



**WORKFORCE DEVELOPMENT MEMORANDUM OF AGREEMENT BETWEEN THE
CONSORTIUM
AND EMPLOY MILWAUKEE, INC.**

This is an agreement (“Agreement”) dated as of _____, 2017 between that certain Consortium created pursuant to Article I of the Workforce Development Consortium Agreement (Workforce Development Area #2) between the City of Milwaukee and the Intergovernmental Cooperation Council, a council organized pursuant to Wis Stat. §66.0301, which consists of the individual elected executive officer of the units of general local government located within Milwaukee County, dated as of the ___ day of _____, 2017 (the “Consortium”), Employ Milwaukee, Inc. (“Employ Milwaukee”), and the City of Milwaukee, acting through its Mayor, to effect job training and employment programs, including those programs operated under the Workforce Innovation Opportunity Act (“WIOA”).

RECITALS

Mayor Tom Barrett is the Chief Elected Official of the City of Milwaukee (the “Mayor”) and on July 20, 2017 was selected by the Intergovernmental Cooperation Council as the designated Chief Elected Official (“Designated CEO”) for WDA #2. In addition to serving as Designated CEO the Mayor is the Chair of the Consortium. The Consortium is the appointing authority for the Employ Milwaukee Board under §107(c) of the WIOA, 29 U.S.C. §3122, and has delegated a portion of that authority to its Designated CEO pursuant to the Consortium Agreement; and

Whereas, the Consortium, Employ Milwaukee, and the City of Milwaukee are desirous of entering into this Agreement to effectuate the WIOA;

NOW, THEREFORE, in consideration of the mutual covenants set for the herein, the Consortium, Employ Milwaukee, and the City of Milwaukee agree as follows:

I. TERM

The term of this Agreement shall commence as of the date of execution and shall continue in force until , January 1, 2019. This Agreement shall act to repeal and supersede any and all prior agreements, and shall be automatically renewed for two-year periods unless either party gives written notice of its intention not to renew at least 60 days prior to the date of expiration. Notwithstanding the foregoing, this Agreement shall also terminate upon the earlier of:

- A. Changes in federal law prohibiting or rendering such agreements ineffectual;

B. Repeal of WIOA or loss of federal funding for WIOA projects.

II. SCOPE

This Agreement shall govern and apply to job training and employment programs under WIOA and such other programs as may be mutually agreed upon.

III. DUTIES

A. The Consortium designates Employ Milwaukee to serve as local grant subrecipient under 29 U.S.C. §3122(d)(12)(B)(i)(II) and for such other programs as may be mutually agreed upon.

B. Designation and Membership of the Local Board.

1. A request was submitted for initial designation of the Workforce Development Area pursuant to WIOA.

2. In accordance with the requirements established by the Governor and the criteria established under 29 U.S.C. §3122(b), the Consortium and its Designated CEO appoint the members of the local board (“Local Board”) from the individuals nominated or recommended to be such members. 29 U.S.C. §3122(c)(1)(A).

3. The Local Board, in consultation with the Designated CEO, shall request subsequent designations as they become necessary. 29 U.S.C. §3121(b)(3).

C. Local and Regional Planning.

1. The Designated CEO shall work with the Local Board to develop and submit to the Governor a comprehensive 4-year local plan that is consistent with the State plan and in conformance with 29 U.S.C. §3123. 29 U.S.C. §3122(d)(1).

2. If required in the future, the Designated CEO and the Local Board shall consult with the State to identify regions, consistent with the considerations described in 29 U.S.C. §3121(b)(1)(B). 29 U.S.C. §3121(a)(1).

3. The Designated CEO and the Local Board shall engage in a regional planning process and prepare, submit, and obtain approval of a single regional plan consistent with the requirements in 29 U.S.C. §3121(c).

D. Budget and Grant Administration Responsibilities.

1. The Designated CEO and the Local Board shall use funds allocated to the local area by the state and use nonfederal funds available to the local area that the Designated CEO and Local

Board determine are appropriate and available for that use, in fulfillment of its responsibilities under WIOA. 29 U.S.C. §3131.

2. The Designated CEO shall review and approve the Local Board's budget for the activities of the Local Board. 29 U.S.C. §3122(d)(12)(A).

3. At the direction of the Local Board, Employ Milwaukee shall disburse those funds allocated to the local area by the state and such nonfederal funds available to the local area pursuant to 29 U.S.C. §3122(d)(12)(B)(ii) that the Designated CEO and the Local Board determine area appropriate and available for Workforce Innovation and Opportunity Activities, pursuant to the requirements of 29 U.S.C. §3122(d)(12)(B)(i)(III).

E. Program Oversight.

1. The Designated CEO will work with the Local Board to conduct oversight of youth activities programming authorized under 29 U.S.C. §3164(c), local employment and training activities authorized under 29 U.S.C. § 3174(b),(c) and (d), and the one-stop delivery system in the local area; and together the Designated CEO and the Local Board will ensure the appropriate use and management of the WIOA funds provided for these activities and one-stop delivery system(s); and for workforce development activities, the Designated CEO and the Board will work together to ensure the appropriate use, management and investment of funds to maximize performance outcomes for local areas under section 29 U.S.C. §3141. 20 U.S.C. § 3122(d)(8).

2. With the agreement of the Designated CEO, and consistent with 29 U.S.C. §3151(d), the Local Board shall competitively designate or certify One Stop Operators, as described in 29 U.S.C. §3151(d)(2)(A) or terminate for cause the eligibility of such operators. 29 U.S.C. §3122(d)(10)(A).

3. The Designated CEO shall review and approve a Memorandum of Understanding between the Local Board and the One Stop Partners, relating to the operation of the One Stop delivery system in the local area, consistent with the requirements in 29 U.S.C. §3151(c)(2). 29 U.S.C. §3151 (c)(1).

4. With the agreement of the Designated CEO, the Local Board will conduct oversight of the one-stop delivery system pursuant to 29 U.S.C. §3151(a)(3) and consult with the State as it establishes objective criteria and procedures used to evaluate the operation of the one-stop center as described in 29 U.S.C. §3151(g).

5. The Designated CEO shall consult with the Local Board, the One Stop Operator, and the One-Stop Partners regarding funding of the One-Stop infrastructure as described in 29 U.S.C. §3151(h).

6. The Designated CEO and the Local Board shall consult with the Governor as the Governor establishes guidance for infrastructure one-stop funding pursuant to 29 U.S.C. §3151(h)(1)(B) and determines funding as described in 29 U.S.C. §3151(h)(2)(C).

7. The Designated CEO and the Local Board shall consult with the Governor as the Governor determines funding allocation for youth activities and statewide workforce investment activities under 29 U.S.C. 3162(b)(1)(C). 29 U.S.C. §3163(b).

8. The Designated CEO and the Local Board shall consult with the Governor as the Governor determines funding allocation for adult employment and training activities and statewide workforce investment activities under 29 U.S.C. 3172(b)(1)(B). 29 U.S.C. §3173(b)(1).

F. Performance Measurements.

1. The Designated CEO shall work with the Local Board and the Governor to negotiate and reach agreement on local performance measures. 29 U.S.C. §3122(d)(9).

2. The Consortium, its Designated CEO, and the Local Board shall determine whether to appeal a gubernatorial reorganization determination made under 29 U.S.C. §3141(g)(2)(A) to the Governor under 29 U.S.C. §3141(g)(2)(B)(i) and to the Secretary of the U.S. Department of Labor under 29 U.S.C. §3141(g)(2)(B)(ii).

IV. OPEN MEETINGS AND PUBLIC RECORDS

A. The provisions of Subchapter V, Chapter 19 of the *Wisconsin Statutes* regarding open meetings of governmental bodies shall apply to all meetings and proceedings of Employ Milwaukee. 29 U.S.C. 3122(e) and 20 CFR §679.390.

B. The Designated CEO and Employ Milwaukee, including but not limited to the Local Board, understand that the City of Milwaukee 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. The Local Board acknowledges that it is obligated to assist the City of Milwaukee in retaining and producing records that are subject to the Wisconsin Public Records Law, including such records that are generated by the Local Board and Employ Milwaukee as a consequence of this Agreement, and that the failure to do so shall constitute a material breach of this Agreement, and that the Local Board and Employ Milwaukee must defend and hold the City harmless from liability due to either the Local Board or Employ Milwaukee's fault under that law. Except as otherwise authorized, those records shall be maintained for a period of seven years.

V. LIABILITY

- A. The Mayor of the City of Milwaukee in his official capacity, acting as Designated CEO and as Chair of the Consortium, serves as the local grant recipient, and is liable for the misuse of the grant funds allocated to the local area under 29 U.S.C. 3122 (d)(12)(B)(i)(I) & (II).
- B. Employ Milwaukee agrees to indemnify, defend and hold harmless the Consortium, the Designated CEO, and the City of Milwaukee, as well as their agents, officers, elected officials, representatives, employees, successors and assigns from and against any claim, demand, suit, payment, damages, loss, cost and expense, including actual attorney's fees, by reason of any alleged or actual liability for injury or damages caused by, relating to or arising in any way, in whole or in part, from (a) the wrongful, intentional, or negligent acts or omissions of the Local Board and Employ Milwaukee, and/or their employees, agents, representatives and subcontractors; and (b) the breach by the Local Board or Employ Milwaukee and/or their agents, officers, elected officials, representatives, employees, successors and assigns, of this Agreement, as well as any other related agreements.
- C. Employ Milwaukee agrees that it will at all times during the term of this Agreement keep in full force and effect both Comprehensive General Liability and Directors & Officers Liability policies, to the maximum extent permissible as allowable costs, issued by a company or companies authorized to do business in the state of Wisconsin, and licensed by the Wisconsin Commissioner of Insurance, with General Liability coverage provided for therein in the amount of \$2,000,000 and Directors & Officers Liability in the amount of \$4,000,000. The City of Milwaukee, the Designated CEO and the Consortium shall be named as additional insureds. Additionally, Employ Milwaukee shall maintain Employee Theft/Employee Dishonesty coverage in the amount of \$1,000,000, which includes third party coverage. Coverage must remain in effect for a period of not less than two years beyond the termination date of the contract. If a claims-made form is used and a change of insurer occurs during the contract period, continuity of coverage must be maintained by either retaining the original retroactive date or exercising the extended reporting period endorsement option from the expired policy for a period of not less than two years, if the replacement insurer will not preserve the original retroactive date. The Mayor shall be given at least ten (30) days written notice of cancellation or nonrenewal during the term of this Agreement. In the case of cancellation or nonrenewal, Employ Milwaukee will immediately obtain new coverage so that no lapse in coverage occurs for any length of time. Upon execution of this Agreement, Employ Milwaukee shall furnish the Designated CEO with certification of insurance and, upon request, certified copies of the required insurance policies. In the event that any action, suit or other proceeding is brought against the Designated CEO upon any matter covered in said policies the Mayor shall, within ten (10) working days, give notice thereof to Employ Milwaukee and Employ Milwaukee shall cooperate with the Mayor in the defense of the action, suit or other proceeding. Irrespective of any other term of this Agreement, this provision shall survive termination of this Agreement.

VI. DISAGREEMENTS

It is expressly understood and agreed to by the parties that any disagreement or controversy as to the interpretation of the requirements and activities described, exempting Section V Liability, herein shall

be submitted to the Wisconsin Department of Workforce Development (DWD) for resolution. The decision by DWD shall be controlling.

VII. NOT A LIMITATION ON LOCAL BOARD'S DUTIES UNDER WIOA

This Agreement shall not be construed to limit or expand Employ Milwaukee or the Local Board's duties and obligations under WIOA, nor shall it be construed to shift any statutory liability of Employ Milwaukee or the Local Board onto the Consortium or the Designated CEO. This Agreement shall not be construed to represent an exhaustive list of all duties and obligations placed on the Consortium, Employ Milwaukee and the Local Board, respectively, by WIOA.

VIII. CONFLICT OF INTEREST.

- A. 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 of Milwaukee and no other public official of the City of Milwaukee 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.
- B. Employ Milwaukee 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. Employ Milwaukee further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. An interest on the part of the Local Board or Employ Milwaukee's employees must be disclosed to the City of Milwaukee.

IX. NONDISCRIMINATION.

- A. Employ Milwaukee agrees 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, past or present membership in the military service, familial status, or based on affiliation with or perceived affiliation with any of these protected categories.
- B. This requirement shall apply, but not be limited to, the following: tenure, terms or conditions of employment, promotion, demotion or transfer, recruitment or recruitment advertising, employment rules and policies, lay-off or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.
- C. No person in the United States shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement. 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.

- D. Employ Milwaukee agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq.
- E. Employ Milwaukee will cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

X. AMENDMENTS

This Agreement may be amended or restated as necessitated by any changes in the Workforce Innovation and Opportunity Act. Additionally, amendments may be made at any time with the consent of both parties and such amendments shall be consistent with the requirements of the Workforce Innovation and Opportunity Act.

In witness whereof, the duly authorized representatives of the parties execute this Agreement as of the day and date first above written:

Tom Barrett, Mayor Date
Chair of the Consortium
Designated CEO for WDA #2

Name: Date
Employ Milwaukee, Inc.

City of Milwaukee Date
Tom Barrett, Mayor of the City of Milwaukee

Approved as to form and execution:

Assistant City Attorney Date