

RESOLUTION NO. 2024-R\_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS APPROVING PARTICIPATION IN A SETTLEMENT AGREEMENT BETWEEN THE STATE OF TEXAS AND KROGER; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SETTLEMENT PARTICIPATION FORM.**

**WHEREAS**, the City of New Braunfels (“City”) obtained information indicating that certain drug companies and their corporate affiliates, parents, subsidiaries, and such other defendants as may be added to the litigation (collectively, “Defendants”) have engaged in fraudulent and/or reckless marketing and/or distribution of opioids that have resulted in addictions and overdoses; and

**WHEREAS**, these actions, conduct and misconduct have resulted in significant financial costs to the City; and

**WHEREAS**, on May 13, 2020, the State of Texas, through the Office of the Attorney General, and a negotiation group for Texas political subdivisions entered into an Agreement entitled Texas Opioid Abatement Fund Council and Settlement Allocation Term Sheet (hereafter, the Texas Term Sheet) approving the allocation of any and all opioid settlement funds within the State of Texas; and

**WHEREAS**, on September 27, 2021, by Resolution No. 2021-R-51, the City opted into that initial settlement agreement which included many defendants including but not limited to McKesson, Cardinal Health, ABCD, and Janssen/Johnson & Johnson, Endo/Par and Teva, and it was awarded \$307, 313.00 in settlement funds; and

**WHEREAS**, on February 27, 2023, by Resolution No. 2023-R-26, the City opted into additional settlement agreements with other manufacturers and pharmacies including Allergan, CVS, Walgreens, and Walmart, from which the City can expect to receive \$289,592; and

**WHEREAS**, if the City wishes to opt into this settlement with Kroger and receive a portion of the settlement funds of \$23,145.47, City Council must take formal action to opt in by adopting this resolution.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of New Braunfels, Texas that the City does hereby:

Choose to participate in the settlement agreement between the State of Texas and Kroger and authorize the City Manager to execute all related documents, including, but not limited to the Subdivision Participation Form attached hereto as Exhibit A, and any other forms necessary to carry out the City’s participation in order to submit prior to the deadline of December 29, 2024.

**PASSED, ADOPTED AND APPROVED** at an open meeting properly posted and conducted in accordance with the Texas Open Meetings Act on this, the 25<sup>th</sup> day of November, 2024.

City of New Braunfels, Texas

\_\_\_\_\_  
NEAL LINNARTZ, Mayor

Attest:

\_\_\_\_\_  
GAYLE WILKINSON, City Secretary

Exhibit A to Resolution No. 2-24-R-\_\_\_\_\_

**TEXAS SETTLEMENT SUBDIVISION PARTICIPATION AND RELEASE FORM**

Political Subdivision:	City of New Braunfels	Texas
Authorized Official:	Robert Camareno, City Manager	
Address 1:	550 Landa St.	
Address 2:		
City, State, Zip:	New Braunfels, TX, 78130	
Phone:	(830)221-4280	
Email:	rcamareno@newbraunfels.gov	

The governmental entity identified above (“Texas Political Subdivision”), in order to obtain and in consideration for the benefits provided to the Texas Political Subdivision pursuant to the Kroger Texas Settlement Agreement and Full Release of All Claims dated October 30, 2024 (“Kroger Texas Settlement”), and acting through the undersigned authorized official, hereby elects to participate in the Kroger Texas Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Texas Political Subdivision above is aware of and has reviewed the Kroger Settlement Agreement, understands that all terms in this Participation and Release Form have the meanings defined therein, and agrees that by executing this Participation and Release Form, the Texas Political Subdivision elects to participate in the Kroger Texas Settlement and become a Participating Texas Political Subdivision as provided therein.
2. The Texas Political Subdivision shall immediately cease any and all litigation activities as to the Released Entities and Released Claims and, within 14 days of executing this Participation and Release Form, its counsel shall work with Kroger’s counsel to dismiss with prejudice any Released Claims that it has filed.
3. The Texas Political Subdivision agrees to the terms of the Kroger Texas Settlement pertaining to Texas Political Subdivisions as provided therein.
4. By agreeing to the terms of the Kroger Texas Settlement and becoming a Releasor, the Texas Political Subdivision is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date of the Release.
5. The Texas Political Subdivision agrees to use any monies it received through the Kroger Texas Settlement solely for the purposes provided therein.

6. The Texas Political Subdivision submits to the exclusive jurisdiction and authority of the Texas Consolidated Litigation Court as defined in the Kroger Texas Settlement. For the avoidance of doubt, nothing contained in this Participation and Release Form, or the Kroger Texas Settlement, constitutes consent to jurisdiction, express or implied, over the Texas Political Subdivision or its selected counsel to the jurisdiction of any other court (including without limitation MDL 2804, the MDL 2804 Fee Panel, the MDL 2804 Enforcement Committee, or the Court in which any Texas Consent Judgment is filed) for any purpose whatsoever.
7. The Texas Political Subdivision, as a Participating Texas Subdivision, has the right to enforce the Kroger Texas Settlement in the Texas Consolidated Litigation Court as provided therein.
8. The Texas Political Subdivision, as a Participating Texas Subdivision, hereby becomes a Releasor for all purposes in the Kroger Texas Settlement, including but not limited to all provisions of Section V (Release), 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 Texas Political Subdivision 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 Entities in any forum whatsoever. The releases provided for in the Kroger Texas Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entity 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 Texas Political Subdivision to release claims. The Kroger Texas Settlement shall be a complete bar to any Released Claim.
9. The Texas Political Subdivision hereby takes on all rights and obligations of a Participating Texas Subdivision as set forth in the Kroger Texas Settlement.
10. In connection with the releases provided for in the Kroger Texas Settlement, each Texas Political Subdivision 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 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 Texas Political Subdivision 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 Kroger Texas Settlement.

11. The Texas Political Subdivision acknowledges, agrees, and understands that the Maximum Texas Settlement Amount to be paid under the Kroger Texas Settlement for the benefit of the Participating Texas Political Subdivision, is less than or equal to the amount, in the aggregate, of the Alleged Harms allegedly suffered by the governmental entity, constitutes restitution and remediation for damage or harm allegedly caused by Kroger in order to restore, in whole or part, the governmental entity to the same position or condition that it would be in had it not suffered the Alleged Harms; and constitutes restitution and remediation for damage or harm allegedly caused by the potential violation of a law and/or is an amount paid to come into compliance with the law.
12. Nothing herein is intended to modify in any way the terms of the Kroger Texas Settlement Agreement, to which the Texas Political Subdivision hereby agrees. To the extent this Participation and Release Form is interpreted differently from the Kroger Texas Settlement, the Kroger Texas Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Texas Political Subdivision.

Signature: \_\_\_\_\_  
Name: Robert Camareno  
Title: City Manager  
Date: November \_\_\_\_\_, 2024