

## **["RE-GRANT"] FISCAL SPONSORSHIP AGREEMENT**

This Fiscal Sponsorship Agreement (this "Agreement") is entered into by and between Souris Valley United Way ("Sponsor"), and the City of Minot ("Grantee"). This Agreement shall be effective as set out below at Section 1.

### **RECITALS**

- A.** Sponsor has an Internal Revenue Service ("IRS") determination letter of qualification under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and is classified as a public charity under Code Sections 509(a)(1) and 170(b)(1)(A)(vi). Sponsor's purposes include mobilizing people, organizations and resources in an impactful effort to advance Education, Financial Stability, and Health while addressing basic human needs;
- B.** The Grantee was formed as "City of Minot – Mayor's Committee on Addiction" in July of 2017 and does not have an IRS determination letter of qualification under Section 501(c)(3) of the Code. The Grantee's purposes include: Assessing key indicators to understand opioid addiction, assessing the available resources, gaps/road blocks to care, needs analysis for treatment, obtain information from similar communities leading to potential solutions, outlining short-term/long-term treatment pathways, designing a fluid approach to treatment, and to use the information gathered to leverage national and regional funding.
- C.** In furtherance of its charitable purposes, the Grantee operates a program (the "Sponsored Program") as described in the grant proposal ("Grant Proposal") which has been approved by Sponsor's board of directors;
- D.** The Grantee desires to have Sponsor act as its fiscal sponsor for the purpose of soliciting and receiving grants from Bush Foundation and distributing such funds to the Grantee, subject to Sponsor's oversight, to be used exclusively in support of the Sponsored Program;
- E.** Sponsor's board of directors has determined that the Sponsored Program furthers Sponsor's charitable goals and tax-exempt purposes. Sponsor's board of directors has authorized Sponsor to enter into a fiscal sponsorship agreement with the Grantee Whereby Sponsor will receive granted funds on its own behalf and disburse such funds to the Grantee in support of the Sponsored Program, in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE,** the parties hereby agree as follows:

- 1. Effective Date.** This Agreement shall become effective on 10/02/2017.
- 2. Fiscal Sponsorship.**
  - a. Sponsored Program Activities.** The Grantee's officers shall act as principal coordinators of the Sponsored Program. Sponsor retains oversight

authority to ensure that the funds disbursed by Sponsor to the Grantee in support of the Sponsored Program are used for their intended charitable purposes.

**b. Receipt and Disbursement of Funds; Variance Power.** In connection with its sponsorship of the Grantee, Sponsor agrees to receive Bush Foundation Funds that are designated as made in support of the Sponsored Program (“Sponsored Program Funds”). Sponsor anticipates granting Sponsored Program Funds to the Grantee, in furtherance of the Sponsored Program (less any administrative charge set out below). Upon signed authorization by the Grantee Program Officer, Sponsor will disburse Sponsored Program Funds to the Grantee, assuming sufficient funds are available; provided, however, that in order to receive further disbursements the Grantee must be in compliance with all of its obligations under this Agreement, including specifically the reporting requirements set forth in Section 5 hereto, and further provided that the date and amount of each disbursement of Sponsored Program Funds shall be within the discretion and control of Sponsor. The Grantee assumes the risk that any funding source may exercise its discretion not to grant or not to appropriate funds to Sponsor for the support of the Sponsored Program. The parties intend that this Agreement be interpreted to provide Sponsor with variance powers necessary to enable Sponsor to treat the Sponsored Program Funds as Sponsor’s assets while this Agreement is in effect. Sponsor, in its sole discretion, shall have the right to withhold, withdraw, or demand the immediate return of any Sponsored Program Funds if, in Sponsor’s reasonable judgment, the Grantee materially breaches this Agreement or cannot accomplish the purposes of the Sponsored Program. Sponsor retains the right, in its sole discretion, to redirect the Sponsored Program Funds to a different charitable purpose or beneficiary if the purpose of the Sponsored Program becomes unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community served by Sponsor.

**c. Substantiation of Charitable Donations.** Sponsor agrees that all Sponsored Program Funds will be reported for federal tax purposes as contributions to Sponsor and further agrees to acknowledge receipt of such Sponsored Program Funds in writing to donors, as required under federal tax law, and to furnish evidence of Sponsor’s status as an organization qualified under Section 501(c)(3) of the Code to donors on request.

**b. Administrative Charge.** Sponsor will retain an administrative charge to cover the costs associated with its management of the Sponsored Program Funds and other administrative expenses associated with this Agreement. This administrative charge shall be: five percent (5%) of the gross amount of the Sponsored Program Funds received by Sponsor.

**2. Review by Sponsor.** Sponsor and its representatives shall be given full access to the books, records, and senior management and financial personnel of the Grantee with respect to the

Sponsored Program as Sponsor may reasonably request. Sponsor may, at its own expense, conduct an independent financial audit and/or program audit of the Grantee's books and records in relation to the charitable activities for which Sponsor has disbursed Sponsored Program Funds.

**3. Financial Accounting and Reporting.** Sponsor and the Grantee will maintain books and financial records for the Sponsored Program in accordance with generally accepted accounting principles, shall retain records as long as required by law and shall make records available to auditors as required by law. The Grantee will reflect the activities of the Sponsored Program, to the extent required, on its state and federal tax and information returns and financial reports. All disbursements from the Sponsored Program Funds shall be made payable to the Grantee.

**4. Grantee Reporting Requirements.**

**b. Reports to Sponsor.** The Grantee shall submit full and complete quarterly reports to Sponsor on the progress of the Sponsored Program. Such reports shall be due within thirty (30) days of the end of each calendar quarter, for so long as this Agreement remains in effect. Such reports shall describe the Grantee's use of the Sponsored Program Funds, compliance with the terms of all grants, and the progress made by the Grantee in accomplishing the purposes of the Sponsored Program.

**c. Reports to Funding Sources.** The Grantee will provide all information financial information to Sponsor who will prepare all financial reports, including interim and final reports, required by Sponsor to satisfy any funding sources, subject to Sponsor's final review and approval.

**0. Restrictions on Use of Sponsored Program Funds.**

**b. Tax-Exempt Purposes.** The Grantee shall use the funds it receives from Sponsor solely for purposes of the Sponsored Program and shall not use such funds in any way that will jeopardize the tax-exempt status of Sponsor. The Grantee agrees to comply with any written request by Sponsor to cease activities that, in Sponsor's reasonable judgment, might jeopardize the tax-exempt status of Sponsor, and further agrees that Sponsor's obligation to make funds available to the Grantee is suspended in the event that it fails to comply with any such request.

**c. Prohibited Activities.** No portion of the Sponsored Program Funds shall be used in any attempt to influence legislation. No portion of the Sponsored Program Funds shall be used to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, induce or encourage violations of law or public policy, cause private inurement or improper private benefit to occur, support terrorist activities, terrorist organizations or individuals who engage in or support terrorist

activities, or take any other action inconsistent with qualification under Section 501(c)(3) of the Code.

**0. Relationship of the Parties.** Nothing in this Agreement shall constitute the naming of either party hereto as an agent or legal representative of the other party for any purpose whatsoever except as specifically and to the extent set forth herein. This Agreement shall not be deemed to create any relationship of agency, employment, partnership, or joint venture between the parties hereto and the Grantee shall make no such representation to anyone. It is the intention of the parties that all employees, contractors, and advisors for the Grantee will be employed or engaged directly by the Grantee and not by Sponsor.

**1. Indemnification.** The Grantee hereby irrevocably and unconditionally agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless Sponsor, its officers, directors, trustees, employees and agents, from and against any and all claims, liabilities, losses and expenses (including reasonable attorneys' fees) directly, indirectly, wholly or partially arising from or in connection with any act or omission of the Grantee, its employees or agents, in applying for, accepting, expending or applying Sponsored Program Funds, or in carrying out the Sponsored Program, except to the extent that such claims, liabilities, losses or expenses arise from or in connection with any negligent act or omission of Sponsor, its officers, directors, trustees, employees or agents.

**2. Publicity.** Any and all use of Sponsor's name in media communications and fundraising materials with respect to the Sponsored Program shall be subject to Sponsor's prior review and approval. The Grantee shall provide Sponsor with reasonable advance notice with respect to any proposed use of Sponsor's name in order to allow for such prior review.

**3. Duration of Agreement.** This Agreement shall remain in effect until the earliest of the following:

**b.** Grantee receives a determination letter from the IRS of its qualification under Section 501(c)(3) of the Code through the standard 1023 application form;

**c.** Sponsor or Grantee terminates this Agreement pursuant to the provisions of Section 13 below; or

**d.** 01/31/2020

**0. Termination.** Either party may terminate this Agreement without cause by giving thirty (30) days' written notice to the other party.

**1. Disposition of Sponsored Program Funds in Termination.** If there are any Sponsored Program Funds remaining after this Agreement has terminated, the following terms and conditions shall apply, subject to Sponsor's variance power set forth above at Section 2b:

**b.** If the Grantee has received a determination letter from the IRS of its qualification under Section 501(c)(3) of the Code, Sponsor shall transfer the balance of all Sponsored Program Funds, net of any liabilities incurred by

Sponsor in connection with the Sponsored Program, to the Grantee for use in the Sponsored Program.

c. If the Grantee has entered into a written fiscal sponsorship agreement with another fiscal sponsor that has an IRS determination letter of qualification under Section 501(c)(3) of the Code, then Sponsor shall transfer the balance of any Sponsored Program Funds, net of any liabilities that Sponsor has incurred in connection with the Sponsored Program, to such new fiscal sponsor for use in the Sponsored Program.

d. In the event that the Grantee has not received an IRS determination letter from the IRS of qualification under Section 501(c)(3) of the Code or entered into a written fiscal sponsorship agreement with another fiscal sponsor that has an IRS determination letter of qualification under Section 501(c)(3) of the Code, Sponsor may allocate the Sponsored Program Funds in any manner consistent with applicable tax and charitable trust laws.

#### **0. Miscellaneous Provisions.**

b. **Amendments.** This Agreement may not be amended or modified, except in a writing signed by both parties hereto.

c. **Dispute Resolution.** In the event of a dispute under this Agreement, Sponsor and the Grantee shall make a good faith effort to resolve such dispute cooperatively before seeking to resolve any dispute by arbitration or otherwise proceeding with any remedy available at law or in equity.

d. **Choice of Forum.** The parties agree that the Superior Court of Ward County, North Dakota is the mandatory, exclusive venue for actions relating to this Agreement. The parties agree that Ward County is a convenient forum, and that all court proceedings shall be filed in Ward County and in no other forum.

e. **Consent to Jurisdiction.** For all purposes related to this Agreement, the parties hereby consent to personal jurisdiction in the state courts in and for the state of North Dakota.

f. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof; it supersedes any prior agreement and understandings between the parties as to such matters, oral or written, all of which are hereby cancelled.

g. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the state of North Dakota.

h. **Severability.** Each provision of this Agreement shall be separately enforceable, and the invalidity of one provision shall not affect the validity or enforceability of any other provision.

i. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

j. **Attorneys' Fees.** In the event of any controversy, claim, or dispute between the parties arising out of or related to this Agreement, or the alleged breach thereof, the prevailing party

shall, in addition to any other relief, be entitled to recover its reasonable attorneys' fees and costs of sustaining its position.

**Remainder of page intentionally left blank**

**SIGNATURE PAGE TO  
FISCAL SPONSORSHIP AGREEMENT**

**Between**

**Souris Valley United Way**

**And**

**City of Minot – Mayor's Committee on Addiction**

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement effective as of the day and year set out in Section 1 of this Agreement.

**Sponsor:**

Souris Valley United Way \_\_\_\_, a  
[North Dakota nonprofit corporation]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**Grantee:**

City of Minot - Mayor's Committee on  
Addiction\_\_\_\_, a [City of Minot – Mayor's  
Committee for Minot, ND]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_