

1 RESOLUTION NO. 1

2
3 Series 2023

4
5 **RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH**
6 **SUMMIT COUNTY, COLORADO, AND THE TOWNS OF BRECKENRIDGE,**
7 **FRISCO, AND SILVERTHORNE, COLORADO.**
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9 WHEREAS, the Town of Breckenridge, along with other participating Colorado local
10 governments and the state of Colorado (“Plaintiffs”) reached a settlement agreement with
11 various pharmaceutical manufacturers and distributors regarding the national opioid crisis;

12 WHEREAS, the Plaintiffs entered into the Colorado Opioids Settlement Memorandum of
13 Understanding signed by Colorado Attorney General Philip J. Weiser on August 26, 2021, which
14 governs the allocation, distribution, sharing, and expenditure of any settlement proceeds paid to
15 Plaintiffs in connection with the opioid litigation;

16 WHEREAS, in order for the Town to receive its share of the proceeds from the
17 settlement, the Town entered into a Subdivision Settlement Participation Form releasing claims
18 against the major distributors;

19 WHEREAS, the Town further entered into a Colorado Subdivision Escrow Agreement
20 which governs the release of the funds in accordance with the MOU; and,

21 WHEREAS, the Parties desire to enter into this Agreement to collaborate with Summit
22 County Public Health Department to promote the collective use of opioid settlement funds for
23 to reduce overuse, misuse and deaths related to synthetic opioids in Summit County.

24 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
25 BRECKENRIDGE, COLORADO:

26 Section 1. That the Town hereby approves the execution of the Intergovernmental
27 Agreement with Summit County, Colorado, And The Towns Of Breckenridge, Frisco, And
28 Silverthorne, Colorado.

29 Section 2. All resolutions, or parts thereof, inconsistent herewith are hereby repealed to
30 the extent only of such inconsistency. This repealer shall not be construed to revive any such
31 resolution, or part thereof, heretofore repealed.

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33 Section 3. This resolution is effective upon adoption.

34 Section 4. Minor changes to or amendments of the approved agreement may be made
35 by the Town Attorney if the proposed changes or amendments do not substantially affect the

1 essential elements of the approved agreement.

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RESOLUTION APPROVED AND ADOPTED this ____ day of ____, 2022.

TOWN OF BRECKENRIDGE

By: _____

Eric S. Mamula, Mayor

ATTEST:

Helen Cospolich, CMC,
Town Clerk

APPROVED IN FORM

Town Attorney Date

INTERGOVERNMENTAL AGREEMENT

Among

SUMMIT COUNTY, COLORADO, And

THE TOWNS OF BRECKENRIDGE, DILLON, FRISCO, AND SILVERTHORNE,
COLORADO

12/8/22

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is made and entered into this ____ of _____ 2022, among SUMMIT COUNTY, COLORADO (the "County"), a body corporate and politic and political subdivision of the State of Colorado (the "State"), and THE TOWNS OF BRECKENRIDGE, DILLON, FRISCO, AND SILVERTHORNE, COLORADO (the "Towns" or individually as a "Town"), home rule or statutory municipalities and political subdivisions of the State. The County and the Towns are referred to collectively herein as "the Parties" or individually as "a Party."

WHEREAS, pursuant to title 29, article 1, part 2, Colorado Revised Statutes, as amended (the "Intergovernmental Relations Statute"), and Article XIV, Section 18 of the State Constitution, governments may contract with one another to provide any function, service or facility lawfully authorized to each of the contracting units and any such contract may provide for the joint exercise of the function, service or facility; and

WHEREAS, more than 1,000,000 people have died in the United States since 1999 of drug overdose, more than 50% of these deaths involved opioids. The number of opioid overdose deaths increased by nearly 65% from 2019 to 2021; and

WHEREAS, overdose-related deaths topped 100,000 for the first time ever in 2021 with over 70% of these deaths involving fentanyl; and

WHEREAS, drug overdose deaths involving synthetic opioids in Colorado increased from 255 in 2019 to more than 900 in 2021, an increase of 253%; and

WHEREAS, the parties are eligible to receive opioid settlement funds as a result of negotiated resolutions of claims against Opioid Settling Defendants when that resolution has been jointly entered into by the State and the Participating Local Governments and may also include distributions from distributions from any liquidation or confirmed plans under Chapters 7 or 11, respectively, of the United States Bankruptcy Code; and

WHEREAS, the Parties desire to collaborate on efforts to reduce overuse, misuse and deaths related to synthetic opioids in Summit County by utilizing opioid settlement funds to promote public health and welfare efforts; and

WHEREAS, in 2021, five out of six overdose deaths in Summit County involved fentanyl; and

WHEREAS, the Parties desire to enter into this Agreement in accordance with the Act in order to promote the collective use of opioid settlement funds through Summit County Public Health Department programs, all as more fully set forth in this Agreement.

NOW, THEREFORE, the Parties agree as follows:

Section 1. Opioid Settlement Funds. The State of Colorado and the Parties each executed the Colorado Opioids Summary Memorandum of Understanding (the “Colorado MOU”), establishing the manner in which Opioid Settlement Funds shall be divided and distributed within the State of Colorado. All settlement funds, regardless of allocation, shall be used for Approved Purposes, as required in the Colorado MOU (Exhibit A). Each Town is eligible to receive a default percentage of funds attributed to its county area as detailed in the Colorado MOU Section (E)(3) and associated Exhibit E.

Section 2. Definitions. The term “Opioid Funds” shall mean damage awards obtained through a Settlement. The parties intend the distribution of such opioid funds for related public health and welfare programs to begin with funding received by each party in 2022.

Section 3. Opioid Funds Approved Purposes. The Parties intend that the Opioid Funds be used for Approved Purposes as defined in the Colorado MOU. Approved purposes are limited to the following uses:

- A. Treatment
 - 1. Treatment of opioid use disorder and its effects
 - 2. Intervention
 - 3. Criminal Justice-involved persons
 - 4. Women who are or may be pregnant
 - 5. People in treatment and recovery

- B. Prevention
 - 1. Prescribing practices
 - 2. Misuse of opioids
 - 3. Overdose deaths and other harms

- C. Additional Areas
 - 1. Services for children
 - 2. First Responders
 - 3. Community Leadership
 - 4. Staffing and Training
 - 5. Research
 - 6. Administrative costs for approved purposes

Section 4. Administration, Powers and Duties.

A. The County or its authorized designee shall receive and administer opioid funds transferred to them by the Towns. The County shall have all power, privileges and duties vested in or imposed on it by the Intergovernmental Relations Statute, this Agreement, and all other applicable laws which may be necessary to carry out the purposes of this Agreement.

B. The Parties shall perform their respective obligations as set forth in the Colorado MOU and the accompanying exhibits to the Colorado MOU which are incorporated herein by reference.

Section 5. Funds.

A. The Towns shall collect their respective Opioid Fund disbursements and will remit those funds, in whole, to the County within thirty (30) days of receipt.

B. The County shall maintain accurate records of the public health programs and costs during each calendar year and shall submit an annual report to the Opioid Funds Advisory Board.

Section 6. Opioid Funds Reporting/Reconciliation. The Parties shall cooperate in good faith to coordinate the Opioid Funds distribution to the County. The County shall provide all necessary reporting and reconciliation and take all actions reasonably necessary and appropriate to accomplish the purposes of this Agreement in the following manner.

A. Each Town shall provide the County with an initial listing, including dollar amounts, of the Opioid Funds the Town will be receiving. The list shall be updated each year by December 1st.

B. The County shall provide the Towns with an initial listing, including dollar amounts, of the Opioid Funds the County will be receiving. The list shall be updated each year by December 1st.

C. The County or its designee shall prepare and submit to the Opioid Funds Advisory Board an annual "Opioid Fund Program Report". The report shall include:

- a. Expenditure data
- b. Description strategies and costs of each program
- c. Certification that all expenditures were utilized for Approved Purposes
- d. Evaluation on the efficacy of programs

Section 8. Opioid Funds Advisory Board and Plan.

a. To promote the purposes of this Agreement and cooperation among the Parties, the Parties agree to form an Opioid Funds Advisory Board ("Advisory Board"). The Advisory Board shall consist of the Town and County Managers of each Party or their designees. The Advisory Board will: (i) approve the Public Health and Education Plan (the "Plan") described below; (ii) collaborate on the implementation of the Plan; and (iii) endeavor to coordinate the expenditure of Opioid Funds as provided herein. The implementation measures and associated programs shall be evaluated at least annually by the Advisory Board for their effectiveness and quality and reported to each Party's governing board.

b. The Plan adopted by the Advisory Board shall include a statement of goals that promote the Approved Purposes of the Opioid Funds and program implementation measures for those goals. The Plan may be amended from time to time and shall include provisions for the joint review of the prior year's expenditures and performance of the various programs during the prior

calendar years so as to inform future decision-making by the Parties. The Plan shall comply with the terms of the Colorado MOU and any settlement.

c. The Advisory Board shall make annual budgetary recommendations to the governing bodies of the Parties regarding the elements of the Plan including the following: (i) priorities and guidelines for the expenditure of the Opioid Funds; (ii) recommended programs to protect the public health and welfare promoted by this Agreement; (iii) an assessment of the programs funded in prior budget years; and (iv) a status report of the community's overall health including indicators of opioid usage, particularly the use of Fentanyl.

d. Meetings of the Advisory Board shall occur at least annually during each calendar year as established by the Advisory Board and shall be held at the Summit County Courthouse or such other convenient location that shall be identified in any notice of such meetings. Meetings shall be scheduled by the County Manager or the Manager's designee or at the request of two or more Parties. At least ten (10) days advanced written notice of a meeting shall be provided to the members of the Advisory Board. Agendas shall be prepared by the County Manager or the Manager's designee and copies distributed to members at least five (5) days prior to a regular meeting of the Advisory Board, although any Advisory Board member may submit items for the agenda. A quorum for the conduct of business at meetings of the Advisory Board means more than one-half the number of the Advisory Board members serving on the Advisory Board at the time of the meeting, whether participating in-person, telephonically, or by any other media by which each member can hear and be heard by the other members.

Section 9. Confidentiality.

For the purposes of ensuring proper distribution of the Settlement Fund revenues, the County and the Towns shall share and exchange confidential information obtained by the Parties or provided by the State subject to any limitations of the State and all statutes and local ordinances controlling the same while maintaining taxpayer confidentiality. All such information exchanged shall remain strictly confidential and shall be used only for its purposes designated herein.

Section 10. Amendment of Agreement; Additional Parties.

a. Except as otherwise provided in this Section, this Agreement may be modified or amended only by a duly executed written agreement with the express approval of the governing bodies of all Parties.

b. This Agreement may be amended to add one or more additional incorporated Town Parties upon passage of an ordinance or resolution of the additional Party's governing body approving of this Agreement.

Section 11. Term and Termination of Agreement.

a. Effective Date. The term of this Agreement shall begin when the County and one or other Party has executed this Agreement.

b. Termination. The term of this Agreement shall end when the County and at least one other Party are not willing to remain as Parties to this Agreement.

c. The participation of any Town as a Party to this Agreement shall terminate upon the provision by the Town to the County of a written notice of termination.

Section 12. Execution and Performance of Agreement in Accordance with Law. Each Party hereby represents to each other Party that it has adopted and executed this Agreement in accordance with applicable law. Each Party shall perform their respective obligations and expend any revenues derived hereunder in accordance with all applicable laws, rules and regulations, including but not limited to the Colorado MOU and this Agreement.

Section 13. Indemnification. All actions or omissions by any Party, including their respective representatives, employees, agents, volunteers or officials, shall be the sole responsibility of the respective Party. Accordingly, each Party shall fully indemnify, to the extent permissible under Colorado law, all other Parties for any damages, claims, costs, expenses, cause of action or liability of any manner, including without limit reasonable attorney's fees, arising out of or relating to the acts or omissions of such Party. The Parties understand and agree that liability for claims for injuries to persons or property arising out of the actions or omissions of any Party is controlled and limited by the provisions of the Colorado Governmental Immunity Act ("Immunity Act") title 24, article 10, Colorado Revised Statutes, as now or hereafter amended and that the Parties do not intend to waive by any provision of this Agreement the liability limitations or any other right, immunity or protection afforded by the Immunity Act or as may otherwise be afforded by law. The indemnity obligations of this Section shall survive the termination of this Agreement. Indemnity obligations of any designee of the County shall be governed by separate agreement.

Section 14. Dispute Resolution.

a. The Parties shall attempt to informally resolve all disputes and claims arising from or related to this Agreement, beginning first with discussions among affected Town(s) and County staff, and if not resolved, escalating to discussions between the applicable Town Manager(s) and County Manager, and ultimately to the Town Council(s) and Board of County Commissioners. Disputes with any designee of the County shall be governed by separate agreement.

b. Any and all disputes and claims arising from or related to this Agreement that are not resolved pursuant to Section (a), above shall thereafter be submitted to mediation. The affected Parties shall share equally the mediator's fees and costs associated with the mediation, and each Party shall pay its own fees, costs, and expenses related to the mediation. If the dispute is not resolved by mediation, any affected Party may commence a Court proceeding, with jurisdiction and venue residing exclusively in the Summit County District Court. Each Party waives its right to have such dispute decided by jury trial. The prevailing Party(s) shall be awarded its reasonable attorneys' fees, costs, and expenses, including any attorneys' fees, costs, and expenses incurred in collecting or executing upon any judgment, order, or award.

c. In the event that the County or a Town defaults in the performance of any of the duties and responsibilities under this Agreement, the non-defaulting Party shall be limited to the remedies of specific performance and mandamus. Prior to exercising such remedies, the non-defaulting Party shall give written notice to the other party of the nature of the claimed default and declare that such default must be cured within thirty (30) days from the date notice is given.

Section 15. Parties in Interest. Nothing expressed or implied herein is intended or shall be construed to confer upon any person other than the Parties any right, remedy or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive

benefit of the Parties.

Section 16. No Personal Liability. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of an elected or appointed official, officer, agent, servant or employee of any Party in his or her individual capacity.

Section 17. Notices. Except as otherwise provided in this Agreement, all notices or other communications by any Party shall be in writing, shall be given in a reasonable time and shall be deemed given when actually received. Notice to the Parties shall be given to the address listed on Exhibit B, attached and incorporated herein, and may also be delivered in electronic form by electronic mail to the addresses listed on Exhibit A.

Section 18. Severability. If any clause, provision, subsection, or Section of this Agreement shall be held to be invalid, illegal or unenforceable for any reason, the Agreement shall be reformed to the extent necessary to reflect the intent and purpose of the original agreement or the Parties may terminate this Agreement.

Section 19. Interpretation. Because this Agreement is the result of mutual negotiation and drafting, in the event this Agreement is deemed to be ambiguous or vague, the Parties agree that the rule of construction that "ambiguities shall be construed against the drafter" shall not apply. In the event of any conflict between the Act, the Intergovernmental Relations Statute or any other law with respect to the exercise of any such power, the provision that permits the broadest exercise of the power consistent with the limitations set forth in this Agreement shall control. The laws of the State shall govern the construction and enforcement of this Agreement.

Section 20. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement. Electronic or scanned signatures shall be valid and acceptable for all purposes.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties effective as of the date set forth above.

SUMMIT COUNTY, COLORADO

By: _____
Philip Gonshak, Interim County Manager

ATTEST:

By: _____
Kathleen Neel, Clerk and Recorder

TOWN OF BRECKENRIDGE

By: _____
Eric Mamula, Mayor

ATTEST:

By: _____
Town Clerk

TOWN OF DILLON

By: _____
Carolyn Skowyra, Mayor

ATTEST:

By: _____
Town Clerk

TOWN OF FRISCO

By: _____
Hunter Mortensen, Mayor

ATTEST:

By: _____
Town Clerk

TOWN OF SILVERTHORNE

By: _____
Ann-Marie Sandquist, Mayor

ATTEST:

By: _____
Town Clerk