

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding, (hereinafter “MOU”), is made by and between the Milwaukee Board of School Directors on behalf of Milwaukee Public Schools, an entity created by Wisconsin state statutes (hereinafter “MPS”), and PWS MKE, LLC, a New York limited liability company (hereinafter “Provider”).

RECITALS

WHEREAS, MPS recognizes community organizations are essential partners to the District; and

WHEREAS, MPS strives to offer innovative programs and opportunities for its students, staff, and families and seek the support of local and national businesses and organizations to sponsor programs and events to make them a success; and

WHEREAS, Provider was founded to leverage the relationship between brands and public/semi-public infrastructure by forming public private partnerships that allow corporations to support projects that have material public benefits that help cities fund and operate their assets, deliver better public amenities to residents and visitors and allow marketers to deliver a positive message that they are here to help communities grow and thrive; and

WHEREAS, MPS and Provider wish to partner to obtain corporate sponsorships for MPS property and facilities;

NOW, THEREFORE, in consideration of the foregoing herein and the mutual promises and covenants set forth herein, the parties agree as follows:

1. RESPONSIBILITIES OF PROVIDER

- a. Provider will use commercially reasonable efforts to perform the Services. “Services” means, securing corporate sponsors (each, a “Sponsor”), as specifically set forth in and according to Exhibit A of the attached.
- b. Provider will be paid the commissions set forth in Exhibit A. Provider will invoice MPS annually upon execution of contract between MPS and Sponsor. The first payment shall be made to Provider no later than 30 days after receipt of fees by any Sponsor, and then annually after that.
- c. Provider and MPS will work on a mutually agreeable press release that MPS will issue regarding the partnership, and the desire to bring on a presenting Sponsor.
- d. Provide a contact person, Marc Rothschild (mrothschild11@gmail.com) to coordinate with MPS in implementing this MOU.
- e. Provider will maintain, during the term of this MOU, the following insurance: Professional Liability of not less than \$1,000,000 for each occurrence with a combined aggregate of \$2,000,000; Commercial General Liability of not less than \$1,000,000 for each occurrence with a combined aggregate of \$2,000,000; Provider will name “the Milwaukee Board of School Directors” as an additional insured on the comprehensive general liability and as a “Certificate Holder” on the professional liability policy. Provider will assume all risk of loss or damage to its property and waives all claims with respect thereto against MPS, unless such loss or damage is caused directly or proximately by any wrongful, intentional, or negligent act or omission of MPS and its employees.

2. RESPONSIBILITIES OF MPS

- a. MPS will pay Provider as set forth in Exhibit A for any renewal or extension of the partnership with Sponsor. This commission will be payable regardless of Provider's involvement in the renewal or extension. MPS agrees to notify Provider of any renewal or extension. If a Sponsor opts not to renew its sponsorship, Provider shall have a right of first refusal to renew this partnership with MPS on the same terms and conditions set forth herein.
- b. MPS and Provider will work on a mutually agreeable press release that MPS will issue regarding the partnership, and the desire to bring on a presenting Sponsor.
- c. Provide a contact person, Lynn Greb (grebla@milwaukee.k12.wi.us), to coordinate with Provider in implementing this MOU.

3. BACKGROUND CHECKS

- a. As soon as reasonably possible following the execution of this MOU, Provider will conduct, at Provider's expense, a criminal information records background check, (hereinafter referred to as "background check"), through the Wisconsin Department of Justice and other appropriate states' agencies, on all current and potential administrators, board members, officers, and employees who have, or who are anticipated to have, "direct, unsupervised contact" with MPS students. If none are expected to engage with MPS students, background checks will not be necessary.
- b. An out-of-state background check should be completed in the state(s) in which the individual resided for at least six months within the last ten years and was eighteen years or older at the time.
- c. Provider will submit to MPS's Department of Employment Relations (DER), (via mail to Milwaukee Public Schools Background Checks, Attn: Department of Employment Relations, Room 116, 5225 West Vliet Street, Milwaukee, WI 53208 or via email at 564@milwaukee.k12.wi.us), all completed background checks. Such records will be reviewed and MPS will notify Provider of any individual(s) who, based on MPS standards, are unfit and should not have contact with MPS students. All determinations made by MPS with regards to whether an individual is fit to provide services pursuant to this MOU are made in MPS's sole discretion.
- d. The following will each be a material failure to comply with the terms of this MOU and cause for immediate termination of this MOU by MPS: failure to perform background checks as outlined in ¶ 3a,b; failure to submit background checks to MPS as outlined in ¶ 3c; allowing services to be performed by an individual who has not been subjected to a background check; and allowing services to be performed by an individual who has been determined to be unfit by MPS as outlined in ¶ 3c.

4. DATA SHARING

- a. The sharing of confidential student records is not contemplated by this MOU.
- b. Notwithstanding the foregoing, the failure of Provider to comply with any federal law, state statute or Milwaukee Board of School Directors policy regarding confidential student records will be a material failure to comply with the terms of this MOU and cause for immediate termination of this MOU by MPS.

5. INDEMNITY

- a. Provider will indemnify and hold harmless MPS, its agents, employees and officers against any and all claims, demands, actions and causes of action and resulting liability, loss, damages, costs and expenses arising out of the services provided pursuant to this MOU for injury to persons and damages to the extent caused directly or proximately by any wrongful, intentional or negligent act or omission of Provider or Provider's officers, employees or agents. This obligation will not extend to wrongful, intentional or negligent acts or omissions of Provider, its officers, employees and agents, if and only if, such acts or omissions are in response to a negligent directive, policy or instruction issued to Provider by MPS or its employees.
- b. To the extent permitted by the laws of the State of Wisconsin, including but not limited to Wis. Stat. § 893.80, MPS will indemnify and hold harmless Provider, its officers, employees and agents against any and all claims, demands, actions and causes of action and resulting liability, loss, damages, costs and expenses for injury to persons and damages to the extent caused directly or proximately by any wrongful, intentional, or negligent act or omission of MPS and its employees so long as such act or omission is within the scope of employment within the meaning of Wis. Stat. § 895.46.
- c. The obligations identified in ¶ 5 of this MOU will survive the termination of the MOU.

6. CONFIDENTIALITY

Each party shall take reasonable steps to ensure that information or materials that the other party specifically identifies as proprietary or confidential information ("Confidential Information"), including this MOU, is not disclosed to any third party. Confidential Information does not include information known to the receiving party prior to disclosure by disclosing party, information that is publicly known or information available from or disclosed by a third party not bound in a confidential relationship with the disclosing party. Each party, as a disclosing party, shall inform the other, as a receiving party, of all requests for or inquiries into the disclosing party's Confidential Information by third parties and shall only provide same when legally obliged to do so after notice to the disclosing party. In the course of performing the services required of Provider hereunder, Provider may disclose Confidential Information as MPS shall have approved for disclosure. "Confidential Information" does not include any information which (a) at the time of disclosure is generally known by the public or thereafter becomes public knowledge through no act or omission of or on behalf of Provider; (b) is disclosed to Provider by third parties having a right to do so and who have not imposed upon Agency obligations of confidentiality in respect thereof; (c) information that is independently developed by MPS without use of, or reference to, Confidential Information or (d) is known to Provider, as can be documented, prior to disclosure. Provider shall have the right publicly to name MPS as a client.

7. TERM

This MOU will be in effect from March 1, 2020 through February 28, 2021. Unless terminated pursuant to the provisions of ¶ 8 of this MOU, this MOU may be renewed, upon mutual written agreement of both parties, for additional one-year terms.

8. TERMINATION

- a. If either party fails to fulfill its obligations under this MOU in a timely or proper manner, or violates any of its provisions, the non-breaching party will thereupon have the right to terminate this MOU by giving ten (10) days written notice of termination of the MOU, specifying the alleged violations, and effective

date of termination. This MOU will not be terminated if, upon receipt of the notice, the breaching party promptly cures the alleged violation prior to the end of the ten (10) day period.

- b. Either party has the right to terminate this MOU at any time, for any reason, by giving the other party thirty (30) days written notice by Certified Mail or Registered Mail of such termination.
- c. MPS has the right to immediately terminate this MOU as outlined in ¶¶ 3d & 4b.
- d. The failure of either party to partially or fully exercise any right, or the waiver by either party of any breach, shall not prevent a subsequent exercise of such right or be deemed a waiver of any subsequent breach of the same or any other term of this MOU.
- e. All funds due to Provider at the time termination shall survive termination and be paid in accordance with this agreement.

9. INDEPENDENT PROVIDER

In entering into this MOU, and in acting in compliance herewith, Provider is at all times acting and performing as an independent contractor, duly authorized to perform the acts required of it hereunder. Provider further agrees that MPS is not to be charged with the obligation or responsibility of extending any fringe benefits such as hospital, medical and life insurance, or pension plans which may be extended to employees of MPS from time to time to any individual or entity providing services pursuant to this MOU.

10. NOTICE

- a. Notice to Provider will be sufficient if sent by first-class mail to Chris Greene, 137 West Brookside Drive, Larchmont, NY 10538 or to such other address as Provider may designate to MPS in writing. Notice shall also be provided via email to Marc Rothschild at mrothschild11@gmail.com
- b. Notice to MPS will be sufficient if sent by first-class mail to Cierra Chesir, 5225 West Vliet Street, Room 160, Milwaukee, WI 53208 or to such other address as MPS may designate to Provider in writing.

11. MODIFICATION

No modification, expansion or amendment of this MOU will be of any force or effect unless in writing and signed by the parties hereto.

12. SEVERABILITY

All terms and covenants herein are severable. In the event any single term or covenant is found invalid by an agency or court of competent jurisdiction, this MOU will be interpreted as if such invalid terms or covenants were not contained herein.

13. CHOICE OF LAW & FORUM. LIMITATION OF LIABILITY

- a. This MOU will be governed in all respects by, and construed in accordance with, the laws of the State of Wisconsin. The venue of any action hereunder will be in Milwaukee County, Wisconsin.
- b. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR LOST REVENUES, LOST PROFITS, LOSS OF BUSINESS, FOR

ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY NATURE, REGARDLESS OF LEGAL THEORY AND WHETHER OR NOT FORESEEABLE, EVEN IF THE EXCLUSIVE REMEDIES PROVIDED BY THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES. NEITHER PARTY'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL UNDER NO CIRCUMSTANCES EXCEED TWICE THE AMOUNT ACTUALLY PAID BY MPS TO PROVIDER DURING THE IMMEDIATELY PRECEDING 12 MONTHS UNDER THIS AGREEMENT.

14. FINAL EXPRESSION

This MOU is intended by Provider and MPS as a final expression of their agreement and as a complete and exclusive statement of its terms. This MOU supersedes all prior proposals, negotiations, conversations, discussions and agreements among the parties concerning the subject matter hereof.

IN WITNESS WHEREOF, the parties have signed this Memorandum of Understanding.

**MILWAUKEE BOARD OF SCHOOL
DIRECTORS**

PWS MKE, LLC

Dr. Keith P. Posley
Superintendent of Schools

Date

Date

EXHIBIT A

STATEMENT OF WORK.

All timing set forth in this SOW is estimated, and Provider and MPS will work diligently to bring a Sponsor on board as soon as possible.

Process Phase 1:

Time Allocation: 60 days

1. **Asset Analysis:** In collaboration with MPS, Provider will conduct a thorough analysis of existing and buildable assets that can be used for sponsor integration.
 - Existing Physical Assets: How can the existing physical assets be used for sponsorship integration with examples (based on our preliminary discussions) as follows.
 - i.
 - ii.
 - iii.
 - iv.
 - New Physical Assets: What new structures can be easily constructed as sponsor integrations into the customer experience with examples (based on our preliminary discussions) as follows.
 - i.
 - Event Activations (ticketed and non-ticketed)
 - i.
 - Sponsor Benefits
 - i.
 - Advertising Plan: creation of a detailed customer acquisition advertising plan that incorporates sponsor logo and messaging into all creative and channels.
2. **Valuation:** once the asset packaging is confirmed Provider will use all available methods and resources to value the package for potential brand sponsors.
3. **Presentation Creation:** on a parallel track with both “Asset Analysis” and “Valuation” Provider will work with MPS team and an outside graphic design professional to create the sponsorship presentation. The presentation will be shared with MPS for review and final approval.

Process Phase 2:

1. **Prospect List Creation:** In collaboration with MPS and on a parallel track with the above deliverables Provider will create a list of the top 20-30 prospects for the sponsorship. The criteria will include but not be limited to the following.
 - a. Existing relationships between MPS and corporations
 - b. Board of Directors relationships with Sponsors
 - c. New York based brands that have experience and history with similar partnerships
 - d. Provider relationships with agencies and brands direct.
 - e. Agencies focused on sponsorship
2. **Meeting Setting / Pitches:** Establish meetings with interested parties and present the value proposition

3. **Proposals:** The goal is that once the first round of meetings and presentations is finished (and potentially somewhat simultaneous to new pitches) that the prospects will request detailed proposals which will be created by Provider and approved by MPS. These will include the following.
 - a. Detailed list of basic package assets
 - b. Custom concepts and integrations discussed during presentation and requested by prospect
 - c. Pricing and Term
 - d. Some basic conditions of the partnership
4. **Negotiation:** Provider will be responsible for negotiating terms with client with whom a proposal is accepted including working with MPS' Department of Procurement and Risk Management to draft and edit contracts. MPS may offer access to legal resources if available to them and will have final decision over all contract terms.
5. **Post Sale Planning:** Provider will set up a post-sale sponsorship account management plan for sponsors and MPS including but not limited to the following.
 - a. Creation of work flow for execution of sponsorship including timelines of deliverables
 - b. Staying on as a main point of contact and liaison between MPS and sponsor for 90 days after sponsorship closes
 - c. Availability for any calls or meetings from time to time throughout duration of term

Proposal Terms

- Commission based on successful contract execution:
 - i. Year 1: 20% of gross annual sponsorship fee to be paid within 30 days from receipt of first payment from Sponsor
 - ii. Remaining Years: 15% of annual sponsorship fee to be paid within 30 days from receipt of annual fee
 - iii. Contract Renewal: 10% of annual sponsorship fee to be paid upon receipt of annual fee
- Exclusive representation of MPS by Provider for 1 year unless terminated pursuant to Section 8