

**PILOT PrEP CLINIC AGREEMENT
BETWEEN
THE CITY OF MILWAUKEE,
by its CITY OF MILWAUKEE HEALTH DEPARTMENT
and
AIDS RESOURCE CENTER OF WISCONSIN**

THIS AGREEMENT (this “**Agreement**”) is made and entered into on November 6, 2018 (“**Effective Date**”) by and between the AIDS Resource Center of Wisconsin, Inc. a tax-exempt Wisconsin non-stock corporation (“**ARCW**”), and the City of Milwaukee by its Health Department (“**MHD**”) both organizations collectively referred to in this Agreement as the “**Parties**”), pursuant to City of Milwaukee Common Council Resolution _____.

RECITALS

- A. **WHEREAS**, both Parties provide comprehensive services to the LGBTQ community and those at-risk of HIV and other infections and are committed to the prevention of HIV/AIDS in Wisconsin; and
- B. **WHEREAS**, ARCW provides Pre-Exposure Prophylaxis (“PrEP”) clinical and prescription services in line with Centers of Disease Control and Wisconsin Department of Health Services guidelines; and
- C. **WHEREAS**, MHD desires to enhance HIV prevention for the clients it serves; and
- D. **WHEREAS**, MHD and ARCW wish to collaborate on the provision of PrEP services to at risk individuals through the presence of a pilot ARCW PrEP clinic at MHD Keenan Health Center at 3200 N. 36th Street, Milwaukee, WI 53216 location.

AGREEMENT

NOW THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the parties agree as follows:

- 1. **Recitals.** The parties agree to the recitals above and to the terms and conditions herein.
- 2. **Additional obligations of City of Milwaukee by its City of Milwaukee Health Department.** MHD will:
 - 2.1 **License.** MHD allows ARCW a license (“License”) for four ARCW employees to enter and occupy Room 210 (“Space”) in the Keenan Health Center during the following times, which may be amended at any time by

either party upon 5 days' notice according to the notice provisions set forth herein, provided that any request by ARCW to change the following times is subject to approval by the MHD:

anytime during normal business hours 1-3 days per week Mon
8am-8pm ,T,W,F 8-5:15 and Th 11-8pm

- 2.1.1 **Additional Limitations.** This License gives ARCW temporary and qualified entry and occupancy rights that are personal privileges and that shall not be construed as giving ARCW any interest or estate in the Keenan Health Center whatsoever. This License is limited to those employees providing the services set forth in this agreement, and shall not be construed to provide ARCW with a general right of access and occupancy to the Space of the Keenan Health Center. This is not a lease or other conveyance of any interest or estate in real property. ARCW is not a tenant or lessee of the Keenan Health Center or of the City. This paragraph shall not be construed to limit or supersede any other License limitations set forth elsewhere in the Agreement.
- 2.1.2 **As Is.** The Space in the Keenan Health Center is licensed to ARCW on an As-Is, Where-Is basis, with all faults and defects, known or unknown, discovered or to be discovered, and with no representations or warranties, express or implied.
- 2.1.3 **Telephone Access.** MHD shall provide the ARCW with telephone and internet access in the Space.
- 2.1.4 **License Fee.** No monetary fee.
- 2.1.5 **Use.** ARCW's License shall extend only to the purposes of fulfilling its obligations set forth herein, and for security, clean-up and restoration as required herein.
- 2.1.6 **Improvements.** ARCW may not erect any fixtures or permanent improvements in or on the Space.
- 2.1.7 **Utilities.** ARCW shall not be charged by MHD for the cost of utilities associated with the Space. As part of this License, ARCW is permitted to use normal and customary amounts of the utilities associated with the Space.
- 2.1.8 **MHD Entry Rights.** MHD may, without notice, enter the Space to inspect any part of the Space at any time.

- 2.1.9 **Facilities.** The Space shall include adequate and safe facilities for the clinic site, including but not limited to secure and confidential space that meet relevant state standards for blood draws and clinical operations, and basic office equipment as necessary. Facilities shall meet applicable state and federal regulations and the requirements of any applicable accrediting organizations.
 - 2.2 **Reception Staff.** MHD shall provide appropriate reception staff to greet and assist PrEP Clinic patients.
 - 2.3 **Collaboration and Assessment.** MHD agrees to participate in joint discussions with ARCW concerning the efficacy, feasibility, location, quality and improvements of the PrEP clinic. The Parties will meet at least quarterly, or on a more frequent basis, to collaborate and assess the Clinic and other related matters.
3. **Additional Obligations of AIDS Resource Center of Wisconsin.** ARCW will:
 - 3.1 ARCW shall establish a PrEP Clinic during the Pilot Term at MHD Keenan Health Center facilities. The Clinic shall be staffed by ARCW clinical staff and shall meet established standards provided by the CDC and other governmental authorities for the provision of PrEP treatment.
 - 3.2 ARCW staff will complete a standard background check meeting any requirements set by MHD or appropriate law, prior to beginning work with MHD and utilizing the Space.
 - 3.3 Adhere to all applicable requirements, policies, rules, regulations, and training of MHD staff that work in a clinical setting.
 - 3.4 Install and/or utilize such confidentiality protections and security protocols on all devices storing protected health care information which, at a minimum, meet the same requirements as the confidentiality protections and security protocols installed on laptops issued by MHD to MHD's Keenan Health Center staff.
 - 3.5 All PrEP Clinic patient treatment and health records shall be maintained and owned by ARCW.
 - 3.6 ARCW shall be responsible for the cost of, and seeking and obtaining any reimbursement or cost savings that may be available for the provision of, PrEP services under this Agreement, including reimbursement for payors or 340B cost savings and compliance. ARCW represents and warrants that it shall comply with all applicable laws and regulations pertaining to coding, billing and collection related to PrEP services and that ARCW shall be ultimately responsible for such billing and regulatory compliance.

- 3.7 **Collaboration and Assessment.** MHD agrees to participate in joint discussions with ARCW concerning the efficacy, feasibility, location, quality and improvements of the PrEP clinic. The Parties will meet at least quarterly, or on a more frequent basis, to collaborate and assess the Clinic and other related matters.
4. **Patient Privacy and Data Handling.** ARCW and MHD each acknowledge and represent that each is a “covered entity” for purposes of the Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA), and that ARCW, MHD, and any subcontractors or ARCW will comply with all applicable state and federal medical privacy laws, including but not limited to HIPAA and Sections 51.30, 146.816 and 146.82 of the Wisconsin Statutes, when applicable. Contractor further covenants and agrees that it will enter into a Business Associate Agreement as required by HIPAA with any subcontractor performing services under this agreement, and will provide a copy of such agreement to the City prior to any subcontractor commencing to provide any services related to this contract.
5. **Term.** The term of this Agreement shall commence on November 6, 2018 and shall continue through October 1, 2019 “(Pilot Term)”. Both Parties recognize that the Pilot Term is to establish a pilot PrEP Clinic and that the feasibility and efficacy of the Clinic will be examined jointly in good faith by both Parties during the Pilot Term. If the Parties jointly agree that the PrEP Clinic collaboration shall be renewed, both Parties must mutually agree in another written agreement.
6. **No Referrals.** Nothing in this Agreement shall be construed as requiring or inducing any Party or, as applicable, any of its owners, directors, members, officers, employees, affiliates, contractors or agents to refer any patients or business reimbursable in whole or in part under any federal or state health care program, to the other parties. The Parties further agree that patients and clients are free to choose where they obtain medical, pharmacy, and support services, without being pressured or solicited by any employee or agent of either party. The Parties warrant, represent and acknowledge that no term or condition of this Agreement is contingent on or variable with, or otherwise determined based on, the volume or value of referrals or other business generated between the parties or the making of arrangements for referrals.
7. **Insurance.** RCW represents that any ARCW clinician or employee who provides Services under this Agreement is an employee or contract employee of ARCW. In providing the Services under this Agreement, ARCW clinicians will be acting within the scope of their employment. ARCW shall, at its expense, obtain and maintain in place during the entire Term, insurance as described in strict compliance with **Exhibit A** attached hereto, and shall cause the City of Milwaukee to be added as an additional insured on such insurance policy(ies); provided that MHD understands that MHD shall not be an additional insured on

ARCW's professional liability policy(ies). ARCH shall, as a condition to it being able to use or enter the Space, provide to MHD a Certificate of Insurance with the City of Milwaukee named as additional insured prior to commencement of the Term.

8. **Termination of Agreement.** Termination of this Agreement shall occur as follows:

8.1 **Timing of termination.**

- 8.1.1 **Mutual Agreement.** MHD and ARCW may terminate this Agreement at any time upon their mutual agreement.
- 8.1.2 **Pilot Term.** Either Party may terminate this Agreement during the Pilot Term with at least sixty (60) days written notice to the other party. Otherwise the Agreement automatically terminates, and does not renew, at the end of the Pilot Term unless agreed to in writing by the Parties.
- 8.1.3 **Termination for Breach.** In the event of a material breach by a party, the non-breaching party may terminate this Agreement upon written notice of the breach to the other party; provided, however, that if (in the sole discretion of the non-breaching party) the breach is capable of being cured, the breaching party shall be allowed to cure such breach within twenty-one (21) days of receipt of the written notice of such breach. If the breaching party, prior to expiration of such twenty-one (21) day time period, has cured the breach, this Agreement shall remain in effect.
- 8.1.4 **Termination for Breach of Confidentiality.** If ARCW or its staff violates patient confidentiality or the requirements of the Health Insurance Portability and Accountability Act of 1996, as amended, Wis. Stats. § 51.30, Wis. Stats. §146.816, or Wis. Stats. § 146.82 and all associated regulations, in any manner, ARCW agrees that such staff member will be removed from the Keenan Health Center and all duties under this Agreement, and MHD may, at its discretion, choose to immediately terminate the Agreement.
- 8.1.5 **Immediate Termination.** This Agreement shall terminate, unless otherwise agreed in writing by the Parties, immediately and automatically if: (a) a receiver is appointed to take possession of all or substantially all of the assets of a party or a party makes an assignment for the benefit of creditors or a party takes any action under any insolvency, bankruptcy, or reorganization act, or a party otherwise ceases to do business; or (ii) either party becomes excluded, debarred or declared ineligible from participation in the Medicare, Medicaid or other federal health care programs.

8.1.6 **Termination Due to Legal Changes.** This Agreement shall be construed to be in accordance with all applicable federal and state statutes, rules, regulations, principles, and judicial and regulatory agency interpretations. If, in the written opinion of legal counsel for ARCW or MHD, or by decision of any agency of the federal or state government, applicable federal and state health care or other laws in effect during the term of the Agreement render any of the material terms of this Agreement unlawful or unenforceable, ARCW and MHD shall, if permitted by law and if in accordance with the opinion of counsel, act in good faith to restructure the business arrangement between them to conform to the then-existing law or the requirement of any state, federal or local governmental agency. If the Parties are unable within thirty (30) days after written notice to agree upon a new arrangement, either party may terminate this Agreement by providing thirty (30) days' written notice to the other party.

8.2 **Transition Following Termination.** Upon termination of this Agreement, ARCW and MHD will cooperate fully in all matters relating to the completion of pending PrEP clinic work and the transition of PrEP services to ARCW. All PrEP patients served by ARCW under this Agreement will be transferred to ongoing PrEP care, if they do so choose, at ARCW sites.

9. **Relationship of the Parties.** The relationship between MHD and ARCW is that of independent contractors. Nothing in this Agreement shall be construed by either party to create a joint venture partnership, association or affiliation, employee or employer relationship, or any other similar relationship. No employee of ARCW shall receive any fringe benefits or any other benefits to which City's salaried employees are entitled to or are receiving.
10. **Review of Agreement.** In implementing this Agreement, MHD and ARCW agree to collaborate in the provision of services as described herein. On an annual basis, or as needed, MHD and ARCW agree to designate representatives to review the services provided under the Agreement, and to jointly amend the Agreement if amendment is determined to be necessary by both parties, in good faith. Amendments shall not have any effect unless such amendments are in writing signed by both parties.
11. **Indemnification and Defense of Suits.** Notwithstanding any references to the contrary in this Agreement, both Parties assume full liability for their acts. ARCW assumes full liability for all of its acts and the acts of its subcontractors (if any) in the performance of this Agreement. ARCW will save and indemnify and keep harmless the City against all liabilities, judgments, attorneys' fees, costs, and expenses which may result from the carelessness or neglect of (i) of ARCW, its employees, officers, directors, volunteers, agents, contractors, subcontractor's or

invitees, (ii) of any occupant or invitee of or at the Space, (iii) ARCW's subcontractor, or of anyone claiming by, through, or under ARCW. MHD shall have the right to tender the defense of any claim or action at law or in equity to ARCW or ARCW's insurer, and upon such tender it shall be the duty of ARCW or ARCW's insurer to defend such claim or action without cost or expense to the MHD or its officers, agents, or employees.

12. **Audit.** At any time during normal business hours and as often as MHD, or if federal or state grants or aids are involved, as the appropriate federal or state agency may deem necessary, there shall be made available to the City or such agency for examination all of its records with respect to all matters covered by this Agreement and related to the License, and ARCW shall permit the MHD or such agency 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 of employment, and other data relating to all matters covered by this Agreement and relating to the License.
13. **Breach; Governing Law.** This Agreement, and all questions arising in connection herewith shall be governed by and construed in accordance with the internal laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in the City of Milwaukee for matters arising under state law and in federal district court in the Eastern District of Wisconsin for matters arising under federal jurisdiction
14. **Notices; Contact Persons.** Notice required or permitted under this Agreement may be made only by the following methods: (1) by personal delivery to the recipient or the recipient's office at the address listed below; (2) by email to the recipient's email listed below; (3) by U.S. Mail addressed to the recipient at the address listed below and deposited in the U.S. Mail with sufficient postage. Notices given in accordance with these provisions shall be deemed given and received (1) when personally served or delivered to a person at the recipient's office at the address listed below, (2) if e-mailed during business days (Monday through Friday, excluding legal holidays) during business hours (8:30 a.m.- 4:30 p.m.) on days when Milwaukee's City Hall is open for business, or (3) if mailed, three business days after the postmark on such notice.

To MHD:

City of Milwaukee Health Department
Attn: Julie Katrichis
3200 North 36th Street
Milwaukee, WI 53216

and

City of Milwaukee Health Department
Attn: Commissioner Jeanette Kowalik, PhD, MPH, MCHES
841 North Broadway, 3rd Floor
Milwaukee, WI 53202

To ARCW:

AIDS Resource Center of Wisconsin
Attn: Chief Operating Officer
820 North Plankinton Avenue
Milwaukee, WI 53203

The above-named persons shall also be the respective contact persons for MHD and ARCW for purposes of this Agreement.

15. **Severability of Provisions.** If any of the terms or provisions contained herein are declared invalid or unenforceable by a court of competent jurisdiction, the remaining provisions and conditions of this Agreement shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.
16. **Captions.** The captions in this Agreement are for convenience and reference, and in no way define or limit the scope or intent of the various provisions, terms, or conditions.
17. **Non-Assignability.** No Party may assign any of its rights, duties, or obligations under this Agreement without the prior written consent of the other Party.
18. **Entire Agreement and Amendment.** This Agreement contains the entire understanding of the parties with respect to the subject matter herein and supersedes any prior or contemporaneous agreement, whether oral or written, of the parties. All Exhibits and Recitals are incorporated into and constitute an integral part of this Agreement. This Agreement may not be amended or altered in any manner except in writing signed by both parties.
19. **Non-Discrimination.** Both Parties agree not to discriminate against any qualified employee or qualified applicant for employment because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, victimhood of domestic abuse or sexual assault, past or present membership in the military service, HIV status, domestic partnership, genetic identity, homelessness, familial status, or an individual's affiliation or perceived affiliation with any of these categories. The Parties will comply with all requirements imposed by or pursuant to the regulations of the appropriate federal agency effectuating Title VI of the Civil Rights Act of 1964. Both Parties agree to comply with all applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.* Reference Milwaukee Code of Ordinances 109-9-3.

20. **Open Records.** Both Parties understand that MHD 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. sec. 19.21 *et. sec.* ARCW acknowledges that it is obligated to assist MHD in retaining and producing records that are subject to the Wisconsin Public Records Law, including but not limited to those records produced or collected by ARCW under this Agreement pursuant to Wis. Stat. sec. 19.36(3), that the failure to do so shall constitute a material breach of this Agreement, and that ARCW must defend and hold MHD harmless from liability due to its fault under that law. Except as otherwise authorized, those records shall be maintained for a period of seven years.
21. **Conflict of Interest.** No officer, employee, or agent of the City of Milwaukee who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement. No member of the governing body of the City and no other public official 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. ARCW covenants that it 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. ARCW further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. An interest on the part of ARCW or its employee must be disclosed to MHD.
22. **Claim Notification.** Each Party will provide claim notification to the other Party of any claim or potential claim that may affect the provision of services covered under this Agreement.
23. **ARCW Billing & 340B Participation.** MHD understands that the provision of PrEP services, including drug purchases, requires substantial financial resources of ARCW in order for ARCW to create and maintain a PrEP clinic in collaboration with MHD's Keenan Health Center. MHD acknowledges that ARCW retains the exclusive right to bill appropriate payors, when possible, of PrEP patients and all amounts collected shall belong exclusively to ARCW. MHD further acknowledges that ARCW is the sole 340B Covered Entity under this Agreement that ARCW may be required to register MHD Keenan Health Center's Site address with the Office of Pharmacy Affairs ("OPA") as a 340B eligible site to enable ARCW's participation in the federal 340B program. ARCW shall inform patients before providing services that ARCW is not MHD, and that ARCW's services are provided by ARCW and not by MHD, and that patients shall receive billing through ARCW.
24. **Waiver.** Waiver by a party of a breach or noncompliance with any terms of this Agreement can be accomplished only by a specific written agreement and will not

operate as or be construed to be a waiver of any subsequent breach or noncompliance.

25. **Exclusion from Federal Health Care Programs.** Each Party hereby represents and warrants that it is not, and at no time has been, excluded from participation in any federally-funded health care programs, including Medicare and Medicaid. This representation includes all employees of each respective party who provides Specialty Services or assist in the provision of services under this Agreement. Each Party hereby agrees to immediately notify the other party of any threatened, proposed or actual exclusion from any federally-funded health care program, including Medicare and Medicaid, with respect to it or any of its employees.
26. **Signatures; Counterparts.** ARCW represents to City that its signatories have been duly authorized to sign this document on ARCW's behalf. This Agreement may be executed in counterparts, with signatures transmitted by facsimile or by internet in .pdf form, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

CITY: THE CITY OF MILWAUKEE, BY ITS HEALTH DEPARTMENT

By: _____
Jeanette Kowalik
Commissioner of Public Health

Date: _____

AIDS RESOURCE CENTER OF WISCONSIN, INC.

By: _____

Name Printed: Tim Dyer

Title: Executive VP & CFO

Date: _____

APPROVED AS TO FORM AND EXECUTION:

By: _____
Assistant City Attorney Andrea Fowler

Date: _____

1084-2018-2112/1253272.1

EXHIBIT A

CITY OF MILWAUKEE INSURANCE REQUIREMENTS

A. General Requirements.

- A certificate of insurance acceptable to City evidencing the insurance requirements is to be provided. The certificate shall state that the issued insurance policies meet the requirements as outlined below. All certificates are to be provided within 30 days of final execution of this Contract. If such certificate is not received, the City of Milwaukee has the authority to declare this Contract terminated.
- All policies shall state that the City shall be afforded a thirty (30) day written notice of cancellation, non-renewal or material change by any insurers providing the coverage required by City for the duration of this Contract.
- Insurance companies must be acceptable to City and must have a current A.M. Best rating of A- VIII or better.
- All policies shall be written on an occurrence form, other than professional liability as noted below.
- If subcontractors are used, each must meet all requirements in sections A and B.

B. The minimum insurance requirements re as follows:

(1) Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory Coverage
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

- Employer's Liability at limits noted above or higher limits if needed to meet Umbrella underlying insurance requirements.
- Coverage shall be modified to include a Waiver of Subrogation Endorsement in favor of City including its directors, officers, agents, employees and volunteers.

(2) Commercial General Liability

Commercial General Liability	\$1,000,000 each occurrence
General Aggregate	\$2,000,000 aggregate
Personal & Advertising Injury Limit	\$1,000,000 each occurrence
Products - Completed Operations Aggregate	\$2,000,000 aggregate
Medical Expense	\$ 5,000 each person

- Coverage must be equivalent to ISO form CG0001 or better.
- The City of Milwaukee shall be added as an additional insured using ISO form CG2026 or its equivalent.
- Coverage shall be modified to include a Waiver of Subrogation Endorsement in favor of City including its directors, officers, agents, employees and volunteers.
- The policy shall include independent contractors (owners/contractors protective) and contractual liability.
- Coverage will apply on a primary and non-contributory basis. We suggest the following wording:

“If you have agreed in a written contract that this policy will be primary and without right of contribution from any insurance in force for an Additional Insured for liability arising out of your operations, and the contract was executed prior to the bodily injury, property damage, personal injury or advertising injury, then this insurance will be primary over, and we will not seek contribution from, such insurance.”

- Coverage shall apply to the risks associated with or arising out of the services provided under this contract.

(3) Auto Liability

Combined Single Limit	\$1,000,000 each accident
Medical Expense	\$ 10,000 each person

- If the Contractor owns or has any long term leased vehicles, coverage must be for Any Auto (Symbol 1). If there are no owned or long term leased vehicles, then coverage must be for Hired and Non-Owned Auto Liability (Symbols 8 and 9).

