

COOPERATION AGREEMENT AMONG THE
CITY OF MILWAUKEE, THE MILWAUKEE
METROPOLITAN SEWERAGE DISTRICT AND
CVS/CAREMARK PHARMACIES, INC. FOR A
PRESCRIPTION DRUG MAIL-BACK PROGRAM

THIS AGREEMENT (“Agreement”) is made and entered into as of the ____ day of _____, 2016 by and among the City of Milwaukee, a municipal corporation (the “City”), acting by and through its Police Department; the Milwaukee Metropolitan Sewerage District (“MMSD”), a metropolitan sewerage district organized under the provisions of Chapter 200 of the Wisconsin Statutes; and CVS Pharmacy, Inc. (“CVS”) a Rhode Island corporation.

RECITALS:

WHEREAS, the availability of surplus and unneeded opioid painkillers and other prescription drugs is increasingly recognized as a serious medical and social problem and as a significant contributing factor to drug addiction and drug dependency in the City of Milwaukee and other communities throughout the United States; and

WHEREAS, improper methods of disposal of surplus and unneeded prescription drugs are significant contributing factors to degradation of the City’s natural environment, and particularly to area waterways that often serve as the ultimate receptors of such drugs; and

WHEREAS, Federal laws and regulations specify several methods by which surplus and unneeded prescription drugs may be safely collected, transported and eventually destroyed in accordance with strictly defined standards and procedures and under the oversight of the United States Department of Justice, Drug Enforcement Administration (“DEA”); and

WHEREAS, a prescription drug mail-back program under the supervision of local law enforcement is one of the methods for collection, transport and disposal of surplus and unneeded prescription drugs specifically sanctioned by applicable Federal law and regulations; and

WHEREAS, the parties to this Agreement desire to participate in a prescription drug mail-back program throughout the City under the terms and conditions set forth below; and

WHEREAS, the parties to this Agreement have consulted with the Milwaukee office of the DEA in devising the prescription drug mail-back program described below and have received acknowledgement that the design of the program complies with applicable Federal laws and regulations; and

WHEREAS, the Common Council of the City of Milwaukee in Resolution File No. _____ has approved the execution and implementation of this Agreement by the Chief of the Milwaukee Police Department on the City's behalf and deems this Agreement to be in the best interests of the citizens of the City; and

WHEREAS, the Director of the Milwaukee Metropolitan Sewerage District has duly approved, in _____ the participation of the MMSD as a party to this Agreement as set forth below;

NOW, THEREFORE, the City, the MMSD and CVS in consideration of the mutual promises and undertakings of the parties and other good and valuable consideration, agree as follows:

ARTICLE I
General Program Description

The parties agree to cooperate in the administration of the City of Milwaukee's mail-back program for surplus and unneeded prescription drugs (the "Program"), throughout the City of Milwaukee. The components of this Program are as follows:

(1) Provision to the public of secure, tamper-proof, postage-paid envelopes for deposit and mailing of surplus and unneeded prescription drugs to the various Milwaukee Police Department stations and sub-stations located throughout the City, or Milwaukee Police Department-sanctioned USPS Post Office Boxes;

(2) Secure transport of mail-back envelopes by and under direct supervision of the Milwaukee Police Department, DEA, or State of Wisconsin Department of Justice personnel to federally approved and sanctioned destruction facilities;

(3) Promotion of the Program to the public through media, advertising, signage at locations where mail-back envelopes are made available and personal appearances at community events;

(4) General oversight by the Milwaukee Police Department and the Milwaukee office of the DEA.

ARTICLE II City Responsibilities

The City shall assume and perform the following functions in conjunction with this Agreement:

(1) Receipt of sealed mail-back envelopes at Milwaukee Police Department stations, sub-stations, or Milwaukee Police Department-sanctioned USPS Post Office Boxes. All such envelopes shall be addressed and mailed only to such locations as designated by the City;

(2) Secure transport of collected mail-back envelopes to such federally approved and sanctioned destruction facilities as may be selected by the City from time to time. All such transport shall be personally attended and conducted by uniformed Milwaukee Police Department personnel or sworn agents of the DEA or State of Wisconsin Department of Justice;

(3) Arranging for final destruction of all mail-back envelopes and their contents at the aforementioned destruction facilities, in strict compliance with Federal requirements;

(4) Promotion of the Program through the media, in advertising, on pertinent City websites, at community events, and through other means of public outreach.

ARTICLE III
MMSD Responsibilities

The MMSD shall assume and perform the following functions in conjunction with this Agreement:

(1) Provision toward the funding for the mailing costs associated with mail-back envelopes, including but not limited to, prepaid postage;

(2) Promotion of the Program through the media, in advertising, on the MMSD website, at community events, and through other means of public outreach.

ARTICLE IV
CVS Responsibilities

CVS shall, to assist in the administration of the City's program and not as a DEA-registered collector operating its own mail-back program, assume and perform the following functions in conjunction with this Agreement:

(1) Provision of sufficient supplies of secure, tamper-proof mail-back envelopes for prescription drugs, addressed to Milwaukee Police Department locations designated by the City in compliance with all applicable Federal requirements, including, but not limited to the package specifications set forth in 21 CFR §§ 1317.70(c)(1)-(c)(6);

(2) Provision of funding for all mail-back envelopes and associated printing costs;

(3) Provision of space in each CVS store location within the City for public pick-up of mail-back envelopes. In this respect, CVS shall take reasonable steps to assure the continuous availability of a sufficient supply of mail-back envelopes at each store location;

(4) Promotion of the Program through signage within CVS stores located within the City, on the CVS website (if practical), in participation in community events, and through other means of public outreach.

ARTICLE V
Compliance with Federal Requirements

This Agreement, and all responsibilities incumbent upon each of the parties to this Agreement, shall be continuously performed in strict compliance with all applicable Federal laws and regulations, including (but not limited to), the Disposal of Controlled Substances Act (“DOCSA”), the Secure and Responsible Drug Disposal Act of 2010, 21 U.S.C. §§ 821-831 and 21 C.F.R. Parts 1301, 1304, 1307 and 1317.

ARTICLE VI
Audits and Inspections

At any time during normal business hours and as often as the City, or if federal or state grants or aids are involved, as the appropriate state or federal agency may deem necessary, there shall be made available to the City or such agency for examination all of the CVS’s and MMSD’s records with respect to the matters covered by this Agreement and CVS and MMSD shall permit the City or such agency and/or their representatives and agents to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions or employment, and other data relating to all matters covered by this Agreement.

ARTICLE VII
Term of Agreement

The term of this Agreement shall commence upon the execution of the Agreement by the authorized representatives of the parties, and shall remain in force for two (2) years from the date thereof.

ARTICLE VIII
Termination

Any party may terminate this Agreement for cause by giving at least 60 days notice in writing to the other party specifying the effective date thereof. In the event of termination of this Agreement, no party shall be liable for any costs borne by any other party in conjunction with this Agreement.

ARTICLE IX
Entire Agreement/Amendment

This Agreement sets forth all of the covenants, promises, agreements, conditions, and understandings among the parties and there are no covenants, promises, agreements, conditions or understandings, either oral or written, other than are herein set forth. This Agreement may not be modified orally or in any other manner other than by agreement, in writing, signed by each of the parties to this Agreement.

ARTICLE X
Assignment

This Agreement shall be binding upon the parties hereto, but neither this Agreement nor any of the rights, interests, or obligations hereunder shall be assigned, sublet, or transferred by any party without the prior written consent of the City. If the City gives such consent, the terms and conditions of this Agreement shall bind the party to whom the Agreement is assigned, sublet or transferred.

ARTICLE XI
Governing Law

This Agreement shall be governed by the internal laws of the State of Wisconsin. Any litigation relating to the formation, interpretation, or alleged breach of this Agreement must be brought in the state and federal courts having jurisdiction in Milwaukee County, Wisconsin, and MMSD and CVS consent to the jurisdiction in such courts.

ARTICLE XII
Severability

If any term or provision of this Agreement shall to any extent be declared invalid or unenforceable, then the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by applicable law.

ARTICLE XIII
Notices

If any notice is required to be delivered hereunder, it shall be given in writing, and shall be delivered personally or shall be deposited in the United States mail, postage prepaid, certified or registered, return receipt requested, in which latter event it shall be deemed given five days after the date mailed. If it is to be sent to the City, then it shall be addressed as follows:

Edward A. Flynn
Chief of Police
City of Milwaukee
749 West State Street
Milwaukee, WI 53233

If it is to be sent to MMSD, then it shall be addressed as follows:

Kevin Shafer
Executive Director
Milwaukee Metropolitan Sewerage District
260 West Seeboth Street
Milwaukee, WI 53204

If it is to be sent to CVS, then it shall be addressed as follows:

Tom Davis
Vice President, Pharmacy Professional Services
CVS Caremark Corporation
One CVS Drive
Woonsocket, RI 02895

ARTICLE XIV
Public Records

MMSD and CVS acknowledge that the City is bound by the Wisconsin Public Records law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* MMSD and CVS further acknowledge that it is obligated to assist the City in retaining and producing records that are subject to the Wisconsin Public Records Law and that the failure to do so shall constitute a material breach of this Agreement, and that MMSD and CVS must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven years after expiration of this Agreement.

ARTICLE XV
No Indemnification

Except as otherwise specifically provided in Article XIV of this Agreement (“Public Records”), no party to this Agreement shall be required to indemnify or defend any other party, and each party shall bear liability for their own acts or omissions.

ARTICLE XVI
Counterparts

This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

ARTICLE XVII
Conflict of Interest

A. No officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which is Agreement pertain, shall have any personal interest, direct or indirect to this Agreement.

B. No member of the governing body of the City and no other public official of the City who exercises any functions or responsibilities in the review or approval of the carrying out of this Agreement, shall have any personal interest, direct or indirect, in this Agreement.

C. MMSD and CVS covenant that no person described above who presently exercises any functions or responsibilities in connection with the Agreement has any personal financial interest, direct or indirect, in this Agreement. MMSD and CVS further covenant that is presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder.

ARTICLE XIX
No Additional Waiver Implied

The failure of any party to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Agreement shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized officers.

CITY OF MILWAUKEE

By: Edward A. Flynn, Chief of Police

Date: _____

Countersigned:

Martin Matson, City Comptroller

Date: _____

Approved as to content, form and execution
this ___ day of _____, 2016.

Assistant City Attorney

MILWAUKEE METROPOLITAN SEWERAGE DISTRICT

By: Kevin Shafer, Executive Director

Date: _____

CVS PHARMACY, INC.

By: Tom Davis, Vice President
Pharmacy Professional Services

Date: _____

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