

**COMPREHENSIVE DATA SHARING AND USE AGREEMENT
FOR DATA HUB MKE**

Between the City of Milwaukee and _____

This Comprehensive Data Sharing and Use Agreement, (“Agreement”), is entered into this ____ day of _____, 20____, by and between the City of Milwaukee, (“City”), acting by and through its Health Department, (“MHD”), and _____, (“Agency”), (collectively, “the Parties”), for the sharing and use of information.

WHEREAS, the Homicide Review Commission, (“HRC”), is a collaborative forum that strives to reduce homicides and non-fatal shootings through a multi-level, multi-disciplinary, and multi-agency homicide review process; and

WHEREAS, the HRC is comprised of law enforcement professionals, criminal justice professionals, public officials, residents, and community service providers who meet to exchange information regarding the City’s homicides and other violent crimes to identify methods of prevention from both public health and criminal justice perspectives, and make recommendations based on trends identified through the homicide review process; and

WHEREAS, the HRC has developed a model for using limited resources to link and analyze data from multiple sources for the purpose of research in identifying factors that contribute to crime, injury, and violence and factors that promote violence reduction and public health and safety, (“Data Hub MKE” or “DH MKE”); and

WHEREAS, DH MKE will also be used to conduct research to increase safety for victims, and children of victims, of domestic violence, and victims of sexual assault, with a goal of protecting victim safety and confidentiality, and protecting children from witnessing violence, being abducted, or experiencing abuse or sexual violence during visitation and exchanges; and

WHEREAS, the City has accepted and funded a Community Safety and Data Hub Grant from the Greater Milwaukee Foundation for the purpose of establishing DH MKE; and

WHEREAS, DH MKE will be supported by, and composed of, various participants in the HRC, the HRC itself, the MHD, and other individuals, agencies, and organizations; and

WHEREAS, DH MKE will receive, store, maintain, protect, and update information from a variety of health agencies, law enforcement agencies, educational

institutions, and other sources that are subject to state and federal guidelines for the protection of privacy, confidentiality, anonymity, and proprietary considerations; and

WHEREAS, the Agency wishes to participate in DH MKE by providing data for the use of the Agency and other participating agencies for the undertaking of various research projects; and

WHEREAS, the City agrees to undertake various obligations and potential liabilities in order to facilitate the Agency's provision of data and use of that data by DH MKE, the Agency, and other DH MKE participants as provided in this Agreement; and

WHEREAS, this Agreement will address the various aspects of the data sharing and use, including compliance with applicable local, state, and federal laws;

NOW THEREFORE, the Parties agree as follows:

Article I – Operation of DH MKE

1. Policy Team. DH MKE will be governed by a data research and oversight team, ("Policy Team"), composed of a representative of the Agency and of each participating agency that shares data with DH MKE. The Agency's selected member of the Policy Team, or waiver of the right to appoint a representative to the Policy Team, shall be designated in writing, and this designation may be changed at the Agency's option, in a written notice to MHD and DH MKE. No member of the Policy Team shall have veto authority regarding a research request or research oversight as those terms are described in this Agreement; rather, Policy Team will take any and all actions pursuant to a vote of a quorum of the Policy Team.

2. Provision of Data. The Policy Team shall determine the exact nature of the data that is to be provided by the Agency to DH MKE. The Policy Team may make periodic requests for updated or additional data, and the Agency shall comply with these requests in a reasonably timely manner. All data provided by the Agency shall be provided to DH MKE electronically, in a format requested by the Policy Team.

3. Storage of Data. All data shall be stored and maintained on a server selected and paid for by the MHD, which shall be compliant with all applicable local, state, and federal laws pertaining to privacy obligations. The third party host may be the Agent, other participating agency, or a third-party. All data provided to DH MKE shall be accessible to DH MKE and MHD personnel and as provided in Article I.4. MHD shall establish reasonable security mechanisms and policies to protect all data submitted to DH MKE as required by law and this Agreement and DH MKE and its Policy Committee shall assist and comply with all such mechanisms and policies.

4. Research Requests. All data provided by the Agency shall be combined with data from other participating agencies to create a comprehensive database from which participating agencies may seek to obtain data in furtherance of research requests made by the Agency and other participating agencies. The Policy Team will approve, in whole or in part, or deny all research requests made by the Agency and other participating agencies. Each research request made by the Agency or other participating agencies shall be in writing, specifying how the research will be conducted and how the findings will be used. DH MKE will only provide the Agency or other participating agency shall only be provided with de-identified data. All data provided in connection with a research request shall only be used by the Agency or another participating agency to further the research and goals of DH MKE, as determined by the Policy Team.

5. Warranty Disclaimer. THE CITY AND DH MKE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING ACCURACY OF DATA, WHETHER ORIGINAL OR COMPILED DATA. THE AGENCY WILL NOT SOLELY RELY ON THE DATA PROVIDED BY DH MKE. THE AGENCY SHALL DETERMINE INDEPENDENTLY BOTH THE RESULTS OBTAINED HEREUNDER AND ANY DATA GENERATED PURSUANT TO THIS AGREEMENT ARE SUITABLE FOR THE PARTICULAR USE INTENDED BY THE AGENCY.

6. Research Oversight. The Policy Team shall review any proposed publication generated in whole or in part with data provided by DH MKE prior to publication. The MHD and/or the DH MKE Policy Team may delay or deny publication involving any use of data that would contravene any legal obligations described in this Agreement, or an agreement with another participating agency. Any publication derived in whole or in part with data provided by DH MKE shall so note if desired by the Policy Team.

Article II – City’s Legal Obligations as a Health Care Provider

1. HIPAA Compliance. MHD is a covered entity for purposes of the Health Insurance Portability and Accountability Act, (“HIPAA”). As a result, the MHD may, in its sole discretion and regardless of any Policy Team action to the contrary, require the Agency and other participating agencies to execute a Business Associate Agreement prior to the release of any MHD data by DH MKE. MDH will notify the Policy Team, the Agency, and other participating agencies of any other HIPAA compliance obligations.

Article III – Agency’s Specific Legal Obligations for its Data

Article IV – General Terms and Conditions.

1. Term. This Agreement shall commence on the date it is executed by the Parties and shall continue for a period of five years, unless terminated as provided in the Agreement.

2. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, and all prior agreements, correspondence, discussions, and understandings of the Parties, (whether oral or written), are merged herein and made a part hereof, it being the intention of the Parties that this Agreement shall serve as the complete and exclusive statement of their agreement together.

3. Waiver. The failure of any Party to insist, in any one or more instance, 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.

4. Section Headings. The headings in this Agreement are for purposes of convenience and ease of reference only and shall not be construed to limit or otherwise affect the meaning of any part of this Agreement.

5. Amendment. This Agreement shall be amended only in a writing executed by the Parties. No oral amendment of this Agreement shall be given any effect.

6. Applicable Law and Venue. This Agreement and all questions in connection herewith shall be governed by and construed in accordance with the internal laws of the State of Wisconsin, without regard to principals of conflicts of law thereunder. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in the City for matters arising under state law, and in federal district court for matters arising under federal law.

7. Independent Performance. In performing its obligations under this Agreement, each Party shall act as independent parties, and not as agents, representatives, or employees of the other Party.

8. Assignment. Neither Party shall assign, sublet, or transfer its interests or obligations under this Agreement without the prior, written consent of the other Party.

9. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreement.

10. Termination.

10.1 Termination for Cause. This Agreement may be terminated by either Party due to a breach by the other Party. The non-breaching party shall give written notice of intent to terminate to the breaching party. If such breach is not cured by the breaching party within 30 days after such notice, the non-breaching party may proceed to terminate the Agreement by giving a written notice of termination, receipt of which shall immediately terminate the Agreement.

10.2 Termination for Convenience. Either Party may terminate this Agreement for any reason upon 60 days written notice to the other Party.

10.3. Right to use Data After Termination. Except in the event of termination by the Agency resulting from a breach by the MHD with respect to its obligations to abide by Article III of this Agreement, after termination, DH MKE shall have the right to continue to use any data provided by the Agency for the purposes specified in this Agreement, as determined by the Policy Team.

10.4 Confidentiality Obligations. Any confidentiality obligations imposed on the Parties pursuant to law and this Agreement shall survive termination of this Agreement.

10.5 Termination by MHD of Participation in DH MKE. In the event the City terminates its participation in DH MKE, or if DH MKE does not comply with or assist the MHD in complying with all the terms and conditions contained in Article II, then any and all of the City's obligations and potential liabilities assumed pursuant to this Agreement with regard to the Agency and DH MKE shall cease. DH MKE may make alternate arrangements with the Agency and/or other participating agencies to continue DH MKE and assume the City's obligations and potential liabilities with respect to the Agency pursuant this Agreement.

10.6 DH MKE Dissolution. In the event DH MKE ceases operations, including by reason of a lack of sufficient funding, the City's obligations and potential liabilities assumed pursuant to this Agreement shall cease.

11. Notice. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be considered to be given and received in all respects when personally delivered, when sent by facsimile (transmission confirmed), one day after sent by reputable overnight courier service, or three days after deposited in the United States mail, postage prepaid, at the following addresses (or at such other address for a party as shall be specified by like notice):

If to the City, to:

If to the Agency, to:

If to DH MKE, to:

12. Force Majeure. The failure by either Party to perform its duties and obligations will be excused if by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of public enemy, riots, labor or material shortages, labor disputes, fire, flood, explosion, legislation, or governmental regulation.

13. Legal Compliance. The Parties shall at all times observe, comply with, and perform all obligations hereunder in compliance with all applicable local, state, and federal laws.

14. Public Records. The City, the Agency, and DH MKE shall comply with the Public Records Law of Wisconsin, and the Agency and DH MKE shall assist the City in meeting any obligations under that law. Except as otherwise authorized, all documents and materials prepared pursuant to this Agreement shall be maintained for a period of seven years after completion of this Agreement.

15. Discrimination Prohibited. Neither the Agency nor DH MKE shall discriminate against any qualified employee or qualified applicant for employment made possible because of this Agreement on account 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 upon affiliation with, or perceived affiliation with any of these protected categories. This requirement shall apply to but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. There shall be posted in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of the clause.

16. Indemnification. Each Party agrees to hold harmless the other from any and all liability that is based on the acts or omissions of its officers, employees, or agents for which they are liable under state or federal law while acting within the scope of their employment or agency. To the extent allowed by law, the City agrees to indemnify DH MKE for any and all liability based on its acts or omissions relating to this Agreement. The Parties understand that the City is not waiving any immunities, limitations, or defenses available to it under state, federal, or administrative law.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day, month, and year set forth above.

The Agency

Name _____, Title _____

Data Hub MKE

Mallory O'Brien, Director

City of Milwaukee

Bevan Baker, Commissioner of Health

Countersigned

Assistant City Attorney
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