

BOULDER COUNTY REGION OPIOID COUNCIL
INTERGOVERNMENTAL AGREEMENT

THIS BOULDER COUNTY REGION OPIOID COUNCIL INTERGOVERNMENTAL AGREEMENT (the “Regional Agreement”) is made between the Board of County Commissioners on behalf of the County of Boulder, State of Colorado, a body corporate and politic, and the City of Boulder, Town of Erie, Town of Jamestown, City of Lafayette, City of Longmont, City of Louisville, Town of Lyons, Town of Nederland, City of Superior, and the Town of Ward, the Participating Local Governments in the Boulder County Region, referred to individually as a “Boulder PLG” and collectively the “Boulder PLGs.”

RECITALS

- A. The State of Colorado and Participating Local Governments executed the Colorado Opioids Settlement Memorandum of Understanding on _____ 2021 (the “Colorado MOU”), establishing the manner in which Opioid Funds shall be divided and distributed within the State of Colorado;
- B. 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;
- C. All Opioid Funds, regardless of allocation, shall be used for Approved Purposes;
- D. Participating Local Governments shall organize themselves into Regions, as further depicted in **Exhibit C** to the Colorado MOU;
- E. Regions may consist of Single-County Regions, Multi-County Regions, or Single County-Single City Regions (Denver and Broomfield);
- F. There shall be a 60% direct allocation of Opioid Funds to Regions through a Regional Share;
- G. Each Region shall be eligible to receive a Regional Share according to **Exhibit F** to the Colorado MOU;
- H. 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;
- I. The procedures established by the Colorado MOU include a requirement that each Region shall create its own Regional Council;
- J. All aspects of the creation, administration, and operation of the Regional Council shall proceed in accordance with the provisions of the Colorado MOU;
- K. Each such Regional Council shall designate a fiscal agent from a county or municipal government within that Region;

- L. 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;
- M. The Regional Agreement pertains to the procedures for the Boulder PLGs to establish a Regional Council, designate a fiscal agent, and request and administer Opioid Funds in a manner consistent with the Colorado MOU;
- N. The Boulder PLGs agree to organize the Boulder County Region Opioid Council (BCROC) to be eligible to receive the Regional Share according to Exhibit F of 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 Boulder PLGs incorporate these recitals 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 BOULDER PLGS.** The Boulder PLGs shall perform their respective obligations as set forth in the Regional Agreement, the Colorado MOU and the accompanying exhibits to the Colorado MOU and incorporated by reference.
- 3. **REGIONAL COUNCIL.**

3.1 Purpose: In accordance with the Colorado MOU, Boulder County and the municipalities within the county, agree to create the Boulder County Region Opioid Council (“BCROC”), consisting of representatives appointed by the Boulder PLGs, to oversee the procedures by which the Boulder County 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 Participation: The Boulder PLGs shall collaborate to appoint Regional Council members and to the extent practicable, Members shall be selected from different cities within the region. No single city should dominate the make-up of the Regional Council. Members shall be selected as follows:

- (i) 1 county commissioner
- (ii) 1 representative appointed from the county community services department
- (iii) 1 representative appointed from the public health department
- (iv) 1 representative from the county human services department
- (v) 1 representative appointed from law enforcement within region (sheriff, police, district attorney, etc.)
- (vi) 1 representative appointed from a county court system within the Boulder Region
- (vii) 3 representatives (total) appointed by cities within the county, at least one of which shall be from a city with a population of less than 10,000 residents.

3.3 Chair: BCROC Members shall appoint one member to serve as Chair of BCROC. The Chair's primary responsibilities shall be to schedule periodic meetings and votes as needed and to serve as the point of contact for disputes within the Region. The 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.

3.4 Terms: BCROC shall be established within ninety (90) days of the first Settlement being entered by a court of competent jurisdiction, including any bankruptcy court. Members shall be appointed in accordance with Section 3.2 and shall serve two-year terms. Following the expiration of that two-year term, the Boulder PLGs, working in concert, shall reappoint that Member, or appoint a new Member according to Section 3.2.

- (i) If a Member resigns or is otherwise removed from the BCROC prior to the expiration of their term, a replacement Member shall be appointed within sixty (60) days in accordance with Section 3.2 (a) to serve the remainder of the term. If the Boulder PLGs are unable to fill a Member vacancy within sixty (60) days, the existing Members of the BCROC at the time of the vacancy shall work collectively to appoint a replacement Member in accordance with Section 3.2 (a). At the end of his or her term, the individual serving as that replacement Member may be reappointed by the Boulder PLGs to serve a full term consistent with this Section.
- (ii) The purpose of the two-year term is to allow Boulder PLGs an increased opportunity to serve on the BCROC. However, BCROC members who have already served on the BCROC may be

appointed more than once and may serve consecutive terms if appointed to do so by the BCROC.

3.5 BCROC Operations Board: The BCROC will use an Operations Board to make funding and policy recommendations to BCROC. Members of the operations board are not members of BCROC unless separately appointed to BCROC as provided for in subsection (b) above. Members of the operations Board will be nominated by the Director of Boulder County Community Services for consideration by BCROC. The BCROC Operations Board may be comprised of all or some of the following, not to include potential recipients of Opioid Funds:

- (i) Representatives from behavioral health providers.
- (ii) Representatives from health care providers.
- (iii) Recovery/treatment experts.
- (iv) Other county or city representatives with relevant experience.
- (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.

3.6 Duties: The BCROC 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 BCROC may also be subject to an accounting from the Abatement Council.

3.7 Governance: A BCROC may establish its own procedures through adoption of bylaws if needed. Any governing documents must be consistent with the other provisions in this section and the Colorado MOU.

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

3.9 Collaboration: The BCROC shall facilitate collaboration between the State, Boulder PLGs, 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.

3.10 Transparency: The BCROC 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 BCROC, the BCROC shall provide such data in an effort to determine best methods for abating the opioid crisis in Colorado.

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

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

3.13 Decision Making: The BCROC shall seek to make all decisions by consensus. In the event consensus cannot be achieved, the BCROC shall make decisions by a majority vote of its Members.

4. REGIONAL FISCAL AGENT.

4.1 Purpose: According to the Colorado MOU, the BCROC 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 BCROC's fiscal agent for the benefit of the entire Region. The fiscal agent shall ensure that full records of all financial transactions are maintained in an orderly manner for review by funding entities and the BCROC and ensure that maximum earnings and security are given to all organization funds.

4.2 Designation: The BCROC shall nominate and designate a fiscal agent for the Region by majority vote. 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: A Regional fiscal agent must be appointed by the BCROC on an annual basis. A Regional fiscal agent may serve as long as the BCROC determines is appropriate, including the length 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 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 BCROC, the Regional fiscal agent shall make any such Opioid Funds available to the BCROC.

- b. **Reporting:** On an annual basis, as determined by the Abatement Council, the Regional fiscal agent shall provide to the Abatement Council the BCROC's expenditure data from their allocation of the Regional Share and certify to the Abatement Council that the BCROC'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 BCROC's meetings, decisions, plans, and expenditure data.

4.5 Authority: The fiscal agent serves at the direction of the BCROC and in service to the entire Region. The terms of the Colorado MOU control the authority of a BCROC, 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 Regional Council shall solicit recommendations and information from all Boulder PLGs, the BCROC Operations Board, 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, a Regional Council may seek assistance from the Abatement Council for purposes of developing a 2-year plan.

5.3 Amendment: At any point, a 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 WITH ABATEMENT COUNCIL.** If the BCROC disputes the amount of Opioid Funds it receives from its allocation of the Regional Share, the BCROC 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 BCROC's right to seek recoupment of any deficiency in its Regional Share.
- 7. **RECORDKEEPING.** The acting Regional fiscal agent shall be responsible for maintaining records consistent with the Regional Agreement.
- 8. **AUTHORIZED REPRESENTATIVES.** Each Boulder PLGs' representative designated below shall be the point of contact to coordinate the obligations in this Regional Agreement. The Boulder PLGs designate their authorized representatives under this Regional Agreement as follows:

- 8.1 Boulder County designates ____ as its authorized representative.
- 8.2 City of Boulder designates the ____ of the _____ as its authorized representative.
- 8.3 Town of Erie designates the ____ of the _____ as its authorized representative
- 8.4 Town of Jamestown designates the of the ____ as its authorized representative.
- 8.5 City of Lafayette designates the _____ of the _____ as its authorized representative.
- 8.6 City of Longmont designates the ____ of the _____ as its authorized representative.
- 8.7 City of Louisville designates the ____ of the _____ as its authorized representative.
- 8.8 Town of Lyons designates the ____ of the ____ as its authorized representative.
- 8.9 Town of Nederland designates the ____ of the ____ as its authorized representative.
- 8.10 Town of Superior designates the ____ of the ____ as its authorized representative.
- 8.11 Town of Ward designates the ____ of the _____ as its authorized representative.

9. **OBLIGATIONS OF THE BOULDER PLGS.** The Boulder PLGs shall perform their respective obligations as set forth in the Regional Agreement, the Colorado MOU and the accompanying exhibits to the Colorado MOU and incorporated by reference.

10. **TERM.** The Regional Agreement will commence on _____ 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 Boulder 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 Boulder PLGs hereunder.

12. **CONFIDENTIALITY.** The Boulder PLGs, for themselves, their agents, employees and representatives, agree that they will not divulge any confidential or proprietary information they receive from another Boulder 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 Boulder PLGs to comply with any laws or legal process concerning disclosures by public entities. The Boulder 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 Boulder PLG for disclosure of confidential materials, the Boulder PLG shall advise the Boulder PLGs of such request in order to give the Boulder 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 Boulder PLG objects to disclosure of any of its material, the Boulder 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 Boulder 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 Boulder PLGs may tender all material to the court for judicial determination of the issue of disclosure.

- 13. 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 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.
- 14. TERMINATION.** The Boulder PLGs enter into this Regional Agreement to serve the public interest. If this Regional Agreement ceases to further the public interest, a Boulder PLG, in its discretion, may terminate their participation in the Regional Agreement, in whole or in part, upon written notice to the other Boulder PLGs. Each Boulder 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 Boulder PLGs. A Boulder PLG’s decision to terminate this Regional Agreement, with or without cause, shall have no impact on the other Boulder PLGs present or future administration of its Opioid Funds and the other procedures outlined in this Regional Agreement. Rather, a Boulder PLG’s decision to terminate this Regional Agreement shall have the same effect as non-participation.
- 15. 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 Boulder 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 Boulder PLGs that are not Key Notices may be done via electronic transmission. The Boulder 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 Boulder PLGs at the following addresses:

16. GENERAL TERMS AND CONDITIONS.

- 16.1 Independent Entities.** The Boulder PLGs enter into this Regional Agreement as separate, independent governmental entities and shall maintain such status throughout.
- 16.2 Assignment.** This Regional Agreement shall not be assigned by any Boulder PLG without the prior written consent of all Boulder PLGs. Any assignment or subcontracting without such consent will be ineffective and void and will be cause for termination of this Regional Agreement.
- 16.3 Integration and Amendment.** This Regional Agreement represents the entire agreement between the Boulder PLGs and terminates any oral or collateral agreement or understandings. This Regional Agreement may be amended only by a writing signed by the Boulder 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.
- 16.4 No Construction Against Drafting Party.** The Boulder PLGs and their respective counsel have had the opportunity to review the Regional Agreement, and the Regional Agreement will not be construed against any Boulder PLG merely because any provisions of the Regional Agreement were prepared by a particular Boulder PLG.
- 16.5 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 within, attached to, or incorporated in this Regional Agreement unless otherwise noted.
- 16.6 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.
- 16.7 Conflict of Interest.** No Boulder PLG shall knowingly perform any act that would conflict in any manner with said Boulder PLG's obligations hereunder. Each Boulder 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 Boulder PLG shall be paid or receive, directly or indirectly, any share or part of this Regional Agreement or any benefit that may arise therefrom.

- 16.8 Inurement.** The rights and obligations of the Boulder PLGs to the Regional Agreement inure to the benefit of and shall be binding upon the Boulder PLGs and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Regional Agreement.
- 16.9 Survival.** Notwithstanding anything to the contrary, the Boulder 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 Boulder PLG if such Boulder PLG fails to perform or comply with such term or condition.
- 16.10 Waiver of Rights and Remedies.** This Regional Agreement or any of its provisions may not be waived except in writing by a Boulder PLG's authorized representative. The failure of a Boulder 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.
- 16.11 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 Boulder 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 Boulder PLGs receiving services or benefits pursuant to the Regional Agreement is an incidental beneficiary only.
- 16.12 Records Retention.** The Boulder 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 request.
- 16.13 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 Boulder 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 Boulder 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 Boulder 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.
- 16.14 Authority to Execute.** Each Boulder PLG represents that all procedures necessary to authorize such Boulder PLG's execution of this Regional Agreement have been

performed and that the person signing for such Boulder PLG has been authorized to execute the Regional Agreement.

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