



BOARD OF SUPERVISORS AGENDA ITEM REPORT
AWARDS / CONTRACTS / GRANTS

Award Contract Grant

Requested Board Meeting Date: December 6 2022

or Procurement Director Award: []

* = Mandatory, information must be provided

*Contractor/Vendor Name/Grantor (DBA):

City of South Tucson

*Project Title/Description:

Intergovernmental Agreement Between Pima County and the City of South Tucson for Disbursement of Opioid Settlement Funds.

*Purpose:

Pima County and the City of South Tucson are participating local governments in a single-county Region under the One Arizona Distribution of Opioid Settlement Funds Agreement. The parties agree that the Pima County Health Department (PCHD) is the lead agency responsible for implementing a program with said shared funds. The purpose of this IGA is to establish a process for the use of Local Government Share funds allocated to the parties by the One Arizona Distribution Agreement.

*Procurement Method:

This IGA is a non-Procurement contract and not subject to Procurement rules.

*Program Goals/Predicted Outcomes:

The City of South Tucson and the County have agreed to pool their allocations from the One Arizona Agreement. The Pima County Health Department will consult with the City of South Tucson regarding how the funds will be used.

*Public Benefit:

By pooling settlement funds, the participating cities/towns and County can achieve economies of scale and accomplish more with limited funds.

*Metrics Available to Measure Performance:

The PCHD will provide an annual report to the State of Arizona that includes:
- The amount of the State Share funds received;
- The allocation of any awards approved; and
- Funds disbursed on approved allocations.

In addition, PCHD will prepare a narrative report of the agreed upon program activities and results.

*Retroactive:

Yes. The IGA begins November 1, 2022. The IGA approved by the City of South Tucson on October 4, 2022 did not arrive to the County until November 1, 2022. December 6, 2022 is the earliest BOS meeting at which this item could be added to the Agenda.

TO: COB 11/22/22 (1)
Ver: 1
Pgs: 14

NOV22 22AM 11:25 PD

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: CTN Department Code: HD Contract Number (i.e., 15-123): 23-048
Commencement Date: 11/01/2022 Termination Date: 10/31/2027 Prior Contract Number (Synergen/CMS): N/A
Expense Amount \$ Revenue Amount: \$

*Funding Source(s) required: N/A - no cost cooperation agreement

Funding from General Fund? Yes No If Yes \$ %

Contract is fully or partially funded with Federal Funds? Yes No

If Yes, is the Contract to a vendor or subrecipient?

Were insurance or indemnity clauses modified? Yes No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? Yes No

If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: Department Code: Contract Number (i.e., 15-123):

Amendment No.: AMS Version No.:

Commencement Date: New Termination Date:

Prior Contract No. (Synergen/CMS):

Expense Revenue Increase Decrease

Amount This Amendment: \$

Is there revenue included? Yes No If Yes \$

*Funding Source(s) required:

Funding from General Fund? Yes No If Yes \$ %

Grant/Amendment Information (for grants acceptance and awards) Award Amendment

Document Type: Department Code: Grant Number (i.e., 15-123):

Commencement Date: Termination Date: Amendment Number:

Match Amount: \$ Revenue Amount: \$

*All Funding Source(s) required:

*Match funding from General Fund? Yes No If Yes \$ %

*Match funding from other sources? Yes No If Yes \$ %

*Funding Source:

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?

Contact: Sharon Grant

Department: Health

Telephone: 724-7842

Department Director Signature: Date: 11-18-22

Deputy County Administrator Signature: Date: 22 Nov 2022

County Administrator Signature: Date: 11-22-2022

**INTERGOVERNMENTAL AGREEMENT
BETWEEN PIMA COUNTY AND THE CITY OF SOUTH TUCSON
FOR DISBURSEMENT OF OPIOID SETTLEMENT FUNDS**

This Intergovernmental Agreement (“IGA”) is made and entered into by and between Pima County, a body politic and corporate of the State of Arizona (“County”), on behalf of the Pima County Health Department, and the City of South Tucson of South Tucson.

RECITALS

WHEREAS, the parties are Participating Local Governments in a single-county Region under the One Arizona Distribution of Opioid Settlement Funds Agreement (“One Arizona Distribution Agreement”), attached as Appendix 1; and

WHEREAS, pursuant to the One Arizona Distribution Agreement, the Pima County Health Department is the lead agency responsible for distributing the Local Government (LG) Share funds within the Region consisting of County and its constituent Participating Cities and Towns (“Pima County Region”); and

WHEREAS, the Participating Cities and Towns desire to enter into an agreement with the County with respect to the use of Settlement funds pursuant to the One Arizona Distribution Agreement; and

WHEREAS, the parties may enter into agreements with one another for joint and cooperative action pursuant to A.R.S. § 11-952, et seq.;

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1.0 Purpose. The purpose of this IGA is to establish a process for the use of Local Government (LG) Share funds allocated to the parties pursuant to the One Arizona Distribution Agreement, the relevant portions of which are hereby incorporated into this IGA by reference.

2.0 Definitions. All capitalized terms not otherwise defined in this IGA have the meanings assigned to them in the One Arizona Distribution Agreement.

3.0 Term/Effective Date.

3.1 The term of this IGA commences on November 1, 2022 and will terminate on October 31, 2027 (“Initial Term”). “Term,” when used in this IGA, means the Initial Term plus any exercised extension options under Section 2.3. If the commencement date of the Initial Term is before the signature date of the last party to execute this IGA, the parties will, for all purposes, deem the IGA to have been in effect as of the commencement date.

3.2 Any party may cancel its participation in this IGA after thirty days written notice to the other parties.

3.3 This IGA may be renewed for three additional five-year periods unless terminated pursuant to section 3.2 above.

3.0 Use of Funds.

3.1 The Participating Cities and Towns and the County agree to pool their default allocations of the Local Government (LG) Share funds under the One Arizona Agreement (the "Pooled Funds").

3.2 The Pima County Health Department will consult with the Participating Cities and Towns regarding distribution of the Pooled Funds, and will authorize the use of the Pooled Funds for Approved Purposes, or for grants to organizations for Approved Purposes, as defined by the One Arizona Agreement.

4.0 Records. County will maintain, for a period of at least five years, records of its expenditures from the Pooled Funds and documents underlying those expenditures, so that it can be verified that funds are being or have been utilized in a manner consistent with the Approved Purposes definition. This requirement supersedes any shorter period of time specified in any applicable document retention or destruction policy.

5.0 Reports. County acknowledges that pursuant to section F.5 of the One Arizona Distribution Agreement, County is responsible for providing Pima County Region's annual report to the State annually by July 31.

6.0 Legal Jurisdiction. Nothing in this IGA shall be construed as either limiting or extending the legal jurisdiction of the parties. This IGA and all obligations upon the parties arising therefrom shall be subject to any limitations of budget law or other applicable local law or regulations.

7.0 Assignment of Rights. No party shall assign its rights under this IGA to any other party without written permission from the other parties.

8.0 Construction of Agreement.

8.1 Construction and interpretation. All provisions of this IGA shall be construed to be consistent with the intention of the parties as expressed in the Recitals hereof.

8.2 Captions and headings. The headings used in this IGA are for convenience only and are not intended to affect the meaning of any provision of this IGA.

9.0 Conflict of Interest. This IGA is subject to the provisions of A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.

10.0 Severability. In the event that any provision of this IGA or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application, which can be given effect without the invalid or void provision or application, and to this extent the provisions of the IGA are severable. In the event that any provision of this IGA is declared invalid or void, the parties agree to meet

promptly upon request of a party in an attempt to reach an agreement on a substitute provision.

- 11.0 No Joint Venture.** It is not intended by this IGA to, and nothing contained in this IGA shall be construed to, create any partnership, joint venture, or employment relationship between the parties or create any employer-employee relationship between the parties and each other's employees. No party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of another party, including (without limitation) the obligation of another party to withhold Social Security and income taxes for itself or any of its employees.
- 12.0 No Third Party Beneficiaries.** Nothing in the provisions of this IGA is intended to create duties or obligations to or rights in third parties not parties to this IGA or to affect the legal liability of either party to the IGA by imposing any standard of care different from the standard of care imposed by law.
- 13.0 Compliance with Laws.** The parties shall comply with all applicable federal, state, and local laws, rules, regulations, standards, and executive orders, without limitation to those designated within this IGA.
- 13.1 Anti-Discrimination.** The provisions of A.R.S. § 41-1463 and Executive Order Number 2009-09 issued by the Governor of the State of Arizona, and Tucson City Code §28-138 are incorporated by this reference as a part of this IGA.
- 13.2 Americans with Disabilities Act.** This IGA is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
- 14.0 Non-Waiver.** The failure of any party to insist upon the complete performance of any of the terms and provisions of this IGA to be performed on the part of another party, or to take any action permitted as a result thereof, shall not constitute a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future.
- 15.0 Force Majeure.** A party shall not be in default under this IGA if it does not fulfill any of its obligations under this IGA because it is prevented or delayed in doing so by reason of Force Majeure. The term "Force Majeure" shall mean, for the purpose of this IGA, any cause beyond the control of the party affected, including but not limited to, failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, or action or non action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the parties themselves), and declared local, state, or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Any party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

16.0 Notification. All notices or demands upon another party to this IGA shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

County:

Theresa Cullen, MD, MS, Director
Pima County Health Department
3950 S. Country Club Rd., #100
Tucson, AZ 85714

City of South Tucson:

City of South Tucson
1601 South 6th Avenue
City Clerk's Office
Tucson, AZ 85713

With copies to:

Kimberly VanPelt, Deputy Director
Pima County Health Department
3950 S. Country Club Rd., #100
Tucson, AZ 85714

With copies to:

City of South Tucson
1601 South 6th Avenue
City of South Tucson Finance Director
Lourdes Aguire
Tucson, AZ 85713

17.0 Remedies. Any party may pursue any remedies provided by law for the breach of this IGA. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this IGA.

18.0 Indemnification. Each party (as "indemnitor") agrees to indemnify, defend and hold harmless, the other parties (as "indemnitees") from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of the bodily injury of any person (including death) or property damage, but only to the extent that such claims, which result in vicarious/derivative liability to the indemnitee, and are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.

19.0 Counterparts. This IGA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

20.0 Legal Arizona Workers Act.

20.1 The parties hereby warrant that they will at all times during the term of this IGA comply with all federal immigration laws applicable to their employment of their employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws").

20.2 Any breach of a party's warranty of compliance with the State and Federal Immigration Laws shall be deemed to be a material breach of this IGA subjecting the breaching party to penalties up to and including suspension or termination of this IGA.

21.0 Entire Agreement. This instrument constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and

understandings, oral or written, are hereby superseded and merged herein. Any appendices to this IGA are incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto each sign this IGA between [list Participating Cities and Towns], and Pima County, on behalf of the Pima County Health Department, on a separate signature page. Each signor warrants that they have been duly authorized to commit the jurisdiction to participate in the IGA by formal approval of the jurisdiction's governing body.

PIMA COUNTY:

CITY OF SOUTH TUCSON:

Chair, Board of Supervisors Date Bob Jones 11/18/22
Mayor Date

ATTEST

ATTEST

Clerk of the Board Date [Signature] 10/04/22
City Clerk Date

APPROVED AS TO CONTENT

APPROVED AS TO CONTENT

[Signature] 11-18-22 [Signature] 10/31/2022
Department Director or designee Date Department Director or designee Date

ATTORNEY CERTIFICATION

The foregoing IGA has been reviewed pursuant to A.R.S. § 11-952 by the undersigned who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the IGA.

Deputy County Attorney 10/2/22 [Signature] 10/04/22
Date City Attorney Date

**ONE ARIZONA DISTRIBUTION OF OPIOID SETTLEMENT FUNDS
AGREEMENT**

General Principles

- The people of the State of Arizona and Arizona communities have been harmed by the opioid epidemic, which was caused by entities within the Pharmaceutical Supply Chain.
- The State of Arizona, *ex rel.* Mark Brnovich, Attorney General (the “State”), and certain Participating Local Governments are separately engaged in litigation seeking to hold the Pharmaceutical Supply Chain Participants accountable for the damage they caused.
- The State and the Participating Local Governments share a common desire to abate and alleviate the impacts of the Pharmaceutical Supply Chain Participants’ misconduct throughout the State of Arizona.
- The State and the Participating Local Governments previously entered into the One Arizona Opioid Settlement Memorandum of Understanding for the purpose of jointly approaching Settlement negotiations with the Pharmaceutical Supply Chain Participants.
- The State and the Participating Local Governments now enter into this One Arizona Distribution of Opioid Settlement Funds Agreement (“Agreement”) to establish binding terms for the distribution and spending of funds from Settlements with the Pharmaceutical Supply Chain Participants.

A. Definitions

As used in this Agreement:

1. “Approved Purpose(s)” shall mean those uses identified in the agreed Opioid Abatement Strategies attached as Exhibit A.
2. “Contingency Fee Fund” shall mean a sub fund established in a Settlement for the purpose of paying contingency fees, such as the Attorney Fee Fund described in Section I.V of the Settlement with the Settling Distributors and the sub fund of the Attorney Fee Fund described in Section II.D of the Settlement with J&J.¹
3. “J&J” shall mean Johnson & Johnson, Janssen Pharmaceuticals, Inc., OrthoMcNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.
4. “Litigation” means existing or potential legal claims against Pharmaceutical Supply Chain Participants seeking to hold them accountable for the damage caused by their misfeasance, nonfeasance, and malfeasance relating to the unlawful manufacture, marketing, promotion, distribution, or dispensing of prescription opioids.

¹ Text of both settlements available at <https://nationalopioidsettlement.com>.

5. "Opioid Funds" shall mean monetary amounts obtained through a Settlement as defined in this Agreement.
6. "Participating Local Government(s)" shall mean all counties, cities, and towns within the geographic boundaries of the State that have chosen to sign on to this Agreement and each applicable Settlement. The Participating Local Governments may be referred to separately in this Agreement as "Participating Counties" and "Participating Cities and Towns" (or "Participating Cities or Towns," as appropriate).
7. "Parties" shall mean the State and the Participating Local Governments.
8. "Pharmaceutical Supply Chain" shall mean the process and channels through which licit opioids are manufactured, marketed, promoted, distributed, or dispensed.
9. "Pharmaceutical Supply Chain Participant" shall mean any entity that engages in or has engaged in the manufacture, marketing, promotion, distribution, or dispensing of licit opioids.
10. "Settlement" shall mean the negotiated resolution of legal or equitable claims against a Pharmaceutical Supply Chain Participant when that resolution has been jointly entered into by the State and the Participating Local Government and approved as final by a court of competent jurisdiction.
11. "Settling Distributors" shall mean McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation.
12. "Trustee" shall mean either (1) an independent trustee who shall be responsible for the ministerial task of releasing the Opioid Funds that are in trust as authorized herein and accounting for all payments into or out of the trust, or (2) a settlement fund administrator, in the event that the Settlement includes a fund administrator. In either case, the Trustee will distribute funds in accordance with this Agreement.

B. Intrastate Regions

1. The State of Arizona will be divided into regions, each of which will be referred to as a "Region" and will consist of: (1) a single Participating County and all of its Participating Cities and Towns; or (2) all of the Participating Cities and Towns within a non-Participating County. If there is only one Participating City or Town within a non-Participating County, that single Participating City or Town will still constitute a Region. Two or more Regions may at their discretion form a group ("Multicounty Region"). Regions that do not choose to form a Multicounty Region will be their own Region. Participating Cities and Towns within a non-Participating County may not form a Region with Participating Cities and Towns in another county.
2. The LG Share funds described in Section C(1) will be distributed to each Region according to the percentages set forth in Exhibit B. The Regional allocation model uses three equally weighted factors: (1) the amount of opioids shipped to the Region; (2) the number of opioid deaths that occurred in that Region; and (3) the number of people who suffer opioid use disorder in that Region. In the event any county does not participate in this Agreement, that

county's percentage share shall be reallocated proportionally amongst the Participating Counties by applying this same methodology to only the Participating Counties.

3. In single-county Regions, that county's health department will serve as the lead agency responsible for distributing the LG Share funds. That health department, acting as the lead agency, shall consult with the cities and towns in the county regarding distribution of the LG Share funds.
4. For each Multicounty Region, an advisory council shall be formed from the Participating Local Governments in the Multicounty Region to distribute the collective LG Share funds. Each advisory council shall include at least three Participating Local Government representatives, not all of whom may reside in the same county. Each advisory council shall consult with the Participating Local Governments in the Multicounty Region regarding distribution of the collective LG Share funds.
5. For each Region consisting of the Participating Cities and Towns within a non-Participating County, an advisory council shall be formed from the Participating Cities and Towns in the Region to distribute the LG Share funds. Each advisory council shall include at least three representatives from the Participating Cities and Towns in the Region, or a representative from each Participating City and Town if the Region consists of fewer than three Participating Cities and Towns. In no event may more than one individual represent the same city or town. To the extent any Participating Cities or Towns in the Region are not represented on the advisory council, the advisory council shall consult with the non-represented Participating Cities and Towns regarding distribution of the collective LG Share funds.

C. Allocation of Settlement Proceeds

1. All Opioid Funds shall be divided with 44% to the State ("State Share") and 56% to the Participating Local Governments ("LG Share").²
2. All Opioid Funds, except those allocated to payment of counsel and litigation expenses as set forth in Section E, shall be utilized in a manner consistent with the Approved Purposes definition. Compliance with this requirement shall be verified through reporting, as set out in Section F.
3. Each LG Share will be distributed to each Region or Multicounty Region as set forth in Section B(2). Participating Counties and their constituent Participating Cities and Towns may distribute the funds allocated to the Region or Multicounty Region amongst themselves in any manner they choose. If a county and its cities and towns cannot agree on how to allocate the funds, the default allocation in Exhibit C will apply. The default allocation formula uses historical federal data showing how each county and the cities and towns within it have made opioids-related expenditures in the past. If a county or any cities or towns within a Region or Multicounty Region do not sign on to this Agreement and each

² This Agreement assumes that any opioid settlement for Native American Tribes and Third-Party Payors, including municipal insurance pools, will be dealt with separately.

Settlement, and if the Participating Local Governments in the Region or Multicounty Region cannot agree on how to allocate the funds from that Settlement amongst themselves, the funds shall be reallocated proportionally by applying this same methodology to only the Participating Local Governments in the Region or Multicounty Region.

4. If the LG Share for a given Participating Local Government is less than \$500, then that amount will instead be distributed to the Region or Multicounty Region in which the Participating Local Government is located to allow practical application of the abatement remedy. If the county did not sign on to the Settlement as defined herein, the funds will be reallocated to the State Share.
5. The State Share shall be paid by check or wire transfer directly to the State through the Trustee, who shall hold the funds in trust, or as otherwise required by a Settlement for the benefit of the State, to be timely distributed as set forth in C(1) herein. The LG Share shall be paid by check or wire transfer directly to the Regions or Multicounty Regions through the Trustee, who shall hold the funds in trust, or as otherwise required by a Settlement for the benefit of the Participating Local Governments, to be timely distributed as set forth in B(2), C(1), C(3), and C(4) herein.
6. The State Share shall be used only for (1) Approved Purposes within the State or (2) grants to organizations for Approved Purposes within the State.
7. The LG Share shall be used only for (1) Approved Purposes by Participating Local Governments within a Region or Multicounty Region or (2) grants to organizations for Approved Purposes within a Region or Multicounty Region.
8. The State will endeavor to prioritize up to 30% of the State Share for opioid education and advertising related to awareness, addiction, or treatment; Department of Corrections and related prison and jail opioid uses; and opioid interdiction and abatement on Arizona's southern border, including grants to assist with the building, remodeling and/or operation of centers for treatment, drug testing, medication-assisted treatment services, probation, job training, and/or counseling services, among other programs.
9. If the federal Center for Medicare and Medicaid Services ("CMS") disallows any federal funding for the State's Medicaid programs pursuant to 42 U.S.C. § 1396b as a consequence of sums received pursuant to resolution of any Litigation with Pharmaceutical Supply Chain Participants, or otherwise seeks to recover sums it regards as the federal share of any Settlement, the amount recovered by CMS shall first be paid from the total amount of Opioid Funds available to the Parties under that Settlement and the distribution to the State and Participating Local Governments shall thereafter be made from the remaining funds.
10. The Parties acknowledge and agree that any Settlement may require Participating Local Governments to release all their claims against the settling Pharmaceutical Supply Chain Participants to receive Opioid Funds. The Parties further acknowledge and agree based on the terms of any such national Settlement, a Participating Local Government will not receive funds through this Agreement until it has complied with all requirements set forth

in that national Settlement to release its claims. This Agreement is not a promise by any Party that any Settlement (including any Settlement resolved through bankruptcy) will be finalized or executed.

D. Participation of Cities and Towns

1. By signing on to the Agreement and any Settlement, a Participating County will receive 60% of its available LG Share for that Settlement when distribution under that Settlement occurs. Any such Participating County will receive up to an additional 40% of its available LG Share for that Settlement by securing the participation of its constituent cities and towns as signatories to this Agreement and that Settlement when distribution under that Settlement occurs. The sliding scale attached as Exhibit D will determine the share of funds available to the Participating County.³
2. If a Participating County does not achieve 100% participation of its cities and towns within the period of time required in a Settlement document for subdivision participation, the remaining portions of the LG Share that were otherwise available to the Participating County will be reallocated to (i) the State Share and (ii) the LG Share for the Participating Counties which have achieved 100% participation of their cities and towns in accordance with the percentages described in Sections B(2), C(1), and C(3), and set forth in Exhibits B and C.

E. Payment of Counsel and Litigation Expenses

1. The Parties anticipate that any Settlement will provide for the payment of all or a portion of the fees and litigation expenses of certain state and local governments.
2. If the court in *In Re: National Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio) or if a Settlement establishes a common benefit fund or similar device to compensate attorneys for services rendered and expenses incurred that have benefited plaintiffs generally in the litigation (the “Common Benefit Fund”), and requires certain governmental plaintiffs to pay a share of their recoveries from defendants into the Common Benefit Fund as a “tax,” then the Participating Local Governments shall first seek to have the settling defendants pay the “tax.” If the settling defendants do not agree to pay the “tax,” then the “tax” shall be paid from the LG Share prior to allocation and distribution of funds to the Participating Local Governments.⁴

³ Population allocation of cities and towns within counties will be derived from the population data included in any national Settlement. If such data is not included in the respective national Settlement, then population allocation will be determined from those cities and towns listed in Exhibit C. The data in Exhibit C is derived from the U.S. Census Estimate (July 1, 2019).

⁴ This paragraph shall not apply to the Settlement with the Settling Distributors or the Settlement with J&J.

3. Any governmental entity that seeks attorneys' fees and expenses from the Litigation shall seek those fees and expenses first from the national Settlement.⁵ In addition, the Parties agree that the Participating Local Governments will create a supplemental attorney's fees and costs fund (the "Backstop Fund").
4. In the event that any Settlement imposes additional limitations or obligations on the payment of counsel and litigation expenses, those limitations and obligations take precedence over this Agreement.
5. The Backstop Fund is to be used to compensate counsel for Participating Local Governments that filed opioid lawsuits by September 1, 2020 ("Litigating Participating Local Governments"). Payments out of the Backstop Fund shall be determined by a committee consisting of one representative from each of the Litigating Participating Local Governments (the "Opioid Fee and Expense Committee").
6. The amount of the Backstop Fund shall be determined as follows: From any national Settlement, the funds in the Backstop Fund shall equal 14.25% of the LG Share for that Settlement. No portion of the State Share shall be used for the Backstop Fund or in any other way to fund any Participating Local Government's attorney's fees and costs. If required to do so by any Settlement, Participating Local Governments must report to the national Settlement Fund Administrator regarding contributions to, or payments from, the Backstop Fund.
7. The maximum percentage of any contingency fee agreement permitted for compensation shall be 25% of the portion of the LG Share attributable to the Litigating Participating Local Government that is a party to the contingency fee agreement, plus expenses attributable to that Litigating Participating Local Government, unless a Settlement or other court order imposes a lower limitation on contingency fees. Under no circumstances may counsel collect more for its work on behalf of a Litigating Participating Local Government than it would under its contingency agreement with that Litigating Participating Local Government.
8. Payments to counsel for Participating Local Governments shall be made from the Backstop Fund in the same percentages and over the same period of time as the national Contingency Fee Fund for each settlement. The Attorneys' Fees and Costs schedule for the Settling Distributors is listed in Exhibit R §(II)(S)(1) of the Settlement with the Settling

⁵ The State retained outside counsel in the Purdue litigation and if it is unable to secure payment of attorneys' fees and expenses from the bankruptcy proceedings in an amount sufficient to compensate outside counsel consistent with the terms of the State's contract with that outside counsel, any remaining attorneys' fees and expenses related to the representation of the State will first be paid directly from the total amount of Opioid Funds available to the Parties under that Settlement, up to the agreed amount in the outside counsel contract, and the distribution to the State and Participating Local Governments shall thereafter be made from the remaining funds.

Distributors.⁶ The Attorneys' Fees and Costs schedule for J&J is listed in Exhibit R §(II)(A)(1) of the Settlement with J&J.⁷ For future Settlements with other defendants in the Pharmaceutical Supply Chain, any necessary payments to counsel for Participating Local Governments shall be made from the Backstop Fund in the same percentages and over the same periods of time as the fee funds for those Settlements, if applicable, subject to the limitations set forth in this Agreement set form in paragraph E(7) above.

9. Any funds remaining in the Backstop Fund in excess of the amounts needed to cover private counsel's representation agreements shall revert to the Participating Local Governments according to the percentages set forth in Exhibits B and C, to be used for Approved Purposes as set forth herein and in Exhibit A.

F. Compliance Reporting and Accountability

1. If the State and Participating Local Governments use a Trustee for purposes of distributing funds pursuant to any Settlement, the Trustee shall be requested to provide timely an up-to-date accounting of payments into or out of any trust established to hold such funds and/or its subaccounts upon written request of the State or a Participating Local Government.
2. The State, Regions, and Participating Local Governments may object to an allocation or expenditure of Opioid Funds solely on the basis that the allocation or expenditure at issue (1) is inconsistent with provision C(1) hereof with respect to the amount of the State Share or LG Share; (2) is inconsistent with an agreed-upon allocation, or the default allocations in Exhibits B and C, as contemplated by Section C(3); or (3) violates the limitations set forth in F(3) with respect to compensation of the Trustee. The objector shall have the right to bring that objection within two years of the date of its discovery to a superior court in Maricopa County, Arizona.
3. In the event that the State and Participating Local Governments use a Trustee, compensation for Trustee's expenses of fund administration may be paid out of the Opioid Funds for reasonable expenses; provided that, reasonable expenses do not exceed the administrative expenses allowed under the terms of the relevant Settlement.
4. The Parties shall maintain, for a period of at least five years, records of abatement expenditures and documents underlying those expenditures, so that it can be verified that funds are being or have been utilized in a manner consistent with the Approved Purposes definition. This requirement supersedes any shorter period of time specified in any applicable document retention or destruction policy.
5. At least annually, by July 31 of each year, each Region or Multicounty Region shall provide to the State a report detailing for the preceding fiscal year (1) the amount of the LG Share received by each Participating Local Government within the Region or Multicounty Region, (2) the allocation of any awards approved (listing the recipient, the amount awarded, the program to be funded, and disbursement terms), and (3) the amounts

⁶ Text of settlement available at <https://nationalopioidsettlement.com>.

⁷ Text of settlement available at <https://nationalopioidsettlement.com>.

disbursed on approved allocations. In order to facilitate this reporting, each Participating Local Government within a Region or Multicounty Region shall provide information necessary to meet these reporting obligations to a delegate(s) selected by the Region or Multicounty Region to provide its annual report to the State. Any Participating Local Government shall also comply with any reporting requirements imposed by any Settlement.

6. No later than September 30 of each year, the State shall publish on its website a report detailing for the preceding fiscal year (1) the amount of the State Share received, (2) the allocation of any awards approved (listing the recipient, the amount awarded, the program to be funded, and disbursement terms), and (3) the amounts disbursed on approved allocations. In addition, the State shall publish on its website the reports described in F(5) above. The State shall also comply with any reporting requirements imposed by any Settlement.
7. If it appears to the State, a Region, or a Multicounty Region that the State or another Region or Multicounty Region is using or has used Settlement funds for non-Approved Purposes, the State, Region, or Multicounty Region may on written request seek and obtain the documentation underlying the report(s) described in F(5) or F(6), as applicable, including documentation described in F(4). The State, Region, or Multicounty Region receiving such request shall have 14 days to provide the requested information. The requesting party and the State, Region, or Multicounty Region receiving such request may extend the time period for compliance with the request only upon mutual agreement.
8. Following a request made pursuant to F(7) and when it appears that LG Share funds are being or have been spent on non-Approved Purposes, the State may seek and obtain in an action in a court of competent jurisdiction in Maricopa County, Arizona an injunction prohibiting the Region or Multicounty Region from spending LG Share funds on non-Approved Purposes and requiring the Region or Multicounty Region to return the monies that it spent on non-Approved Purposes after notice as is required by the rules of civil procedure. So long as the action is pending, distribution of LG Share funds to the Region or Multicounty Region temporarily will be suspended. Once the action is resolved, the suspended payments will resume, less any amounts that were ordered returned but have not been returned by the time the action is resolved.
9. Following a request made pursuant to F(7) and when it appears to at least eight Participating Counties that have signed on to this Agreement and a subsequent Settlement that the State Share funds are being or have been spent on non-Approved Purposes, the Participating Counties may seek and obtain in an action in a superior court of Maricopa County, Arizona an injunction prohibiting the State from spending State Share funds on non-Approved Purposes and requiring the State to return the monies it spent on non-Approved Purposes after notice as is required by the rules of civil procedure. So long as the action is pending, distribution of State Share funds to the State temporarily will be suspended. Once the action is resolved, the suspended payments will resume, less any monies that were ordered returned but have not been returned by the time the action is resolved.

10. In an action brought pursuant to F(8) or F(9), attorney's fees and costs shall not be recoverable.

G. Settlement Negotiations


1. The State and the Participating Local Governments agree to inform each other in advance of any negotiations relating to an Arizona-only settlement with a Pharmaceutical Supply Chain Participant that includes both the State and the Participating Local Governments and shall provide each other the opportunity to participate in all such negotiations.
2. The State and the Participating Local Governments further agree to keep each other reasonably informed of all other global settlement negotiations with Pharmaceutical Supply Chain Participants. Neither this provision, nor any other, shall be construed to state or imply that either the State or the Participating Local Governments (collectively, the "Arizona Parties") are unauthorized to engage in settlement negotiations with Pharmaceutical Supply Chain Participants without prior consent or contemporaneous participation of the other, or that either party is entitled to participate as an active or direct participant in settlement negotiations with the other. Rather, while the State's and the Participating Local Government's efforts to achieve worthwhile settlements are to be collaborative, incremental stages need not be so.
3. The State or any Participating Local Government may withdraw from coordinated Settlement discussions detailed in this Section upon 10 business days' written notice to the other Arizona Parties and counsel for any affected Pharmaceutical Supply Chain Participant. The withdrawal of any Arizona Party releases the remaining Arizona Parties from the restrictions and obligations in this Section.
4. The obligations in this Section shall not affect any Party's right to proceed with trial or, within 30 days of the date upon which a trial involving that Party's claims against a specific Pharmaceutical Supply Chain Participant is scheduled to begin, reach a case-specific resolution with that particular Pharmaceutical Supply Chain Participant.

H. Amendments

1. The Parties agree to make such amendments as necessary to implement the intent of this Agreement.

One Arizona Distribution of Opioid Settlement Funds Agreement ACCEPTED by the undersigned and executed this 1 day of MARCH, 2022.

ARIZONA ATTORNEY GENERAL


Mark Brnovich