

KING COUNTY REGIONAL AGREEMENT OPIOID ABATEMENT COUNCIL

This regional agreement for an opioid abatement council is entered into among King County and the cities of Auburn, Bellevue, Bothell, Burien, Covington, Des Moines, Enumclaw, Federal Way, Issaquah, Kenmore, Kent, Kirkland, Lake Forest Park, Maple Valley, Mercer Island, Newcastle, Redmond, Renton, Sammamish, SeaTac, Seattle, Shoreline, Snoqualmie, Tukwila and Woodinville, each a “Party” and jointly “Parties.”

SECTION 1. RECITALS

WHEREAS, the State of Washington and other local governments have engaged in litigation with entities who manufacture, distribute, and dispense prescription opioids; and

WHEREAS, the opioid litigation has resulted in various settlements and/or judgments with direct money payments to be made to the state and its eligible political subdivisions; and

WHEREAS, the One Washington Memorandum of Understanding Between Washington Municipalities (“the MOU”), attached hereto with Exhibits A, B, and C, and incorporated by reference, which has been previously approved and executed by the Parties, requires the formation of an opioid abatement council; and

WHEREAS, the undersigned Parties do hereby adopt and implement this Agreement for the creation of the King County Regional Opioid Abatement Council (“OAC”), to be bound by the terms of this Agreement, the MOU and exhibits thereto, the settlement agreement provisions, and any applicable state statute(s).

NOW, THEREFORE, it is hereby agreed by the Parties:

SECTION 2. DEFINITIONS

1. “Approved Purposes” refers to the strategies specified and set forth in Exhibit A to the MOU.
2. “OAC Administrator” shall mean King County, the Party who shall perform the duties assigned to the OAC Administrator in Section 4.C.
3. “Opioid Funds” shall mean monetary amounts obtained through a settlement, judgment or any other manner from the Opioid Litigation.
4. “Opioid Litigation” shall mean the litigation between state and/or local jurisdictions and Johnson & Johnson, and distributors AmerisourceBergen, Cardinal Health, and McKesson; and the national opioid settlement agreements involving Teva Pharmaceutical Industries, Allergan, Walgreens, Walmart, and CVS.
5. “National Settlement Agreement(s)” or “Settlement(s)” means the national opioid settlement agreements involving Johnson & Johnson, and distributors AmerisourceBergen, Cardinal Health, and McKesson; and the national opioid settlement agreements involving Teva Pharmaceutical Industries, Allergan, Walgreens, Walmart, and CVS.

SECTION 3. PARTICIPATING ENTITIES

The Parties to this Agreement are the political subdivisions in King County entitled to direct payment of Opioid Funds pursuant to the National Settlement Agreements derived from the Opioid Litigation.

SECTION 4. CREATION OF THE KING COUNTY REGIONAL OAC

Consistent with the MOU Exhibits A, B and C, the Parties create and establish the OAC to perform the duties and functions set forth in the MOU and herein.

A. OAC Members

1. **Membership** – Representation on the OAC shall be roughly proportional to Opioid Fund distribution with a total of four party representatives: two from King County, one from the City of Seattle, and one chosen by the Sound Cities Association (SCA). All persons who serve on the OAC must have prior work or educational experience pertaining to one or more of the Approved Purposes.
2. **Chair** – As the OAC Administrator, one of the King County representatives to the OAC shall be the chairperson to preside at and lead all meetings of the OAC and to act as the representative of the OAC in any matters contemplated by the MOU. The chairperson is entitled to vote on all OAC business and at King County's discretion, the role of the chairperson may alternate between the two King County OAC representatives.
3. **OAC Vacancies** – In the event the OAC has a vacancy, the Party or Parties whose representative vacated the position shall select a new member for the OAC.
4. **Alternates** – Parties may designate alternate representatives to serve on the OAC in the absence of the Party or Parties' primary representative. Alternates must meet the same work/educational experience requirements as primary representatives.

B. Duties of the OAC

1. **Oversight** – As provided in this Agreement, the OAC shall monitor distribution, expenditure, re-allocation, and dispute resolution related to the Parties' allocations of Opioid Funds for Approved Purposes within the King County Region.
2. **Data Requirements** – The OAC shall determine what data and in what form and under what timelines the Parties must provide to the OAC Administrator regarding the Parties' Opioid Fund allocation expenditures.
3. **Reports** – The OAC shall annually review reports prepared by the OAC Administrator of the Parties' Opioid Funds allocation expenditures for compliance with the Approved Purposes and the terms of the MOU and any Settlement.
4. **Re-Allocation of Opioid Funds** – If the OAC is notified that a Party will forego some or all of its allocation of Opioid Funds, the OAC shall:
 - (i) Request and then approve or deny proposals from other Parties and/or community groups for use of the allocation within the King County Region; and
 - (ii) Direct the trustee responsible for releasing Opioid Funds to distribute the allocation to the Party(ies) and/or community group(s) whose proposals were approved by the OAC.

5. **Reporting** – The OAC shall report and make publicly available all decisions on Opioid Fund allocation and re-allocation applications, proposals, distributions, and expenditures by the OAC and the Parties.
6. **Dashboard** – The OAC shall develop and maintain a centralized public dashboard or other repository for the publication of expenditure data from the OAC and the Parties that receive Opioid Funds. The dashboard or repository shall be updated at least annually.
7. **Outcome Data** – If necessary, the OAC shall require and collect additional outcome-related data from the Parties to evaluate the use of the Opioid Funds. The OAC shall work with the Parties to determine the type of outcome data to be collected.
8. **Complaints** – The OAC shall establish a process for hearing complaints and resolving disputes by Parties regarding the alleged failure of the OAC or a Party to (1) use Opioid Funds for Approved Purposes or (2) comply with reporting requirements.
9. **Noncompliance** – If the OAC finds that a Party's expenditure of its allocation of Opioid Funds did not comply with the Approved Purposes of the MOU, or that the Party otherwise misused its allocation of Opioid Funds, the OAC may take remedial action against the alleged offending Party. Such remedial action is left to the discretion of the OAC and may include notifying the Settlement Fund Administrator of the noncompliant expenditure(s) and requesting suspension of direct payments to the offending Party and re-allocation by the OAC consistent with Section B.4.

C. Duties of the OAC Administrator

1. **Receipt of Expenditure Reports** – The OAC Administrator shall receive and maintain the expenditure reports provided by the Parties pursuant to Section D.8 and shall provide them to the members of the OAC for the annual review required under Section B.3.
2. **Re-Allocation** – The OAC Administrator shall be responsible for requesting proposals, notifying the Settlement trustee as required, and maintaining records of distribution decisions for Opioid Funds subject to re-allocation under Section B.4.
3. **Reporting** –
 - (i) The OAC Administrator shall fulfill the OAC's responsibilities for collecting data, preparing reports, and making information publicly available, including through the development, maintenance, and annual updating of a centralized public dashboard or other repository.
 - (ii) The OAC Administrator shall set deadlines for the Parties to submit data to the OAC and the OAC shall not be responsible for any deficiencies in data or reports due to the failure of a Party to meet those deadlines or the reporting requirements under Section D.
 - (iii) Nothing in this Section C shall relieve a Party of its responsibilities to maintain, report, and produce data or records as required by Section D, the MOU, and/or any Settlement Agreement.
4. **Outcome Data** – If the OAC determines that outcome-related data will be collected, the OAC Administrator will receive such data from the Parties and prepare any related reports as directed by the OAC.

5. **Records Retention** – The OAC Administrator shall maintain OAC records for no less than five (5) years and shall make such records available for review by other Parties or the public. Records requested by the public shall be produced in accordance with the Washington Public Records Act, chapter 42.56 RCW. Nothing in this section supplants any Party's obligations to retain and produce its own records as provided in this Agreement.
6. **Accounting of Administrative Expenses** – The OAC Administrator shall prepare the annual accounting of OAC administrative expenses.

D. Duties of the Parties

1. **Notice of OAC Representative** – Parties shall notify the OAC Administrator of its OAC representative and alternate, if any, and shall timely fill vacancies.
2. **Use and Distribution of Opioid Funds** – Parties shall maintain full discretion over the use and distribution of their allocation of Opioid Funds, provided the Opioid Funds are used solely for Approved Purposes.
3. **Notice to Forego Allocation** – If a Party chooses to forego its allocation of Opioid Funds, it will notify the OAC so the funds can be re-allocated as provided in Section B.4. A Party's notice that it will forego its allocation of Opioid Funds shall apply to all future allocations unless the Party notifies the OAC otherwise. A Party is excused from the reporting requirements set forth in this Agreement for any allocation of Opioid Funds it foregoes.
4. **Allocation Amount** – If a Party disputes the amount it receives from its allocation of Opioid Funds, the Party shall resolve the dispute with the Settlement Fund Administrator. However, the Party shall alert the OAC within sixty (60) days of discovering the information underlying the dispute. Failure to alert the OAC within this timeframe shall not constitute a waiver of the Party's right to seek recoupment of any deficiency in its allocation.
5. **Collaboration** – Parties may agree and elect to share, pool, or collaborate with their respective allocation of Opioid Funds as long as such sharing, pooling, or collaboration is used for Approved Purposes and complies with the MOU and the Settlements.
6. **Proposal Methodology** – Parties shall develop and implement a methodology for obtaining, receiving, and reviewing proposals for use of their allocation of Opioid Funds.
7. **Community-Based Input** – Parties shall ensure an opportunity for community-based input on priorities for Opioid Fund allocation strategies.
8. **Reporting** – Parties shall report to the OAC Administrator on all expenditures of Opioid Fund allocations. The specific data to be provided shall be determined by the OAC.
9. **OAC Administrative Payment** – As further described in Section 6, beginning in 2023 each Party shall contribute 10% of its annual Opioid Funds allocation to pay for OAC Administrative Costs.
10. **Party's Administrative Costs** – After the 10% OAC Administrative Costs contribution, the administrative costs for a Party to administer its allocation of Opioid Funds shall not exceed 10% of the remaining allocation or actual costs, whichever is less.

11. **Records Retention** – Parties shall maintain all records related to the receipt and expenditure of Opioid Funds for no less than five (5) years and shall make such records available for review by other Parties, the OAC, or the public. Records requested by the public shall be produced in accordance with the Washington Public Records Act, chapter 42.56 RCW. Records requested by another Party or the OAC shall be produced within twenty-one (21) days of the date the record request was received. Nothing in this Agreement supplants any Party’s obligations under the Washington Public Records Act.

SECTION 5. OAC ACTION

- A. The OAC shall take action by way of motion and such motions shall be adopted if approved by a favorable majority vote.
- B. Any action by the OAC shall not be effective unless approved by a quorum of the members. The OAC quorum shall be a simple majority of its members.

SECTION 6. FINANCING OF OAC ADMINISTRATIVE COSTS

- A. The OAC Administrator shall act as the fiscal agent for the OAC and shall hold funds and pay, either directly or through reimbursement, administrative costs related to the OAC (“OAC Administrative Costs”).
- B. Beginning in 2023, each Party shall contribute 10% of its allocation of Opioid Funds to an appropriate fund held by King County Treasury to pay for OAC Administrative Costs. The OAC Administrator shall annually calculate and notify each Party and King County Treasury of the amount of each Party’s required contribution. Within 90 (ninety) days of receiving notification, King County Treasury shall transfer the appropriate amounts from each Party’s Real Estate Excise Tax (REET) account to the OAC Administrative Costs fund. King County Treasury and a Party may agree on a procedure other than REET transfer for accepting a Party’s contribution.
- C. Each Party’s share of responsibility for annual OAC Administrative Costs shall be proportionate to the number of Opioid Funds the Party received in that year as compared to the amount received by other Parties.
- D. OAC administrative expenses shall not exceed 10% of the Parties’ combined annual Opioid Funds received or actual costs, whichever is less. This does not preclude a Party from using 10% of its remaining allocation of Opioid Funds, after it’s OAC Administrative Cost contribution, for its own administrative costs as outlined in the MOU and in Section D.10.
- E. Beginning in 2024, the OAC Administrator shall provide the Parties with an annual accounting for the prior year (July 1 to June 30) of all actual OAC Administrative Costs along with the allocation showing each Party’s proportionate share of the costs.
- F. If the amount contributed by a Party to the OAC Administrative Costs fund under Section 6.B in a year exceeds that Party’s proportionate share of the OAC Administrative Costs for that year,

King County Treasury shall retain the excess amount in the OAC Administrative Costs fund and reduce that Party's required contribution for the following year by that same amount. Any excess contributions remaining in the fund after termination and payment of all OAC Administrative Costs will be returned to the contributing Party for use as authorized by the MOU.

SECTION 7. DURATION

This Agreement shall be effective for the time period that the political subdivisions receive payments under any of the Opioid Litigation claims and shall continue to be effective until one year after the final payment of such funds.

SECTION 8. TERMINATION

This Agreement shall be self-terminating one year after the final distribution of funds and all reporting finalized through or by the Parties to the MOU.

SECTION 9. MODIFICATIONS OR AMENDMENTS

This Agreement may be modified or amended upon written agreement by all participating Parties, except that the OAC may amend the definitions of Opioid Litigation and National Settlement Agreements in order to make this Agreement applicable to future opioid litigation settlements. Any modifications or amendments to the Agreement must be consistent with the terms of the MOU and the Settlements.

SECTION 10. HEADINGS

The article headings in this Agreement have been inserted solely for the purpose of convenience and ready reference. In no way do they purport to, and shall not be deemed to, define, limit, or extend the scope or intent of the articles to which they appertain.

SECTION 11. ENTIRE AGREEMENT

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.

This Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous discussions and agreements. Understandings, representations, or warranties not contained in this Agreement or a written amendment hereto shall not be binding on any Party.

SECTION 12. SEVERABILITY

In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable.

In the event any portion of this Agreement should become invalid or unenforceable, the remainder of the Agreement shall remain in full force and effect.

SECTION 13. NON-DISCRIMINATION

The Parties, their employees, and agents shall not discriminate against any person based on any reason prohibited by Washington state or federal law as adopted or subsequently amended.

SECTION 14. COMPLIANCE WITH LAWS

The Parties shall observe all federal, state, and local laws, ordinances, and regulations, to the extent that they may be applicable to the terms of this Agreement.

SECTION 15. GOVERNING LAW; VENUE

This Agreement has and shall be construed as having been made and delivered in the State of Washington, and the laws of the State of Washington shall be applicable to its construction and enforcement. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions hereto shall be instituted only in courts of competent jurisdiction within King County, Washington, unless relocation or commencement elsewhere is required by law.

WHEREFORE, the undersigned executive authorities do hereby approve and adopt the Agreement as set forth herein.

Done on this ____ day of _____, 2023.

Name and Title _____
On Behalf Of _____