

SETTLEMENT SUBDIVISION PARTICIPATION FORM

Local Government: City of Gallup	State: New Mexico
Authorized Official: Maryann Ustick, City Manger	
Address 1: 110 W. Aztec Ave.	
Address 2:	
City, State, Zip: Gallup, New Mexico 87301	
Phone: (505) 863-1221	
Email: mustick@gallupnm.gov	

The governmental entity identified above (“Local Government”), in order to obtain and in consideration for the benefits provided to the Local Government pursuant to the Settlement Agreement and Full Release of All Claims dated November 23, 2022 (“Kroger Settlement”), and acting through the undersigned authorized official, hereby elects to participate in the Kroger Settlement, release all Released Claims against all Releasees, and agrees as follows.

1. The Local Government is aware of and has reviewed the Kroger Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Local Government elects to participate in the Kroger Settlement and become a Participating Local Government as provided therein.
2. The Local Government shall immediately cease any and all litigation activities as to the Releasees and Released Claims and, in any event within 14 days of executing this Participation Form, dismiss with prejudice any Released Claims that it has filed.
3. The Local Government agrees to the terms of the Kroger Settlement pertaining to Local Governments as defined therein.
4. By agreeing to the terms of the Kroger Settlement and becoming a Releasor, the Local Government is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date of the Release.
5. The Local Government agrees to (i) treat all funds received pursuant to the Kroger Settlement as “Opioid Funds” as that term is defined in Section A.2 the New Mexico Opioid Allocation Agreement attached to the Kroger Settlement (“the NMOAA” or “the MOU”); (ii) modify the term “Settlement” as that term is defined in Section A.7 of the MOU to include the Kroger Settlement; (iii) forego the use of a settlement administrator for the Kroger Settlement as contemplated by Section B.1 of the MOU, instead utilizing the payment process described in Section III.A of the Kroger Settlement; and (iv) allow the State to hold back and oversee the distribution of any funds needed for any attorney fee backstop fund that may be required (but in no event will that holdback be more than 15% of the Local Government’s share, and all outside counsel will be required to exhaust all other sources of fees in accordance with the MOU).

6. The Local Government submits to the jurisdiction of the court in which the State of New Mexico's Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Kroger Settlement.
7. The Local Government, as a Participating Local Government, hereby becomes a Releasor for all purposes in the Kroger Settlement, including but not limited to all provisions of Section IV, 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 Local Government 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 Releasee in any forum whatsoever. The releases provided for in the Kroger Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Releasee 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 Local Government to release claims. The Kroger Settlement shall be a complete bar to any Released Claim.
8. In connection with the releases provided for in the Kroger Settlement, each Local Government 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 Local Government 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 Settlement.

9. Nothing herein is intended to modify in any way the terms of the Kroger Settlement, to which Local Government hereby agrees. To the extent this Election and Release is interpreted differently from the Kroger Settlement in any respect, the Kroger Settlement controls.

I have all necessary power and authorization to execute this Election and Release on behalf of the Local Government.

Signature: _____

Name: Maryann Ustick

Title: City Manager

Date: _____