All stakeholders are working cooperatively to create a framework that will allow work for the state and local governments, foster collaboration and accountability, and be available to focus on the areas where the most harm is occurring. The agreed upon framework will be memorialized in a Minnesota Opioids State-Subdivision Memorandum of Agreement ("State-Subdivision Agreement").

Some Key principles of this Agreement are as follows:

1. Financial Allocation:
 - a. 75 % of money will go to Local Government Units ("LGU"); 25% to the State
 - b. Of the LGU share, 81% will go to Counties, 12.11% to Litigating Cities/Health Department Cities; 6.74 % to cities with populations over 30,000 that have not litigated.
 - c. If the State gets full bonuses for maximum participation, this will be appx. \$222,012,670 for LGUs.
 - d. While subject to slight alteration, Duluth will receive 1.1502% of the LGU share.
 - e. Payments will be made directly to local governments, beginning as early as April, 2022. Pursuant to the national settlement, these payments will be funded over 18 years.
2. The allocation described above requires a change in state law, Minn. Stat. § 256.043. Because a 75/25 allocation in the state-subdivision agreement under current law would leave the state with inadequate resources (12.5%), the state-subdivision agreement will include a provision which shifts from 75% to local governments and 25% to the state to 60% for local governments and 40% for the state if statutory change is not accomplished.
3. Up to 7% of the local government share will be reserved for private attorneys' fees. Attorneys will be required to seek reimbursement through the federal settlement first. Unused funds will be returned to local governments for redistribution.

The City of Duluth will receive a direction allocation pursuant to the State-Subdivision Agreement. That amount is dependent upon the overall settlement funds that flow to the state based on participation. The funds can be used for opioid mitigation efforts as described on the attached document.

In order for staff to initiate formal settlement approval, the City Council must approve participation in the Opioid Litigation Settlements and the State-Subdivision Agreement. Staff and legal counsel recommend approval of the settlement and adopting the attached Resolution.