

OPIOID SETTLEMENT
INTERGOVERNMENTAL AGREEMENT

THIS OPIOID SETTLEMENT INTERGOVERNMENTAL AGREEMENT (the “Agreement”) is made between Gunnison County, Colorado (“County”), and the Town of Pitkin (“Town”) (collectively, the “Parties”) pursuant to Section 29-1-203, C.R.S., as amended.

RECITALS

WHEREAS, the State of Colorado and participating local governments negotiated the Colorado Opioids Settlement Memorandum of Understanding (the “Colorado MOU”), establishing the manner in which funds from settlements between the State of Colorado and opioid manufacturers shall be divided and distributed within the State;

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

WHEREAS, pursuant to the Colorado MOU and the Colorado Opioid Settlement Tracker (“COST”), the Town has the option of opting in to receive a direct share of opioid settlement funds;

WHEREAS, the Town intends to not only opt-in to receive these direct payments but also direct them to the County, so as to best consolidate resources in the community to combat opioid abuse and addiction

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 Parties incorporate the recitals set forth above and agree as follows:

1. DEFINITIONS. The defined terms used in this Agreement shall have the same meanings as in the Colorado MOU. Capitalized terms used herein and not otherwise defined within the Agreement or in the Colorado MOU shall have the meanings ascribed to them in the body of the Agreement.

2. OBLIGATIONS OF THE PARTIES.

2.1. The Town shall:

2.1.1. By July 31, 2022 and any other subsequent deadline, indicate in writing to the Office of the Colorado Attorney General, or other relevant State agency, its desire to opt in and receive and accept its local share of opioid settlement funds.

2.1.2. Remit to the County all payments received pursuant to the COST and the Colorado MOU upon receipt of such funds.

2.2. The County shall:

2.2.1. Prepare, at least annually and on behalf of the Town, all reporting required by the State of Colorado regarding the expenditures of such funds, including any reporting required by the Colorado Opioid Abatement Council (“COAC”).

2.2.2. At the Town’s request, share with the Town any drafts of the reporting required by Section 2.2.1 of this Agreement and receive input from the Town regarding such drafts.

6. RECORDKEEPING. The County shall be responsible for maintaining records consistent with this Agreement.

7. OBLIGATIONS OF THE PARTIES. The Parties shall perform their respective obligations as set forth in the Agreement, the Colorado MOU and the accompanying exhibits to the Colorado MOU and incorporated herein by reference.

8. TERM. The Agreement will commence on the date it is executed by all parties, and shall expire on the date the last settlement payment to the Town, consistent with the terms of the Colorado MOU and any applicable settlement agreement (the “Term”), unless otherwise renewed by amendment to this Agreement.

9. INFORMATIONAL OBLIGATIONS. Each Party hereto shall meet its obligations as set forth in § 29-1-205, C.R.S., as amended, to include information about this 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 Agreement or any remedies available to the Parties hereunder.

10. CONFIDENTIALITY. The Parties, for themselves, their agents, employees and representatives, agree that they will not divulge any confidential or proprietary information they receive from another Party or otherwise have access to, except as may be required by law. Nothing in this Agreement shall in any way limit the ability of the Parties to comply with any laws or legal process concerning disclosures by public entities. The Parties understand that all materials exchanged under this 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 Party for disclosure of confidential materials, the Party shall advise the Parties of such request in order to give the Parties 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 Party objects to disclosure of any of its material, the Party 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 Party 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 Parties may tender all material to the court for judicial determination of the issue of disclosure.

- 11. GOVERNING LAW; VENUE.** This Agreement shall be governed by the laws of the State of Colorado. Venue for any legal action relating to the Agreement will be in the applicable District Court of the State of Colorado for the county of Gunnison.
- 12. TERMINATION.** The Parties enter into this Agreement to serve the public interest. If this Agreement ceases to further the public interest, a Party, in its discretion, may terminate their participation in the Agreement, in whole or in part, upon written notice to the Parties. Each Party also has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon thirty (30) days prior written notice to the Parties.
- 13. NOTICES.** “Key Notices” under this Agreement are notices regarding default, disputes, or termination of the 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 Parties 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 Parties that are not Key Notices may be done via electronic transmission. The Parties 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 Agreement, and Key Notices shall be given to the Parties at the following addresses:

Gunnison County: County Manager
Gunnison County
200 E. Virginia
Gunnison, Colorado 81230
Phone: 970-641-0248

With copy to: Board of County Commissioners
of the County of Gunnison, Colorado
200 E. Virginia
Gunnison, Colorado 81230

Town: Town of Pitkin
P.O. Box 9
Pitkin, CO 81241

14. GENERAL TERMS AND CONDITIONS

- 14.1. Independent Entities.** The Parties enter into this Agreement as separate, independent governmental entities and shall maintain such status throughout.
- 14.2. Assignment.** This Agreement shall not be assigned by any Party without the prior written consent of all Parties. Any assignment or subcontracting without such consent will be ineffective and void and will be cause for termination of this Agreement.
- 14.3. Integration and Amendment.** This Agreement represents the entire agreement between the Parties and terminates any oral or collateral agreement or understandings. This Agreement may be amended only by a writing signed by the Parties. If any provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and the remaining provision of this Agreement shall continue in full force and effect.
- 14.4. No Construction Against Drafting Party.** The Parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any Party merely because any provisions of the Agreement were prepared by a particular Party.
- 14.5. Captions and References.** The captions and headings in this Agreement are for convenience of reference only and shall not be used to interpret, define, or limit its provisions. All references in this 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.

- 14.6. Statutes, Regulations, and Other Authority.** Any reference in this 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 Agreement.
- 14.7. Conflict of Interest.** No Party shall knowingly perform any act that would conflict in any manner with said Party's obligations hereunder. Each Party 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 Party shall be paid or receive, directly or indirectly, any share or part of this Agreement or any benefit that may arise therefrom.
- 14.8. Inurement.** The rights and obligations of the Parties to the Agreement inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.
- 14.9. Survival.** Notwithstanding anything to the contrary, the Parties understand and agree that all terms and conditions of this Agreement and any exhibits that require continued performance or compliance beyond the termination or expiration of this Agreement shall survive such termination or expiration and shall be enforceable against a Party if such Party fails to perform or comply with such term or condition.
- 14.10. Waiver of Rights and Remedies.** This Agreement or any of its provisions may not be waived except in writing by a Party's authorized representative. The failure of a Party to enforce any right arising under this Agreement on one or more occasions will not operate as a waiver of that or any other right on that or any other occasion.
- 14.11. No Third-Party Beneficiaries.** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third

person or entity. Any person or entity other than the Parties receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

14.12. Records Retention. The Parties 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 the request by any Party.

14.13. Execution by Counterparts; Electronic Signatures and Records. This 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 Parties approve the use of electronic signatures for execution of this 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 Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the 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.

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

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THEREFORE, IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date shown below.

GUNNISON COUNTY, COLORADO
BY AND THROUGH ITS BOARD OF
COMMISSIONERS

TOWN OF PITKIN
BY AND THROUGH ITS
BOARD OF TRUSTEES

By: Jonathan Houck, Chair

By: Eddy Balch, Mayor

Date: _____

Date: _____

ATTEST:

ATTEST:

By: Melanie Bollig, Deputy Clerk

By: Sara Gibb, Clerk