

INTERGOVERNMENTAL AGREEMENT – OPIOID ABATEMENT

This intergovernmental agreement (the “Regional Agreement”) is entered into and effective as of this ____ day of _____, 2022 and is made between Arapahoe County, a Participating Local Government, as defined in the Colorado MOU, in the Arapahoe County Region (“AC Region”) and the municipalities listed on the attached **Exhibit A**, all of which are Participating Local Governments in the Arapahoe County Region, individually herein a “Regional PLG” and collectively the “Regional PLGs.”

RECITALS

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

WHEREAS, the 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; and

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

WHEREAS, Participating Local Governments shall organize themselves into Regions, as further depicted in Exhibit E to the Colorado MOU; and

WHEREAS, Arapahoe County and its municipalities therein are considered the AC Region; and

WHEREAS, there shall be a 60% direct allocation of Opioid Funds to Regions through a Regional Share; and

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

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; and

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

WHEREAS, all aspects of the creation, administration, and operation of the Regional Council shall proceed in accordance with the provisions of the Colorado MOU; and

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

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; and

WHEREAS, the 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 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 which are each incorporated herein by reference.

3. **REGIONAL COUNCIL**

3.1. Purpose: In accordance with the Colorado MOU, the AC Region has established a Regional Council to oversee the procedures by which the AC Region may request Opioid Funds from the Abatement Council and the procedures by which the allocation of its Region's Share of Opioid Funds will be administered.

3.2. Membership: The Regional Council of the AC Region ("AC Regional Council") shall consist of the following:

- a. **Voting Members.** Voting Members are as follows:
 - i. Two (2) representatives appointed by the Arapahoe County Board of County Commissioners ("BOCC")

- ii. The Public Health Director of the Arapahoe County Public Health Department, or their designee
 - iii. The Director of the Arapahoe County Human Services Department or their designee
 - iv. The Arapahoe County Sheriff or their designee
 - v. 1 representative appointed from a municipal law enforcement agency within the AC Region (to be appointed by majority vote of the municipalities listed in Exhibit A).
 - vi. 1 representative appointed from the County Court system or District Attorney's Office or their designee by the BOCC.
 - vii. Four (4) total representatives appointed by the municipalities listed on **Exhibit A** as follows:
 - 1) 1 representative appointed by the City of Aurora
 - 2) 1 representative appointed by the City of Centennial
 - 3) 1 representative to represent the west side of the County, appointed by majority vote of the Cities of Englewood, Sheridan and Littleton
 - 4) 1 representative to represent the east side/smaller communities of the County, appointed by majority vote of the remainder of the municipalities listed on Exhibit A.
 - viii. For the representatives appointed under a.i and a.vii above, the Board of County Commissioners and the municipalities may also appoint alternates who may attend meetings and vote when their respective primary representative will be absent.
- b. **Non-Voting Members.** Non-voting members of the AC Regional Council shall consist of representatives of all municipalities which do not otherwise have an appointed representative serving on the AC Regional Council. In addition, by majority vote of the AC Regional Council, additional non-voting members may be appointed from time to time. All non-voting members shall receive the same notice of meetings and meeting materials as voting members and shall be entitled to engage in discussion regarding matters discussed during meetings. Non-voting members serve in an advisory role.
- c. **Chair/Other Officers:** At the first meeting of each year, the Voting Members shall appoint one Voting Member to serve as Chair of the AC Regional Council.

The Chair's primary responsibilities shall be to schedule periodic meetings and votes of the Regional Council as needed and to serve as the point of contact for disputes within the Region. The Chair must be either a Voting Member from Arapahoe County, such as a county commissioner or their designee, or a Voting Member from a city or town within a Region, such as a mayor or city or town council member or their designee. The Voting Members may also appoint such other officers, for example a chair elect and/or vice-chair, recording secretary, from the Members as may be desired to conduct the business of the Regional Council.

- d. **Non-Participation:** A Local Government that chooses not to become a Participating Local Government in the Colorado MOU shall not receive any Opioid Funds from the Regional Share or participate in the Regional Council.
- e. **Terms:** Members of the AC Regional Council shall serve for two-year terms. If an appointed Voting Member resigns or is otherwise removed from the Regional Council prior to the expiration of their term, a replacement shall be appointed within sixty (60) days in the same manner as the original appointment, to serve the remainder of the term. The purpose of the two-year term is to allow Regional PLGs an increased opportunity to serve on the AC Regional Council. However, AC Regional Council members who have already served on the Regional Council may be appointed more than once and may serve consecutive terms without term limits.

3.3. Duties: The AC Regional Council is primarily responsible for engaging with the Abatement Council on behalf of the AC Region and following the procedures outlined in the Colorado MOU for requesting Opioid Funds from the Regional Share, which shall include deciding how Opioid Funds from the Regional Share (and any other Opioid Funds that are contributed to the AC Region) are to be expended, developing and submitting 2-year plans, amending those plans as appropriate, monitoring the use of Opioid Funds for compliance with the Colorado MOU, and providing the Abatement Council with data through its fiscal agent regarding Opioid Fund expenditures. The AC Regional Council shall also be responsible for any other duties assigned to it by the Colorado MOU. Upon request from the Abatement Council, the AC Regional Council may also be subject to an accounting from the Abatement Council.

3.4. Governance: The AC Regional Council shall establish its own procedures through the adoption of bylaws, which shall be consistent with the other provisions in this section and the Colorado MOU.

3.5. Authority: The terms of the Colorado MOU control the authority of the AC Regional Council and the AC Regional Council shall not stray outside the bounds of the authority and power vested by the Colorado MOU. Should the AC Regional

Council require legal assistance in determining its authority, it may seek guidance from the legal counsel of the AC Regional Council's fiscal agent at the time the issue arises.

3.6. Collaboration: The AC Regional Council shall facilitate collaboration between the State, Participating Local Governments within the AC 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. Committees: The AC Regional Council may appoint such advisory committees as may be desirable to assist in conducting its business. Such committees shall include a Technical Advisory Committee, which shall consist of persons who are subject matter experts in fields related to opioid education, treatment, recovery or related fields, for the purpose of providing technical assistance as may be needed, as well as a Staff Planning Committee, which shall consist of staff from one or more Regional PLGs, for the purpose of assisting the Regional Council with operational and planning support.

3.8. Transparency: The AC 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 AC Regional Council, the AC Regional Council shall provide such data in an effort to determine best methods for abating the opioid crisis in Colorado.

3.9. Conflicts of Interest: Voting Members shall abide by the conflict-of-interest rules applicable to local government officials under state law.

3.10. Ethics Laws: Voting Members shall abide by their local ethics laws or, if no such ethics laws exist, by applicable state ethics laws.

3.11. Decision Making: The AC Regional Council will seek to make all decisions by consensus. In the event consensus cannot be achieved, the AC Regional Council shall make decisions by a majority vote of Voting Members present at the meeting, who must constitute at least a quorum

4. REGIONAL FISCAL AGENT

4.1. Purpose: According to the Colorado MOU, the AC Regional Council must designate a fiscal agent for the AC Region prior to the AC 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: Arapahoe County (through its Finance Department) shall serve as the fiscal agent. Another PLG can be substituted as the fiscal agent by decision of the AC Regional Council.

4.3. 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 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 their 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.

4.4. 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. A 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: According to the Colorado MOU, as part of a 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 AC Regional Council shall solicit recommendations and information from all Regional PLGs and other stakeholders within the AC 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 AC Regional Council may seek assistance from the Abatement Council for purposes of developing a 2-year plan.

5.3 Amendment: At any point, the AC 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 a Regional PLG disagrees with a decision of the AC Regional Council, or there is a dispute regarding the appointment of Voting or Non-Voting Members to the AC Regional Council, that Regional PLG shall inform the Chair of its dispute at the earliest possible opportunity. In Response, the AC Regional Council shall gather any information necessary to resolve the dispute. Within fourteen (14) days of the Regional PLG informing the Chair of its dispute, the AC Regional Council shall issue a decision with respect to the dispute. In reaching its decision, the AC Regional Council may hold a vote of Voting Members, with the Chair serving as the tiebreaker, or the AC Regional Council may devise its own dispute resolution process. However, 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 AC Regional Council is a final decision.
- 7. DISPUTES WITH ABATEMENT COUNCIL.** If the AC 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 AC Regional Council's right to seek recoupment of any deficiency in its Regional Share.
- 8. ALLOCATION OF LG SHARES.** Section E.3. of the Colorado MOU allows for Regional PLGs to agree to a different allocation formula for the LG Shares within a Region than the default allocation provided in the Colorado MOU, Exhibit G. The Regional PLGs hereby agree to modify the allocation formula for the LG Shares within the AC Region as set forth in the attached **Exhibit B**.
- 9. RECORDKEEPING.** The AC Region's fiscal agent shall be responsible for maintaining records consistent with the Regional Agreement.
- 10. AUTHORIZED REPRESENTATIVES.** Each Regional PLG shall designate a representative who is the point of contact for purposes of helping to coordinate the obligations as provided herein. Such designation and the person's contact information shall be provided to the Chair of the AC Regional Council and shall be updated promptly when there are changes.
- 11. 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, which are incorporated herein by reference.
- 12. TERM.** The Regional Agreement will commence on the date when the final Regional PLG executes the Agreement 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”).

- 13. 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.
- 14. CONFIDENTIALITY.** The Regional PLGs, for themselves, their agents, employees and representatives, agree that they will not divulge any confidential or proprietary information 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. The Regional PLGs understand that all materials exchanged under this Regional Agreement, including confidential information or proprietary information, 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 for disclosure of confidential materials, the Regional PLG shall advise the Regional PLGs of such request in order to give the Regional PLGs the opportunity to object within the time frame for delivery of the documents under the Act 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. 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. If the matter is not resolved, the Regional PLGs may tender all material to the court for judicial determination of the issue of disclosure.
- 15. 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 applicable District Court of the State of Colorado for the county of AC 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.
- 16. 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 their participation in the Regional Agreement, in whole or in part, upon written notice to the other Regional PLGs. Each

Regional PLG also has the right to terminate the Regional Agreement with cause upon written notice effective immediately, and without cause 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 its Opioid Funds and the other procedures outlined in this Regional Agreement. Rather, a Regional PLG's decision to terminate this Regional Agreement shall have the same effect as non-participation, as outlined in Section 3.2(d).

17. 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 confirmed electronic transmission 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, but specifically excluding facsimile transmissions and texts when transmitted, if transmitted on a business day and during normal business hours of the recipient, and otherwise on the next business day following transmission; certified mail, return receipt requested, postage prepaid, three business days after being deposited in the United States mail; or overnight carrier service or personal delivery, when received. For Key Notices, the Regional PLGs will follow up any electronic transmission with a hard copy of the communication by the means described above. 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 include a reference to the Regional Agreement, and Key Notices shall be given to the Regional PLGs at the addresses shown on the attached Exhibit A for the municipalities, and the following address for Arapahoe County:

Arapahoe County Attorney
Administration Building
5334 S. Prince St.
Littleton, CO 80120-1136

18. GENERAL TERMS AND CONDITIONS

18.1. Independent Entities. The Regional PLGs enter into this Regional Agreement as separate, independent governmental entities and shall maintain such status throughout.

18.2. 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 this Regional Agreement.

18.3. Integration and Amendment. This Regional Agreement represents the entire agreement between the Regional PLGs and terminates any oral or collateral agreement or understandings. This Regional Agreement may be amended only by a writing signed by 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.

18.4. 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.

18.5. 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. All references in this Regional Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

18.6. 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.

18.7. 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. No elected or employed member of any Regional PLG shall be paid or receive, directly or indirectly, any share or part of this Regional Agreement or any benefit that may arise therefrom.

18.8. Inurement. 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.

18.9. 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.

18.10. Waiver of Rights and Remedies. This Regional Agreement or any of its provisions may not 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.

18.11. 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.

18.12. 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 shall be furnished to the Parties upon their request.

18.13. 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.

18.14. 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.

The City of _____

Name:

Title:

Date: _____

ATTEST:

Name, Title: _____

APPROVED AS TO FORM:

Name, Title: _____

Exhibit A

Participating Local Governments in the Arapahoe County Region

City of Aurora
15151 E. Alameda Parkway
Aurora, CO 80012

City of Littleton
2255 W. Berry Ave.
Littleton, CO 80120

Town of Bennett
207 Muegge Way
Bennett CO, 80102

City of Sheridan
4101 S Federal Boulevard
Sheridan, CO 80110

Town of Bow Mar
5395 Lakeshore Drive
Bow Mar, CO 80123

City of Centennial
13133 E. Arapahoe Rd.
Centennial, CO 80112

Cherry Hills Village
2450 East Quincy Avenue
Cherry Hills Village, CO 80113

Town of Columbine Valley
2 Middlefield
Columbine Valley, CO 80123

Town of Deer Trail
555 2nd Ave. / PO Box 217
Deer Trail, CO 80105

City of Englewood
1000 Englewood Pkwy
Englewood, CO 80110

Town of Foxfield
PO Box 461450
Foxfield, CO 80046

City of Glendale
950 S Birch Street
Glendale, CO 80246

Greenwood Village
6060 S Quebec Street
Greenwood Village, CO 80111

Exhibit B

Intracounty Allocations

Arapahoe	37.287%
Aurora	35.600%
Bennett	0.032%
Bow Mar	0.016%
Centennial	5.854%
Cherry Hills Village	0.668%
Columbine Valley	0.160%
Deer Trail	0.000%
Englewood	5.585%
Foxfield	0.037%
Glendale	1.229%
Greenwood Village	2.830%
Littleton	8.565%
Sheridan	2.135%