

**COLORADO REGION 18 OPIOID**  
**INTERGOVERNMENTAL AGREEMENT**

**THIS COLORADO REGION 18 OPIOID INTERGOVERNMENTAL AGREEMENT** (the “Regional Agreement”) is made between all Region 18 Participating Local Governments (“PLG”), as defined in the Colorado Opioids Settlement Memorandum of Understanding, individually herein known as a “Regional PLG” and collectively the “Regional PLGs.”

**RECITALS**

**WHEREAS**, the State of Colorado and Participating Local Governments executed the Colorado Opioids Settlement Memorandum of Understanding on August 26, 2021 (the “Colorado MOU”), establishing the manner in which Opioid Funds shall be divided and distributed within the State of Colorado;

**WHEREAS**, this Regional Agreement assumes and incorporates the definitions and provisions contained in the Colorado MOU, and the Regional Agreement shall be construed in conformity with the Colorado MOU;

**WHEREAS**, all Opioid Funds, regardless of allocation, shall be used for Approved Purposes;

**WHEREAS**, the Colorado MOU establishes the procedures by which each Region shall be entitled to Opioid Funds from the Abatement Council and administer its Regional Share allocation;

**WHEREAS**, pursuant to the Colorado MOU there shall be a 60% direct allocation of Opioid Funds to Regions through a Regional Share;

**WHEREAS**, each Region shall be eligible to receive a Regional Share according to **Exhibit C** to the Colorado MOU;

**WHEREAS**, the procedures established by the Colorado MOU include a requirement that each Region shall create its own Regional Council;

**WHEREAS**, each such Regional Council shall designate a fiscal agent from a county or municipal government within that Region;

**WHEREAS**, each such Regional Council shall submit a two-year plan to the Abatement Council that identifies the Approved Purposes for which the requested funds will be used, and the Regional Council's fiscal agent shall provide data and a certification to the Abatement Council regarding compliance with its two-year plan on an annual basis;

**WHEREAS**, this Regional Agreement pertains to the procedures for the Regional PLGs to establish a Regional Council, designate a fiscal agent, and request and administer Opioid Funds in a manner consistent with the Colorado MOU;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Regional PLGs as identified the attached Exhibit A incorporate the recitals set forth above and agree as follows:

1. **DEFINITIONS**. The defined terms used in this Regional Agreement shall have the same meanings as in the Colorado MOU. Capitalized terms used herein and not otherwise defined within the Regional Agreement or in the Colorado MOU shall have the meanings ascribed to them in the body of the Regional Agreement.
2. **OBLIGATIONS OF THE REGIONAL PLGS**. The Regional PLGs shall perform their respective obligations as set forth in the Regional Agreement, the Colorado MOU and the accompanying exhibits to the Colorado MOU incorporated herein by reference.

### **3. REGIONAL COUNCIL.**

**3.1. Purpose:** In accordance with the Colorado MOU, a Regional Council, consisting of representatives appointed by the Regional PLGs, shall be created to oversee the procedures by which a Region may request Opioid Funds from the Abatement Council and the procedures by which the allocation of its Region's Share of Opioid Funds are administered.

**3.2. Membership:** The Regional Council shall consist of the following:

a. **Voting Members.** Voting Members shall be appointed by the Regional PLGs. The Regional PLGs shall collaborate to appoint Regional Council members and to the extent practicable, Voting Members shall be selected from different counties and cities. No single county or city should dominate the make-up of the Regional Council. Voting Members shall be selected as follows:

- (i) 1 representative appointed by each county (may, but need not, be commissioners).
- (ii) 1 representative appointed from a rotating city within each county (or other city agreed upon) (may, but need not, be councilmembers and mayors). A rotating city member shall be selected by majority vote of the cities within each county who do not have a Voting Member currently sitting on the Regional Council.
- (iii) 1 representative from each public health department within the region.
- (iv) 1 representative from a county human services department.
- (v) At least 1 representative appointed from law enforcement within the region (sheriff, police, district attorney, local city or town prosecuting attorney, etc.).
- (vi) 1 representative from a municipal or county court system within the region.

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b. **Non-Voting Members.** Non-voting members shall serve in an advisory capacity. Any Non-Voting Members shall be appointed by the Regional PLGs, each of which may appoint no more than two, and may be appointed from among all or some of the following:

- (i) Representatives from behavioral health providers.

- (ii) Representatives from health care providers.
  - (iii) Recovery/treatment experts.
  - (iv) Other county or city representatives.
  - (v) A representative from the Attorney General's Office.
  - (vi) Community representative(s), preferably those with lived experience with the opioid crisis.
  - (vii) Harm reduction experts.
- c. **Acting Chair:** The Voting Members shall appoint one member to serve as Acting Chair of the Regional Council. The Acting Chair's primary responsibilities shall be to schedule periodic meetings of the Regional Council as needed and to serve as the point of contact for disputes within the Region. The Acting Chair must be either a Member from a county within a Region, such as a county commissioner or their designee, or a Member from a city or town within a Region, such as a mayor or city or town council member or their designee. The Acting Chair shall serve a two year term, beginning January 1, 2022, and may be reappointed to any number of successive terms.
- d. **Terms:** Voting Members shall be appointed in accordance with Section 3.2 (a) and shall serve two-year terms beginning January 1, 2022. Following the expiration of that two-year term, the Regional PLGs may reappoint that Voting Member, or appoint a new Voting Member in accordance with Section 3.2 (a).

**3.3.** If a Voting Member resigns or is otherwise removed from the Regional Council prior to the expiration of his or her term, a replacement Voting Member shall be appointed within sixty (60) days in accordance with Section 3.2 (a) to serve the remainder of the term. If the Regional PLGs are unable to fill a Regional PLG Voting Member vacancy within sixty (60) days, the existing Voting Members of the Regional Council at the time of the vacancy shall work collectively to appoint a replacement Voting Member in accordance with Section 3.2 (a). **Duties:** The Regional Council is primarily responsible for engaging with the Abatement Council on behalf of its Region and following the procedures outlined in the Colorado MOU for requesting Opioid Funds from the Regional Share, which shall include developing 2-year plans, amending those plans as appropriate, and providing the Abatement Council with data through its fiscal

agent regarding Opioid Fund expenditures. Upon request from the Abatement Council, the Regional Council may also be subject to an accounting from the Abatement Council.

**3.4. Governance:** The Regional Council may establish its own procedures through adoption of bylaws or other governing documents if it deems appropriate. Any governing documents must be consistent with the other provisions in this Regional Agreement and the Colorado MOU.

**3.5. Authority:** The terms of the Colorado MOU control the authority of the Regional Council and the Regional Council shall not stray outside the bounds of the authority and power vested by the Colorado MOU. Should the Regional Council require legal assistance in determining its authority, it may seek guidance from the legal counsel of the county or municipal government of the Regional Council's fiscal agent at the time the issue arises.

**3.6. Collaboration:** The Regional Council shall facilitate collaboration between the State, Participating Local Governments within its Region, the Abatement Council, and other stakeholders within its Region for the purposes of sharing data, outcomes, strategies, and other relevant information related to abating the opioid crisis in Colorado.

**3.7. Transparency:** The Regional Council shall operate with all reasonable transparency and abide by all Colorado laws relating to open records and meetings. To the extent the Abatement Council requests outcome-related data from the Regional Council, the Regional Council shall provide such data in an effort to determine best methods for abating the opioid crisis in Colorado.

**3.8. Conflicts of Interest:** Voting Members shall abide by the conflict-of-interest rules applicable to local government officials under C.R.S. § 24-18-101 *et seq.*

**3.9. Ethics Laws:** Voting Members shall abide by their local ethics laws and by C.R.S. § 24-18-101 *et seq.*

**3.10. Decision Making:** The Regional Council shall make decisions by a majority vote of its Voting Members.

#### **4. REGIONAL FISCAL AGENT**

**4.1. Purpose:** Pursuant to the Colorado MOU, the Regional Council must designate a fiscal agent for the Region prior to the Region receiving any Opioid funds from the

Regional Share. All funds from the Regional Share shall be distributed to the Regional Council's fiscal agent for the benefit of the entire Region.

**4.2. Designation:** The Regional Council shall designate a fiscal agent for the Region. Regional fiscal agents must be a board of county commissioners or a city or town council or executive department, such as a department of finance.

**4.3. Term:** The Regional fiscal agent may serve as long as the Regional Council determines is appropriate, including for the duration of any Settlement that contemplates the distribution of Opioid Funds within Colorado.

**4.4. Duties:** The Regional fiscal agent shall receive, deposit, and make available Opioid Funds distributed from the Abatement Council and provide expenditure reporting data to the Regional Council and the Abatement Council on an annual basis. In addition, the Regional fiscal agent shall perform certain recordkeeping duties outlined below.

- a. **Opioid Funds:** The Regional fiscal agent shall receive all Opioid Funds as distributed by the Abatement Council. Upon direction by the Regional Council, the Regional fiscal agent shall make any such Opioid Funds available to the Regional Council.
- b. **Reporting:** On an annual basis, as determined by the Abatement Council, the Regional fiscal agent shall provide to the Abatement Council the Regional Council's expenditure data from its allocation of the Regional Share and certify to the Abatement Council that the Regional Council's expenditures were for Approved Purposes and complied with its 2-year plan.
- c. **Recordkeeping:** The Regional fiscal agent shall maintain necessary records with regard the Regional Council's meetings, decisions, plans, and expenditure data. For purposes of the Colorado Open Records Act, the Regional fiscal agent shall be deemed the official custodian of records of the Regional Council.

**4.5. Authority:** The fiscal agent serves at the direction of the Regional Council and in service to the entire Region. The terms of the Colorado MOU control the authority of a Regional Council, and by extension, the Regional fiscal agent. The Regional fiscal agent shall not stray outside the bounds of the authority and power vested by the Colorado MOU.

## **5. REGIONAL TWO-YEAR PLAN**

**5.1. Purpose:** Pursuant to the Colorado MOU, as part of the Regional Council's request to the Abatement Council for Opioid Funds from its Regional Share, the Regional Council must submit a 2-year plan identifying the Approved Purposes for which the requested funds will be used.

**5.2 Development of 2-Year Plan:** In developing a 2-year plan, the Regional Council shall solicit recommendations and information from all Regional PLGs and other stakeholders within its Region for the purposes of sharing data, outcomes, strategies, and other relevant information related to abating the opioid crisis in Colorado. At its discretion, the Regional Council may seek assistance from the Abatement Council for purposes of developing a 2-year plan.

**5.3 Amendment:** At any point, the Regional Council's 2-year plan may be amended so long as such amendments comply with the terms of the Colorado MOU and any Settlement.

- 6. DISPUTES WITHIN REGION.** In the event that any Regional PLG disagrees with a decision of the Regional Council, or there is a dispute regarding the appointment of Voting or Non-Voting Members to the Regional Council, that Regional PLG shall inform the Acting Chair of its dispute at the earliest possible opportunity. In Response, the Regional Council shall gather any information necessary to resolve the dispute. Within fourteen (14) days of the Regional PLG informing the Acting Chair of its dispute, the Regional Council shall issue a decision with respect to the dispute. In reaching its decision, the Regional Council may hold hearings and may take a vote of Voting Members. In any disputes regarding the appointment of a Voting Member, that Voting Member will be recused from voting on the dispute. The decision of the Regional Council is a final decision.
- 7. DISPUTES WITH ABATEMENT COUNCIL.** If the Regional Council disputes the amount of Opioid Funds it receives from its allocation of the Regional Share, the Regional Council shall alert the Abatement Council within sixty (60) days of discovering the information underlying the dispute. However, the failure to alert the Abatement Council within this time frame shall not constitute a waiver of the Regional Council's right to seek recoupment of any deficiency in its Regional Share.
- 8. AUTHORIZED REPRESENTATIVES.** Each Regional PLGs' authorized representative as identified in Exhibit A shall be the point of contact to coordinate the obligations as provided

herein. The Regional PLGs shall update the Regional Council in any changes to its authorized representative.

9. **OBLIGATIONS OF THE REGIONAL PLGS.** The Regional PLGs shall perform their respective obligations as set forth in this Regional Agreement, the Colorado MOU and the accompanying exhibits to the Colorado MOU, which are incorporated herein by reference.
10. **TERM.** This Regional Agreement will commence on the date it is first executed by at least two parties, and shall expire on the date the last action is taken by the Region, consistent with the terms of the Colorado MOU and any Settlement (the “Term”).
11. **INFORMATIONAL OBLIGATIONS.** Each Regional PLG hereto will meet its obligations as set forth in § 29-1-205, C.R.S., as amended, to include information about this Regional Agreement in a filing with the Colorado Division of Local Government; however, failure to do so shall in no way affect the validity of this Regional Agreement or any remedies available to the Regional PLGs hereunder.
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7. **CONFIDENTIALITY.** The Regional PLGs, their agents, employees, representatives, and designees, agree that they will not divulge any information marked as confidential or proprietary they receive from another Regional PLG or otherwise have access to, except as may be required by law. Nothing in this Regional Agreement shall in any way limit the ability of the Regional PLGs to comply with any laws or legal process concerning disclosures by public entities. Pursuant to Section 4.4(c) herein, the fiscal agent shall be deemed the official custodian of records for the Regional Council. Notwithstanding, the Regional PLGs understand that all materials exchanged under this Regional Agreement, including information marked as confidential or proprietary may be subject to the Colorado Open Records Act., § 24-72-201, *et seq.*, C.R.S., (the “Act”). In the event of a request to a Regional PLG or the Regional Council for disclosure of confidential materials, the Regional PLG shall advise the Regional PLGs through the Regional Council of such request in order to give the Regional PLGs the opportunity to object to the disclosure of any of its materials which it marked as, or otherwise asserts is, proprietary or confidential. If a Regional PLG objects to disclosure of any of its material, the Regional PLG shall identify the legal basis under the Act for any right to withhold. If the matter is not resolved, the Regional PLGs may



tender all material to the court for judicial determination of the issue of disclosure. In the event of any action or the filing of a lawsuit to compel disclosure, the Regional PLG agrees to intervene in such action or lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. **GOVERNING LAW; VENUE**. This Regional Agreement shall be governed by the laws of the State of Colorado. Venue for any legal action relating solely to this Regional Agreement will be in the District Court of the State of Colorado for the county of the Region's fiscal agent. Venue for any legal action relating to the Colorado MOU shall be in a court of competent jurisdiction where a Settlement or consent decree was entered, as those terms are described or defined in the Colorado MOU. If a legal action relates to both a Regional Agreement and the Colorado MOU, venue shall also be in a court of competent jurisdiction where a Settlement or consent decree was entered.

8. **TERMINATION**. The Regional PLGs enter into this Regional Agreement to serve the public interest. If this Regional Agreement ceases to further the public interest, a Regional PLG, in its discretion, may terminate its participation in the Regional Agreement, in whole or in part, upon written notice to the other Regional PLGs through its designee on the Regional Council. Termination for cause, shall be effective immediately upon written notice. Termination without cause shall be effective upon thirty (30) days prior written notice to the other Regional PLGs. A Regional PLG's decision to terminate this Regional Agreement, with or without cause, shall have no impact on the other Regional PLGs present or future administration of their Opioid Funds, nor affect the validity of this Regional Agreement.
9. **NOTICES**. "Key Notices" under this Regional Agreement are notices regarding default, disputes, or termination of the Regional Agreement. Key Notices shall be given in writing and shall be deemed received if given by 1) confirmed electronic transmission (but specifically excluding facsimile transmissions and texts) that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, , if transmitted on a business day and during normal business hours of the recipient, and otherwise on the next business day following transmission; 2) certified mail, return receipt requested, postage prepaid, three business days after being deposited in the United States mail; 3) or overnight carrier service or personal delivery, when received. All other communications or notices between the

Regional PLGs that are not Key Notices may be done via electronic transmission. The Regional PLGs agree that any notice or communication transmitted by electronic transmission shall be treated in all manner and respects as an original written document; any such notice or communication shall be considered to have the same binding and legal effect as an original document. All Key Notices shall be given to a Regional PLG through its authorized representative as set forth in paragraph 8, above.

## **10. GENERAL TERMS AND CONDITIONS**

- 10.1. Independent Entities.** The Regional PLGs enter into this Regional Agreement as separate, independent governmental entities and shall maintain such status throughout.
- 10.2. Assignment.** This Regional Agreement shall not be assigned by any Regional PLG without the prior written consent of all Regional PLGs. Any assignment or subcontracting without such consent will be ineffective and void and will be cause for termination of that Regional PLG's participation in this Regional Agreement.
- 10.3. Integration and Amendment.** This Regional Agreement represents the entire agreement between the Regional PLGs and supersedes any oral or collateral agreement or understanding. This Regional Agreement may be amended only by a writing signed by all the Regional PLGs. If any provision of this Regional Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and the remaining provision of this Regional Agreement shall continue in full force and effect.
- 10.4. No Construction Against Drafting Party.** The Regional PLGs and their respective counsel have had the opportunity to review the Regional Agreement, and the Regional Agreement will not be construed against any Regional PLG merely because any provisions of the Regional Agreement were prepared by a particular Regional PLG.
- 10.5. Captions and References.** The captions and headings in this Regional Agreement are for convenience of reference only and shall not be used to interpret, define, or limit its provisions. **Statutes, Regulations, and Other Authority.** Any reference in this Regional Agreement to a statute, regulation, policy or other

authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the execution of this Regional Agreement.

**10.6. Conflict of Interest.** No Regional PLG shall knowingly perform any act that would conflict in any manner with said Regional PLG's obligations hereunder. Each Regional PLG certifies that it is not engaged in any current project or business transaction, directly or indirectly, nor has it any interest, direct or indirect, with any person or business that might result in a conflict of interest in the performance of its obligations hereunder. **Successors and Assigns.** The rights and obligations of the Regional PLGs to the Regional Agreement inure to the benefit of and shall be binding upon the Regional PLGs and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Regional Agreement.

**10.7. Survival.** Notwithstanding anything to the contrary, the Regional PLGs understand and agree that all terms and conditions of this Regional Agreement and any exhibits that require continued performance or compliance beyond the termination or expiration of this Regional Agreement shall survive such termination or expiration and shall be enforceable against a Regional PLG if such Regional PLG fails to perform or comply with such term or condition.

**10.8. Waiver of Rights and Remedies.** No provision of this Regional Agreement may be waived except in writing by a Regional PLG's authorized representative. The failure of a Regional PLG to enforce any right arising under this Regional Agreement on one or more occasions will not operate as a waiver of that or any other right on that or any other occasion.

**10.9. No Third-Party Beneficiaries.** Enforcement of the terms of the Regional Agreement and all rights of action relating to enforcement are strictly reserved to the Regional PLGs. Nothing contained in the Regional Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the Regional PLGs receiving services or benefits pursuant to the Regional Agreement is an incidental beneficiary only.

**10.10. Records Retention.** The Regional PLGs shall maintain all records, including working papers, notes, and financial records in accordance with their applicable

record retention schedules and policies. Copies of such records, except to the extent they are privileged or confidential, shall be furnished to other PLGs at their request.

**10.11. Execution by Counterparts; Electronic Signatures and Records.** This Regional Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Regional PLGs approve the use of electronic signatures for execution of this Regional Agreement. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24-71.3-101, *et seq.* The Regional PLGs agree not to deny the legal effect or enforceability of the Regional Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Regional PLGs agree not to object to the admissibility of the Regional Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**10.12. Authority to Execute.** Each Regional PLG represents that all procedures necessary to authorize such Regional PLG's execution of this Regional Agreement have been performed and that the person signing for such Regional PLG has been authorized to execute the Regional Agreement.

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**IN WITNESS WHEREOF,** \_\_\_\_\_ County/City does hereto enter into the Colorado Region 18 Opioid Intergovernmental Agreement as set forth above and hereby designates \_\_\_\_\_ as its representative on the Regional Council and as its point of contact to coordinate the obligations as provided herein

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_ **BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_  
\_\_\_\_\_, Chairman

DRAFT

Updated 2/28/2022