



## Administration

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### MEMO

TO: County Commission

FROM: Robert W. Wilson

Date: August 31, 2023

Subject: Agreement on Use of Opioid Settlement Funds

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On August 20, 2018 the Cass County Commission entered into a retainer agreement with Robbins, Geller, Rudman & Dowd LLP to represent Cass County Government in multi-district litigation lawsuits against opioid manufacturers, distributors and sellers. In the past five years several defendants have entered into settlement agreements that include compensation to local governments across the country, including Cass County and the cities of Fargo and West Fargo. To date Cass County has received a total of \$127,545 in settlement proceeds.

Local units of government in North Dakota are limited in how they can expend opioid settlement proceeds. North Dakota Century Code 50-36-06(1) directs that, '*... a political subdivision that recovers moneys as a result of opioid litigation may deposit the moneys in the State of North Dakota's opioid abatement fund or may retain the moneys and transfer the moneys to the public health unit that provides services to the political subdivision;*'

The applicable public health unit in Cass County is Fargo Cass Public Health (FCPH). Representatives of Cass County, FCPH and the cities of Fargo and West Fargo have developed the attached agreement to pool opioid settlement proceeds and utilize the funds for opioid abatement in a coordinated fashion. Terms of the litigation settlements require the funds to be used for opioid abatement purposes.

Stipulations of this agreement include:

- That all parties will collaborate on the use of funds,
- That the parties will provide an allocation plan to the Behavioral Health Division of the ND Department of Health & Human Services &
- That the agreement will remain in place until all settlement funds have been received and utilized.

A copy of the agreement is attached for review and has been reviewed by the State's Attorney's Office.

**SUGGESTED MOTION: Authorize the Chair to sign Agreement on Use of Opioid Settlement Funds with the Cities of Fargo & West Fargo and Fargo, Cass Public Health**



**CONTRACT APPROVAL**

**REQUIRED BY DEPARTMENT:**

DEPARTMENT: Administration DATE OF REQUEST: 08/30/2023

COMPANY REQUESTING CONTRACT: Fargo Cass Public Health, Fargo, West Fargo

BRIEF PROJECT DESCRIPTION: Agreement on use of opioid settlement funds

NEW CONTRACT OR  CONTRACT RENEWAL

**REQUIRED BY STATE'S ATTORNEY OFFICE:**

STATE'S ATTORNEY SIGNATURE: *Heather Nauman* DATE 8/31/2023

**STATE'S ATTORNEY COMMENTS:**

Approved as to form.  

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**AGREEMENT ON USE OF OPIOID SETTLEMENT FUNDS**

*THIS AGREEMENT* (“Agreement”) is made and entered into as of September 1, 2023, by and between the City of Fargo (“Fargo”), City of West Fargo (“West Fargo”), County of Cass, North Dakota (“Cass County”), and Fargo Cass Public Health (“FCPH”).

**RECITALS**

WHEREAS, Fargo, West Fargo, and Cass County are political subdivisions of the State of North Dakota (collectively the “Political Subdivisions”);

WHEREAS, the Political Subdivisions are plaintiffs in multiple lawsuits against manufacturers, distributors, sellers, and others relating to the role of the defendants in contributing to the opioid crisis in Fargo, West Fargo, and Cass County (the “Opioid Litigation”);

WHEREAS, the Political Subdivisions have settled some of their claims in the Opioid Litigation and continue to litigate and discuss settlement on the remainder of their claims in the Opioid Litigation. As a result, the Political Subdivisions have received moneys as part of settling various claims in the Opioid Litigation and continue to expect to receive monies in the future from these settlements and future settlements and/or judgments;

WHEREAS, North Dakota has enacted North Dakota Century Code ch. 50-36 which relates to opioid settlements. Pursuant to N.D.C.C. § 50-36-06(1), a political subdivision that recovers moneys as a result of opioid litigation may deposit the moneys in the State of North Dakota’s opioid abatement fund or may retain the moneys and transfer the moneys to the public health unit that provides services to the political subdivision;

WHEREAS, FCPH is the public health unit which provides services to the Political Subdivisions. The Political Subdivisions desire and intend to retain their moneys from the Opioid Litigation and transfer the moneys to FCPH as allowed by N.D.C.C § 50-36-06.

WHEREAS, pursuant to N.D.C.C. § 50-36-06(2), a political subdivision that recovers and retains moneys as a result of opioid litigation shall collaborate with a public health unit on the use of moneys for local programs for remediating and abating the opioid crisis. The use of moneys must be in compliance with any court-ordered restrictions (i.e., must be spent on opioid abatement).

WHEREAS, the Political Subdivisions desire and intend to collaborate with FCPH on the use of the moneys for local programs for remediating and abating the opioid crisis.

WHEREAS, pursuant to N.D.C.C. § 50-36-06(3), all political subdivisions must provide an allocation plan to the behavioral health division prior to expenditure.

WHEREAS, the Parties enter into this Agreement to fulfill their obligations pursuant to N.D.C.C. ch. 50-36 and to comply with the settlement agreements reached thus far in the Opioid Litigation.

### **AGREEMENT**

- A. The Political Subdivisions agree that they will retain all moneys collected in the Opioid Litigation and transfer all moneys to FCPH.
- B. The Parties agree that they shall collaborate on the use of the moneys for local programs for remediating and abating the opioid crisis including collaborating on the agreed upon mitigation plan.
- C. The Parties agree that they shall work together to comply with all court-ordered restrictions and to comply with the various requirements in the settlement agreements which have been reached in the Opioid Litigation to ensure that the moneys are spent on opioid remediation and abatement. The Parties agree to work together to ensure that all reporting requirements, if any, are met.
- D. The Parties agree to provide an allocation plan to the Behavioral Health Division of the State of North Dakota's Department of Health and Human Services prior to expenditures.
- E. Term of Agreement. This Agreement shall remain in place until all the Opioid Litigation has been resolved and all moneys recovered have been collected and utilized.
- F. Jurisdiction. This Agreement shall be interpreted, construed, and enforced in all respects in accordance with the laws in force under the State of North Dakota and the Parties consent to the Courts of Cass County North Dakota as the exclusive and sole courts with jurisdiction and authority to resolve any disputes over the Agreement, its implementation or enforcement.
- G. Amendments. No amendments to this Agreement shall be effective unless in writing and signed by all Parties. The Parties agree to amend this Agreement as necessary to comply with any changes in applicable laws and regulations.

H. Entire Agreement. The entire agreement of the parties with respect to this matter is contained in this agreement, which supersedes all oral agreements, writings, and negotiations between the parties.

*(The remainder of this page is intentionally left blank – Signature pages follow)*

THE CITY OF FARGO, NORTH DAKOTA,  
a municipal corporation

By: \_\_\_\_\_  
TIMOTHY J. MAHONEY, Mayor

ATTEST:

\_\_\_\_\_  
STEVEN SPRAGUE, City Auditor

THE CITY OF WEST FARGO, NORTH DAKOTA,  
a municipal corporation

By: \_\_\_\_\_  
BERNIE L. DARDIS, President of the  
Board of City Commissioners

ATTEST:

\_\_\_\_\_  
Deputy City Auditor

CASS COUNTY, NORTH DAKOTA,

By: \_\_\_\_\_  
CHAD PETERSON, Chair of the Board of  
County Commissioners

ATTEST:

\_\_\_\_\_  
Brandy Madrigga, Finance Director



FARGO CASS PUBLIC HEALTH

By: \_\_\_\_\_  
Desi Fleming, Director of Public Health



## **Opioid Response Work Background, Opioid Settlement Funds Plan & Future Strategies Proposal**

### **Background**

Fargo Cass Public Health (FCPH) began opioid response work the summer of 2016. FCPH's substance abuse prevention coordinator was assigned to this work 20 hours per week. A city commissioner, the public health director, and health officer were also very involved in leading the response. The City of Fargo provided \$50,000 in general funds to address the opioid crisis locally, and has continued to dedicate \$50,000 annually to FCPH for this purpose. In August 2017, FCPH received an opioid response grant from the North Dakota Department of Human Services, Behavioral Health Division (BHD). FCPH has received varying amounts of opioid response funds from BHD ever since.

In November 2017, FCPH placed Narcan in all Cass county schools and provided training to school staff. In March 2018, FCPH hosted the region's first public opioid overdose response and naloxone administration training. In April 2018, FCPH hosted the region's first peer recovery coach training, and opened the Harm Reduction Center. These are just a few of many early successes in FCPH's opioid response. FCPH has been a leader in opioid response and has provided presentations, training, and technical assistance to programs throughout the country.

During the grant's most recent fiscal year- October 2021 thru September 2022- FCPH promoted prevention and anti-stigma campaigns, reduced access to prescription drugs, provided opioid overdose response and naloxone administration training, distributed naloxone, reduced barriers to treatment, operated a syringe services program, and implemented the Narcan Leave Behind Program and the ONE Program.

FCPH promoted the substance use prevention program ParentsLead.org by creating 121 social media posts reaching 20,525, participating in two booths and one news conference, and distributing 1,079 promotional materials.

An overdose prevention campaign resulted in 130 social media posts reaching 55,635, 13 news stories, production of a video, and numerous International Overdose Awareness Day activities.

A substance use disorder stigma-reduction campaign produced 58 social media posts reaching 13,809.

FCPH reduced access to prescription opioids by creating 67 medication disposal education social media posts reaching 12,520, participating in two booths at community events, and distributing 710 Deterra medication disposal bags.

FCPH conducted 63 opioid overdose response trainings, resulting in 743 individuals trained. A total of 3,797 naloxone kits with 7,594 doses were distributed. There were 1,076 reported doses of naloxone administered resulting in 553 opioid overdose reversals using naloxone from FCPH.

Nasal Narcan, a form of naloxone, is provided by FCPH to first responders including the Fargo, West Fargo, and NDSU Police Departments, the Cass County Sheriff's Office, and the Fargo and West Fargo Fire Departments. Public libraries and municipal buildings in Fargo and West Fargo, and all school

districts in Cass County have Narcan. Hundreds of other organizations have also received training and Narcan, and any organization or individual in Cass County can receive both for free. Naloxone is also distributed at the Harm Reduction Center in downtown Fargo. Most individuals receiving naloxone at the Harm Reduction Center are participants in the Syringe Services Program.

A stigma-reduction campaign for Syringe Services Programs (SSP) yielded 136 social media posts reaching 35,244. Nine presentations reaching 233 individuals educated about SSPs.

FCPH's SSP had 5,798 visits serving 976 individuals, including 368 new enrollees. Program participants received referrals, education, and supplies. Referrals were given for substance use disorder treatment, healthcare, opioid use disorder medication providers, behavioral health services, social services, shelter, food pantries, and more. Onsite testing and education for HIV and hepatitis C were provided, as well as education on harm reduction, safer sex, proper sharps disposal, and opioid overdose response and naloxone administration. The program supplied safer injection and safer sex supplies, naloxone, fentanyl testing strips, sharps disposal containers, and COVID-19 at-home tests. A total of 5,585 doses of naloxone were provided. The past two years (2021-2022), a life was saved 920 times when an opioid overdose was reversed using naloxone provided through this program. June thru September 2022, 770 fentanyl testing strips were provided. This program is only partially funded thru the BHD grant, with the City of Fargo covering the remaining costs.

To reduce barriers to treatment, FCPH provided cab rides to the Opioid Treatment Program for patients unable to afford transportation to onsite daily medication dosing. Hundreds of rides were provided each month; an average of 7 individuals received rides monthly.

FCPH implemented the Opioid & Naloxone Education (ONE) Program in April. Through this program, home health nurses screened patients with a prescription opioid and provide education, resources, and support to ensure safe opioid use. April thru September 2022, 180 clients were screened, and 16 medication lock boxes and 36 Deterra medication disposal bags were provided. Six patients received opioid misuse and overdose prevention education, and Narcan.

In July 2022, FCPH implemented the Narcan Leave Behind Program with the Fargo and West Fargo Fire Departments. At overdose scenes, firefighters leave Narcan with willing individuals, as well as links to resources like Narcan training, treatment options, and requests for additional Narcan.

This current fiscal year- October 2022 thru September 2023- FCPH is continuing activities from the previous fiscal year. There are currently three fulltime positions solely dedicated to opioid response work, with several additional staff providing support ranging from a few hours per month to several hours a week.

## **Opioid Settlement Funds Plan**

FCPH proposes Opioid Settlement funds be used for the following mitigation plan:

1. Sponsor a community opioid response coalition beginning April 2023.
  - a. Provide staff to coordinate a community opioid response coalition.
  - b. Solicit and maintain membership from key community sectors.
  - c. Hold monthly coalition meetings.
  - d. Utilize coalition to advise/plan opioid response activities.
2. Distribute naloxone throughout the community and train on use, with a focus on high-risk groups.

- a. Provide naloxone to first responders including law enforcement agencies and fire departments.
  - b. Leave naloxone behind at scenes of overdose emergency calls.
  - c. Provide naloxone to individuals being released from treatment and incarceration.
  - d. Provide naloxone to persons who use prescription and illicit opioids.
  - e. Work with pharmacies to provide no-cost naloxone to patients who cannot afford it.
  - f. Provide naloxone to organizations that serve high-risk individuals.
  - g. Research the use of vending machines for low-barrier distribution of naloxone.
3. Maintain a comprehensive, needs-based harm reduction program for persons who use drugs.
    - a. Offer harm reduction supplies including syringes, safer use supplies, wound care supplies, naloxone, fentanyl testing strips, sharps containers, and safer sex supplies.
    - b. Provide services, education and training including safer injection education, overdose response training, naloxone training, safer sex education, education on HIV, hepatitis C and STIs, rapid HIV and hepatitis C testing, immunizations, and sharps disposal.
    - c. Provide referrals to treatment, healthcare, behavioral health, housing, employment, and social services.
    - d. Explore and implement new and promising practices for harm reduction programming as funding allows.

## Future Strategies Proposal

Dependent on funding and collaboration between FCPH and partnering agencies, two other opioid mitigation strategies could be implemented, including the establishment of an overdose response team, and naloxone distribution to incarcerated individuals upon release.

Drug overdose is the leading cause of death after release from prison. Data show the increased risk of overdose for those newly released from incarceration and the effectiveness of naloxone distribution to prevent it. According to the CDC, a large meta-analysis of data from several different nations found that individuals released from incarceration experience a three to eight-fold increase in the rate of overdose death in the first two weeks after release compared to weeks three through twelve following release. Further, a study conducted by the Massachusetts Department of Public Health found that individuals recently released from incarceration are 56 times more likely to overdose than members of the general public, indicating urgent need to scale up overdose prevention services for this population. Also according to the CDC, an evidence-based strategy for preventing opioid overdose is to distribute naloxone in criminal justice settings upon release.

With Cass County approval, FCPH proposes to provide opioid overdose prevention and Narcan administration training to inmates prior to release, and have jail staff distribute Narcan to inmates upon release. Naloxone distribution to inmates upon release has been successfully implemented by the ND Department of Corrections and Rehabilitation at the State Penitentiary in Bismarck, and at some county jails including in Richland County.

FCPH also proposes implementation of an overdose outreach team to prevent overdose recurrence. Overdoses and deaths from overdose are preventable, there are effective forms of treatment for substance use disorders, and recovery is possible.

This solution is currently being successfully delivered. In response to the opioid crisis, many communities have implemented overdose outreach programs to reduce overdoses and deaths from overdose. Programs like Police Assisted Addiction and Recovery Initiative (PAARI), Drug Abuse Response Teams (DART), and Quick Response Teams (QRT) include timely follow up with overdose survivors to provide resources for overdose prevention, harm reduction, treatment and recovery. Outreach is most effective 24–72 hours post overdose.

This program would greatly enhance the community’s response to drug overdose. Currently, comprehensive and coordinated response to survivors of a non-fatal overdose does not exist in Cass County. Examples of current responses include police officers advising overdose survivors to “get some help” and emergency departments treating, stabilizing and discharging them. As a result, some family and friends of persons who use drugs contact law enforcement begging to have their loved ones arrested and incarcerated so they don’t die of an overdose. The police department does not have the time or resources to provide overdose outreach and gladly welcomes assistance in this area.

This program would establish structure and resources for providing coordinated efforts among all committed stakeholders and agencies in Cass County. This includes staff dedicated to coordinate the program and provide outreach. Coordination with overdose survivors, family members, first responders, law enforcement, emergency department staff, and service providers is essential. Outreach staff will provide a number of services including training on opioid overdose response and Narcan administration; dissemination of Narcan kits for persons who use drugs, family, and friends; instruction on harm reduction practices and distribution of supplies; referral to treatment, offering peer recovery coaching; and linkage to other resources including transportation, housing, and medical care.

This program would be a multi-disciplinary, collaborative approach to addressing the needs of individuals with a history of drug misuse. Partners would include law enforcement, major healthcare systems, the opioid treatment program, treatment providers, behavioral health service providers, recovery services, and others.

FCPH would dedicate staff to coordinate the program and provide outreach. Staff will guide program planning and implementation, and convene regular stakeholder discussions to ensure continued project implementation and redirection if needed.

A trained peer recovery coach would be utilized to connect with survivors of a non-fatal overdose within 72 hours in an effort to engage the survivor in treatment and support services. The recovery coach will also provide survivors of non-fatal overdoses, and their friends and family, Narcan and training on administration, as well as support services. The project will work to provide access to detox, treatment services and medication-assisted treatment.

If feasible, implementation of naloxone distribution upon release from incarceration, and the establishment of an overdose response team would greatly enhance the community’s opioid overdose prevention efforts.