

**MEMORANDUM OF UNDERSTANDING BETWEEN MILWAUKEE PUBLIC SCHOOLS AND THE MILWAUKEE PUBLIC SCHOOLS FOUNDATION, INCORPORATED**

THIS AGREEMENT is made between the Milwaukee Board of School Directors (hereinafter, “Board or “MPS”) 5225 West Vliet Street, P.O. Box 2181, Milwaukee, Wisconsin, 53201-2181, and Milwaukee Public Schools Foundation, Incorporated (hereinafter “Foundation”). Both parties are collectively referred to as “the Parties.”

WHEREAS, the Foundation was organized and incorporated for the purpose of raising and managing private resources that support the mission and priorities of MPS, provide educational opportunities for students of MPS, and enhance institutional excellence; and

WHEREAS, the Foundation is an established non-profit, public charity pursuant to Section 501 (c) (3) of the Internal Revenue Code; and

WHEREAS, MPS is a First-Class City School system pursuant to Wis. Stat. Chapter 119; and

WHEREAS, the Foundation Board of Directors is responsible for the control and management of all assets of the Foundation, including the prudent management of all gifts consistent with donor intent; and

WHEREAS, working together, the Parties have developed informal practices and procedures that have assisted greatly in achieving their respective goals and objectives; and

WHEREAS, the Parties desire to formalize their relationship through a written agreement that expresses agreed upon standards of operation and preserves the privacy and independent status of the Foundation;

NOW, THEREFORE, MPS and the Foundation make the following agreements:

**I. Foundation’s Commitment to MPS**

1. Exempt Status. The Foundation shall conduct its activities in such a manner as to maintain its exempt status under Section 501 (c) (3) of the Internal Revenue Code.

2. Fundraising. The Foundation shall conduct fund-raising on behalf of and for the benefit of MPS, and shall endeavor to increase the levels of private support for the mission and priorities of MPS. The Foundation, in consultation with the Superintendent, is responsible for planning and executing a comprehensive fund-raising and donor-acquisition program. The Parties will coordinate fund-raising, including major gifts solicitation, so as not to interfere with or disrupt the fundraising activities of the Foundation or MPS.

3. Disbursements. The Foundation's responsibilities shall include management and disbursement of assets received, held by or entrusted to the Foundation, in support of MPS and in accordance with this Agreement. Support of MPS shall include, but not be limited to, providing scholarships for students and providing funds for educational activities and programs. The Foundation may also support the MPS strategic plan through property and capital acquisition and development, as appropriate.

4. Asset Management. The Foundation Board of Directors is responsible for the prudent investment and management of all assets of the Foundation, including the prudent management of all gifts in a manner consistent with donor intent. All Foundation assets will be managed, invested and expended consistent with donor intent, the Uniform Prudent Management of Institutional Funds Act ("UPMIFA") and Section 501 (c) (3) of the Code.

5. Bylaws/Articles. The Foundation has established and will maintain Bylaws and Articles of Incorporation governing the operation of the Foundation. The Foundation will provide the Superintendent with an advance copy of amendments or additions to the Foundation's Articles of Incorporation or Bylaws. Governance of the Foundation shall be the responsibility of the Foundation's Board of Directors.

6. Operations. The Foundation Board of Directors is responsible for the performance and oversight of all aspects of the Foundation's operations. Such performance and oversight is guided by the Foundation's Bylaws and the Foundation's fiduciary responsibilities, including expectations of individual Board members.

7. Governance. The Board of Directors of the Foundation will be appointed/selected or elected in a manner consistent with the Foundation's Bylaws. The Foundation's Board of Directors is independent from MPS and shall make all decisions regarding the business and affairs of the Foundation to ensure consistency with the Foundation's articles of incorporation and by-laws. Due to the shared interests of MPS and the Foundation, the Superintendent and a member of the Milwaukee Board of School Directors shall serve as members of the Foundation's Board of Directors. The authority and privileges of the Superintendent and member of the Milwaukee Board of School Director shall be set forth in the Foundation's by-laws.

8. Non-Disparagement. The Foundation agrees to refrain from any conduct, practice, business or activity that would harm MPS' reputation or be inconsistent with MPS' mission. The Foundation agrees that all its promotional and advertising material shall clearly and conspicuously disclose that donations are being provided to the Foundation as distinct from MPS.

9. Accounting. The Foundation shall retain a separate and independent accountant paid by the Foundation and that is not a member of the MPS staff. Foundation funds shall be kept separate from MPS funds. No institutional funds, assets, or liabilities may be transferred directly or indirectly to the other without the approval of each Party. The Parties acknowledge that authority to initiate and approve the transfer of funds shall reside with the Executive Director of the Foundation and MPS, consistent with each party's policies and practices.

10. External Audit. The Foundation shall utilize a firm of certified public accountants to perform a separate external audit of the Foundation's books, records and accounts. Copies of final audit report, including the financial statements, opinion letter, management letter, internal control letter and other documents prepared by such auditor shall be furnished to MPS. MPS and the Foundation shall separately prepare annual financial statements in accordance with applicable accounting standards. The Foundation shall not be subject to audit by MPS internal, Office of Board Governance Audit.

11. Donations. The Foundation shall accept and acknowledge receipt of donations, including in-kind donations. The Foundation may transfer donations, including in-kind donations, to MPS, as appropriate, unless donor restrictions prevent such transfer.

12. School Funds. The Foundation may establish and maintain designated restricted funds specifically for individual MPS schools, which at their discretion shall develop their own school funds. Donations designated for such schools will be maintained in a separate fund and administered pursuant to the endowment agreement between the individual school fund board chair and the Foundation and countersigned by the schools for acknowledgement purposes.

13. Public Records Responsibilities. MPS is subject to the Wisconsin Public Records Law, Wis. Stat. §19.31 to Wis. Stat. §19.39. The Foundation believes it is not. If determined to be a quasigovernmental body by a court, however, the Foundation may be obligated to produce records to a third party in response to Public Records requests. In that case, the Foundation shall, in consultation with its legal counsel, respond to Public Records requests to the extent required by Wisconsin law.

## **II. MPS' Commitment to the Foundation**

14. Board Membership. Consistent with the Foundation's by-laws, the Superintendent shall serve as a non-voting member of the Board of Directors. The Superintendent and other employees of MPS, as appropriate, shall share with the Foundation the MPS' strategic plans, institutional priorities, projects and resource requirements so that the Foundation may represent the direction and needs of MPS to donor prospects and do its best to align its programming and fund-raising campaigns with the objectives of MPS. A member of the Milwaukee Board of School Directors shall also serve as a member of the Foundation's Board of Directors.

15. Cooperation. MPS values the Foundation's unique ability to carry out a variety of community related activities that advance the mission and vision of MPS. MPS, including the Milwaukee Board of School Directors, acknowledges the independent status of the Foundation and the Foundation acknowledges and accepts the independent and separate nature of MPS. Each party agrees to cooperate with the other in the advancement and support of MPS programs, and to coordinate fundraising activities. MPS representatives will coordinate all fund-raising initiatives, particularly major gift solicitations, with the Foundation.

16. Conflict of Interest. Because MPS is the Foundation's primary beneficiary and MPS' well-being is a primary mission of the Foundation, conflicts of interest are not expected to occur

between MPS and the Foundation. In the rare and unusual circumstance of an apparent or real conflict of interest, the Parties agree to attempt to resolve the conflict in good faith. If the parties are unable to resolve the conflict, either party may terminate this agreement with thirty (30) days written notice.

17. Support. In consideration for the continuing benefit MPS has derived and continues to receive from the Foundation's fund-raising, fiduciary and other services, MPS shall provide to the Foundation the various financial and in-kind support described below. MPS reserves the right in its sole discretion to terminate or modify any all of the following items if it's determined by the Milwaukee Board of School Directors that termination or modification is in the best interest of MPS.

a. President/Executive Director. The MPS Foundation Executive Committee, shall appoint a Foundation President/Executive Director, in consultation with the Superintendent to serve as a loaned employee to act as the staff liaison to the Foundation's Board of Directors. The Parties agree that the President/Executive Director shall serve as the chief executive officer of the Foundation and have general charge and control of the business and affairs of the Foundation and be responsible for carrying out the policies of the Foundation's Board of Directors and for the day-to-day management and operation of the Foundation. The President/Executive Director shall report to the Chair of the Foundation's Board of Directors and his/her performance shall be evaluated annually by the Foundation's Executive Committee, in consultation with the Superintendent, as appropriate. The Foundation's Board of Directors shall be responsible for directing the employment of the President/Executive Director, including the authority to hire, fire or discipline the President/Executive Director. The Foundation's Executive Committee agrees to promptly inform and consult with the Superintendent prior to making any significant changes with respect to the employment of the President/Executive Director, including decisions with respect to hiring and firing.

b. Foundation Staff. The Foundation's Board of Directors may hire staff, in consultation with the Superintendent. Further, MPS may assign such additional loaned employee(s) of MPS, on whom the Parties mutually agree, to perform work for the Foundation and support its purpose, and who shall work at the direction and under the control of the Executive Director. The Superintendent may also make MPS staff available on an intermittent or periodic basis to assist the Foundation in specific activities, as needed, but who will remain under the direction and control of the staff member's supervisor. The Foundation is responsible for the management and supervision of loaned MPS employees and shall be liable for all employment related claims, including but not limited to, grievances, lawsuits, claims made in State and Federal courts, or with the Wisconsin Department of Workforce Development and the Equal Employment Opportunity Commission. **These MPS loaned employee(s) are subject to audit or investigation by MPS Office of Accountability and Efficiency, Audit Services per Board Governance Policy 2.12 (3) (b) and 6.38 (1) (a).**

c. Records. In compliance with federal, state and local laws, MPS shall provide the Foundation with access to data and records reasonably necessary to support the Foundation's purposes, including, but not limited to, the names and contact information for the students, alumni and current and retired faculty and staff. The Parties agree that to the extent the Foundation gains access to confidential information protected by the Family and Educational Rights and Privacy Act (FERPA) and Wis. Stats. § 118.125 that the Foundation is acting as a school official on behalf

of MPS, and/or based upon consent of the individual. The Parties agree that they will comply with all requirements of FERPA to protect against disclosure and re-disclosure of protected information. Failure of the Foundation to do so may serve as proper and immediate basis for termination of this Agreement.

d. Payroll/Benefit Administration. MPS, not the Foundation, shall be responsible for withholding, reporting, depositing and/or payment of all employment taxes associated with Foundation employee(s); maintaining worker's compensation and complying with all other applicable federal, state and local laws and regulations governing such employment. **Board Governance Policy 2.12 (3) (b) and 6.38 (1) (a) shall apply as it relates to audit or investigation of such loaned employee(s) by the MPS Office of Accountability and Efficiency, Audit Services.**

e. Use of Logo. The Foundation shall be entitled to use the name of MPS, logo, and other marks that identify it as a Foundation whose mission is to support MPS, provided the Foundation acts in accordance with their terms and conditions of this Agreement and its Bylaws.

### **III. Indemnification and Insurance**

18. Indemnification of MPS. The Foundation agrees to indemnify, defend, save and hold harmless MPS, as well as its directors, officers, employees and agents, against any and all claims, damages, liabilities and court awards including costs, expenses, and attorneys' fees incurred as a result of any act or omission by the Foundation, or its directors, employees, agents, subcontractors or assignees, relating to the provisions of this Agreement.

19. Indemnification of Foundation. To the extent permitted by state law, including but not limited to s. 893.80 and 895.46, *Wis. Stats.*, MPS agrees to indemnify, defend, save and hold harmless the Foundation, as well as its directors, officers, employees and agents, against any and all claims, damages, liabilities and court awards including costs, expenses, and attorneys' fees incurred as a result of any act or omission by the MPS or its directors, employees, agents, subcontractors or assignees, relating to the provisions of this Agreement.

20. Insurance. The Parties agree that they shall each maintain comprehensive general liability insurance, directors and officers insurance and other insurance coverage as may be necessary or appropriate for liabilities, which may arise in connection with their operations in, amounts acceptable to each party. Evidence of insurance coverage will be reasonably provided to the other party upon request.

### **IV. Independence**

21. Separation of Liabilities. The Parties acknowledge and agree that MPS and the Foundation are independent entities and neither will be liable for the other's contracts, torts, or other actions or omissions, or those of the other's directors, officers, employees or agents. The Parties shall not make any contract or representation, nor incur any liability or obligation whatsoever, on behalf of or in the name of the other Party.

22. Non-Assumption. Neither Party shall, by entering into Agreement, assume or become liable for any of the existing or future obligations, liabilities, and debts directly or indirectly attributable to the other Party.

23. Fund Separation. MPS funds shall be maintained separately and segregated from Foundation funds. Foundation funds shall be managed and controlled by the Foundation's Board of Directors. The Milwaukee Board of School Directors shall control MPS funds, in accordance under applicable state and federal law.

## **V. Term**

24. Term. The term of this Agreement shall commence on the date on which it has been executed by both Parties and terminate on June 30, 2025. Thereafter, the parties may agree to renew the agreement for additional three (3) year terms, on the same terms and conditions, unless modified by the Parties in writing.

25. Review of Terms. The Parties agree to review the terms of this Agreement annually, or at the time of any change in the employment of the Superintendent.

26. Modification of Agreement. If either Party believes that the Agreement should be amended, the Party shall give written notice to the other Party of such belief and the Parties shall work cooperatively to discuss amending this Agreement. No modifications, expansion or amendment of this Contract shall be of any force or effect unless it shall be in writing and signed by the parties hereto.

27. Return of Property. In the event either Party terminates this Agreement, the Foundation, MPS and any employees assigned by MPS to perform services under this Agreement shall promptly return any tangible or intangible property in their possession, custody or control to the owner thereof, and cooperate in transitioning the executive director functions to one or more person(s) identified by the Foundation.

28. Termination. In the event the Foundation ceases to exist, all assets and monies and items of value received by or held by the Foundation for the benefit of MPS or any of its constituent parts shall immediately be transferred to MPS or a designee consistent with federal and state laws, and consistent with such restrictions as may have been imposed by donors. Either Party may, upon ninety (90) days written notice, terminate this Agreement. This Agreement is terminable without cause.

## **VI. Miscellaneous**

29. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to this subject matter, and supersedes any and all written or oral agreements relating to this subject matter.

30. Dispute Resolution. In the event of any dispute between MPS and the Foundation as to their relationship or any of the terms or conditions of this Agreement, notice of such dispute shall be given to the Milwaukee Board of School Directors and the Board of Directors of the Foundation. Following such notice, the Superintendent and Chairperson of the Foundation Board of Directors will meet and attempt to resolve the dispute in good faith. In the event attempts to resolve the

dispute are unsuccessful, the Parties retain their respective rights to pursue resolution through any other forum.

31. Governing Law. The laws of the State of Wisconsin shall govern this Agreement.

32. Notices. Any and all notices, demands and communications provided for in this Agreement shall be given in writing and shall be deemed given to a Party when mailed to such Party by regular or certified mail. Notice to the Foundation shall be provided to Chairperson, or their designee, of the Board of Directors for the Foundation. Notice to MPS shall be provided to the Superintendent.

33. Non-waiver. Inaction or failure to demand performance of any term of this Agreement shall not be deemed a waiver of the rights of either Party under this Agreement.

34. Authority. The Parties represent that each has authority to execute this Agreement, to enter into transactions contemplated by this Agreement and to perform its obligations under this Agreement.

35. Severability. If, for any reason, any provision of this Agreement is held invalid, such invalidity shall not affect any other provision of this Agreement not held invalid, and every other provision hereof shall remain in full force and effect. If any provision of this Agreement shall be held invalid in part, then the rest of such provision, together with all other provisions of this Agreement, shall continue in full force and effect.