

FISCAL SPONSORSHIP AGREEMENT

THIS FISCAL SPONSORSHIP AGREEMENT (this “Agreement”), is made and entered into effective as of August_____, 2018 by and between The United Way of Greater Milwaukee & Waukesha County, (“United Way”), a Wisconsin non-profit corporation, and the City of Milwaukee, (the “City”), a municipal corporation, (collectively, “the Parties”).

RECITALS

WHEREAS, the City, a political subdivision of the state of Wisconsin, is classified as a governmental unit described in Sections 170(b)(1)(A)(v) and 170(c)(1) of the Internal Revenue Code of 1986, as amended (the “Code”); and

WHEREAS, United Way is a tax-exempt organization described in Section 501(c)(3) of the Code, as well as a public charity because it is an organization that normally receives a substantial portion of its support from a grants or from the general public as described in Sections 170(b)(1)(A)(vi) and 509(a)(1) of the Code.; and

WHEREAS, United Way’s exempt purposes include, without limitation, changing lives and improving the community through education; working with parents, schools, and organizations to ensure children have a chance for success in school, work, and life by investing in programs that produce results; and

WHEREAS, the City intends to carry out the Fund My Future Milwaukee Project, (the “FMFM Project”) described in **Exhibit A** to this Agreement; and

WHEREAS, the City will use all of the funds that it receives pursuant to this Agreement exclusively for the FMFM Project and for public purposes, which public purposes are directly in line with and supportive of United Way’s Code Section 501(c)(3) tax-exempt purposes; and

WHEREAS, United Way has determined that financial support of the FMFM Project will further United Way’s tax-exempt purposes; now

THEREFORE, the Parties agree as follows:

AGREEMENT

1. Receipt of funds, restricted fund, and grants.

(a) **Creation of funds.** United Way will create four funds designed for the FMFM Project: the Seed, Incentive, Operations and Unspecified Funds, described herein.

(b) **Grants.** The United Way and the City will receive grants, contributions, and gifts to be used for the FMFM Project, (“Contributions”). The City will remit all Contributions that it receives to United Way for deposit into one of the four funds based upon the donor’s intentions and United Way shall deduct the fee set forth in Section 15,

as well as make any Reward or Bonus payments from the applicable fund as directed by the City as long as it meets the donor's intent. United Way will deposit all Contributions that it receives to the Seed Fund.

(c) **Distributions.** United Way will make payments from the applicable funds at the direction of the City as long as it meets the donor's intent, including payments to the Edvest Account (as defined in Section 4). It being specifically understood by the Parties that the City is given the discretion to keep such monies in the various Funds as it deems necessary to sufficiently fund future obligations with regard to future Section 15 fees, future Reward or Bonus payments, and other Program expenses as the City determines are necessary or consistent with the purposes of the Program.

2. Receipt of funds. Except for Contributions received directly by the City, all Contributions given or paid to the FMFM Project must be made payable to "United Way of Greater Milwaukee and Waukesha County". United Way will establish and maintain an online system to accept Contributions that will be designated for the FMFM Project (the "Website").

3. Solicitations. The City may also solicit Contributions on behalf of the United Way for the FMFM Project. The City will report to United Way about the funding sources approached and provide the text of the City's fundraising materials. All grant agreements, pledges, or other commitments with funding sources to support the FMFM Project through United Way's Funds shall be executed by United Way.

4. 529 entity account. The City will open and maintain a Code Section 529 Qualified Scholarship Account (the "Edvest Account") with the Edvest College Savings Plan ("Edvest"), the administrator of which is the State of Wisconsin, the distributor of which is TIAA-CREF Individual & Institutional Services, LLC, and the plan manager of which is TIAA-CREF Tuition Financing, Inc., or any successor plan, administrator, distributor, and plan manager that maintains a compliant plan. The account owner of the Edvest Account will be the City. The City will set up the Edvest Account such that United Way may receive duplicate copies of all account statements, deposits, withdrawals, and other confirmations and correspondence from the Edvest Account.

5. The Use of grant funds. United Way shall only deposit the Grant Funds directly to the Edvest Account. Any changes in the purposes for which the Grant Funds may be spent must be approved in writing by the Parties before implementation. Both during the term of this Agreement and after the Termination of this Agreement (as provided in Section 17), the Parties shall not use any funds deposited into the Edvest Account for any purpose other than that of the FMFM Project and the Parties shall not withdraw funds from the Edvest Account for use in any purpose other than that of the FMFM Project. United Way retains the right, if the City breaches this Agreement, or if the City's conduct of the FMFM Project jeopardizes United Way's legal or tax-exempt status, to withhold, withdraw, or demand immediate return of the Grant Funds (to the extent permissible under applicable law), and to spend such Grant Funds so as to accomplish the purposes of the FMFM Project as nearly as possible.

6. Due diligence. The City shall provide United Way with:

(a) A Form W-9 completed with the City's information, or other appropriate documentation satisfactory to United Way, showing that the City is a "government unit" as described in Code Sections 170(b)(1)(A)(v) and 170(c)(1); and

(b) Such other documents relating to the City, the Edvest Account, or the FMFM Project as United Way may reasonably request.

7. Financial recordkeeping and reports by United Way.

(a) **Funds.** United Way will monitor, track, and keep financial records of (i) all Contributions made to the Funds and (ii) all distributions, including those made to the Edvest Account. On a quarterly basis, United Way will compile a report that summarizes all of the financial transactions into and out of all the funds. United Way will report all Contributions received for the FMFM Project as required under applicable law on its annual Form 990, *Return of Organization Exempt From Income Tax*.

(b) **Edvest Account.** United Way shall undertake the following financial recordkeeping and reporting duties related to the Edvest Account:

- (i) Receive and retain custody of all of the duplicate copies of the account statements, deposits, withdrawals, and other confirmations and correspondence from the Edvest Account, if the City sets up the Edvest Account such that United Way can receive duplicate copies of such documents (as provided in Section 4);
- (ii) Maintain books and records of all financial transactions recorded in the Edvest Account, based upon the duplicate documents received pursuant to Section 7(b)(i);
- (iii) Prepare quarterly and annual profit and loss statements on a schedule matching United Way's taxable year, the calendar year, based upon the duplicate documents received pursuant to Section 7(b)(i); and
- (iv) Provide administrative and accounting support, as well as related guidance, to the City in matters related to the FMFM Project and the Edvest Account.

8. No investment advice, solicitation, or investment management. United Way will not (i) advise or make recommendations on the purchase or sale of any security or any other asset or (ii) advise, recommend, issue reports or furnish analysis on securities or any other assets, either directly, indirectly, or through publications or reports. Nothing in this Agreement constitutes or forms a part of any offer for sale or subscription of, or any invitation to offer to buy or subscribe for, any securities or other assets, nor should this Agreement or any part of this Agreement form the basis of, or be relied upon in any connection with the purchase or sale of any security or any other asset whatsoever. The Agreement and the material within this Agreement are not to be construed as an offer or a recommendation to buy or sell a security or

any other asset. United Way is not registered investment adviser under federal, Wisconsin, or any other applicable law.

9. Cooperation. Upon the reasonable written request of United Way, the City shall provide any information or cause Edvest to provide such information, which is necessary to prepare both the financial recordkeeping contemplated in Section 7 and United Way's books, accounting records, financial statements, and tax returns, including United Way's Form 990, *Return of Organization Exempt From Income Tax*.

10. Reports by the City. As provided in Section 4, the City will set up the Edvest Account such that United Way will receive duplicate copies of all account statements and other financial information. Annual reports shall report all distributions including those paid to Edvest (once commenced) and the progress of the FMFM Project.

11. Prohibited use of funds. Funds may not be used in any attempt to influence legislation within the meaning of Code Section 501(c)(3). the City shall not use any portion of the Grant Funds to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to induce or encourage violations of law or public policy, to cause any private inurement or improper private benefit to occur, nor to take any other action inconsistent with the activities permitted or an organization that is tax-exempt under Code Section 501(c)(3). The prohibitions in this Section 11 shall survive the termination of this Agreement under Section 17.

12. Changes. The Parties shall notify one another promptly of any change in (a) legal or tax status, (b) executive or key staff responsible for the FMFM Project or Grant Funds, or (c) any circumstances that can reasonably be expected to materially and adversely impact the FMFM Project.

13. Indemnification and insurance. the City agrees, to the extent permitted by law, to indemnify and hold harmless United Way, its officers, directors, trustees, and employees, from and against any and all claims, liabilities, losses and expenses (including reasonable attorneys' fees) to the extent arising from or in connection with any negligent act or omission of the City, its employees, or officers acting within the scope of their employment or agency pursuant to sections 895.46(1) and 893.80, *Wis. Stats.* in applying for or accepting grants, in expending, accepting or applying the Grant Funds, or in carrying out the FMFM Project.

United Way agrees, to the extent permitted by law, to defend, indemnify, and hold the City, its officers, and employees harmless from and against any and all claims, liabilities, losses and expenses arising from or in connection with any act or omission of the United Way, its officers, directors, trustees, and employees in the carrying out of this Agreement, except to the extent caused by the City. United Way will provide to the City a certificate of insurance demonstrating applicable liability insurance coverage and will update same upon request.

14. No agency. Nothing in this Agreement shall constitute either the naming of the City as an agent or legal representative of United Way or the naming of United Way as agent or legal representative of the City for any purpose whatsoever except as specifically and to the extent set forth in this Agreement. This Agreement shall not be deemed to create any

relationship of agency, partnership, or joint venture between the parties to this Agreement. United Way and the City shall make no such representation to anyone, including in print, which misconstrues the intended relationship of the parties.

15. Fees. United Way will charge 5% per donor contribution up to \$250 per donor. The fee will only be applicable for donations made through the normal Annual United Way Campaign and will not apply to donors who make a gift of \$10,000 or more. In addition, contributions received by the City will not be accessed a fee.

16. The City is liable for FMFM Project costs. The City is solely responsible for any FMFM Project costs or obligations that exceed the amount of Grant Funds to be distributed to the City under this Agreement. The City remains liable for its costs and obligations under this Agreement even if Grant Funds are inadequate to satisfy such costs and obligations. For example, without limitation, the City must pay the annual fee set forth in Section 15 even if no funding sources provide funds to United Way for the FMFM Project.

17. Termination. The Agreement shall automatically renew on an annual basis unless terminated for cause by one of the Parties or upon the discontinuation of the Program, upon 90 days written notice. Upon termination the Parties shall not use Contributions, Grant Funds, or any deposits into an Edvest Account for any purpose other than that of the FMFM Project, except that: Contributions or Grant Funds that remain in the either Fund may be used for a mutually agreed purpose consistent with law; Contributions that remain in the Unrestricted Fund may be used by the City for winding down the Project; and Contributions that remain in the Unrestricted Fund may be returned to the donor when consistent with law.

18. Notice. Except as otherwise provided, all notices and demands which may or are required to be given pursuant to this Agreement must be in writing and shall be deemed to have been given when hand delivered or when (i) deposited in the United States mail, postage prepaid certified, return receipt requested, (ii) deposited with an express courier, postage prepaid or fees prepaid, or (ii) transmitted by facsimile or an electronic method that permits an image of the original notice document to be displayed (such as an e-mail attachment in “portable document format”/PDF):

If to United Way:

United Way of Greater Milwaukee &
Waukesha County
c/o Fil Carini
225 W. Vine Street
Milwaukee, WI 53212
fcarini@unitedwaygmwc.org

If to the City:

City of Milwaukee
c/o Sharon Robinson
200 East Wells Street
Milwaukee, WI 53202
srobin@milwaukee.gov

19. Benefit. This Agreement shall inure to the benefit of and be binding upon United Way and the City and their respective successors and assigns, except that no party may assign any of its interest under this Agreement without the prior written consent of the other party.

20. No waiver. The failure of any one of the parties to insist in any one or more instance upon the performance of any of the terms or conditions of this Agreement shall not be construed as a waiver of any rights granted under this Agreement or of the future performance of any such term of condition.

21. Governing law. This Agreement shall be governed by and construed in accordance with federal law and the laws of the State of Wisconsin, without giving effect to the principles of conflicts of laws.

22. Headings. Section headings are for description purposes only and shall not control or alter the meaning of the Agreement as set forth in the text.

23. Electronic transmissions. Original signatures of the parties on copies of this Agreement transmitted by facsimile or an electronic method that permits an image of the original signed document to be displayed (such as an e-mail attachment in “portable document format”/PDF) shall be deemed originals for all purposes and shall be binding on the parties.

24. Counterparts. This Agreement may be executed separately in counterparts, and such counterparts shall be deemed a single instrument binding on all parties hereto notwithstanding the fact that all parties have not signed the same counterpart.

25. Severability. If any covenant, condition, term or provision of this Agreement is found to be illegal, or if the application thereof to any person or in any circumstance shall to any extent be determined by an arbitrator or by a court to be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, condition, term or provision to persons or in circumstances other than those to which it is held invalid or unenforceable, shall not be affected, and each covenant, condition, term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. Further, there shall be substituted for such illegal, invalid or unenforceable term or provision such terms as are legal, valid, and enforceable and which correspond most closely to the intent of the parties as expressed in this Agreement.

26. Entire agreement. This Agreement shall supersede any prior oral or written understandings or communications between the parties and constitutes the entire agreement of the parties with respect to the subject matter hereof. This Agreement may not be amended or modified, except in a writing signed by both parties hereto.

27. Choice of Law, Venue. This Agreement, and all questions arising in connection therewith, 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.

28. Public Records Law. Both parties understand 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. sec. 19.21 *et sec.* United Way acknowledges 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 United Way must defend and hold the City harmless due to United Way's fault under that law. Except as otherwise authorized, those records shall be maintained for a period of seven years after termination of this Agreement.

29. Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any of the 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 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.

United Way 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. United Way further covenants that in the performance of this Agreement, no person having any conflicting interest shall be employed. An interest on the part of United Way or its employee must be disclosed to the City.

30. Non-Discrimination. United Way agrees not to discriminate against any 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. This requirement shall apply, but not be limited to, the following: discharge; failure or refusal to hire or refer for employment; harassment of any individual; compensation, terms, or conditions of employment; limiting, segregation, or classification of employees or applicants for employment in order to deny individuals of employment opportunities; and refuse to reasonably accommodate an employee or prospective employee's protected class. United Way will cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that all such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

31. Audit. 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 federal or state agency may deem necessary, there shall be made available to the City or such agency for examination all of United Way's records with respect to all matters covered by this Agreement and United Way shall permit the City or such agency to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, records, payrolls, and other data relating to all matters covered by this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first written above.

UNITED WAY OF GREATER MILWAUKEE &
WAUKESHA COUNTY

By: Fil Carini
Chief Operating Officer

CITY OF MILWAUKEE

By: Sharon Robinson
Director, Department of Administration

By: Martin Matson
Comptroller

By: Kathryn Z. Block
Assistant City Attorney
As to form and execution