

FISCAL SPONSORSHIP AGREEMENT

This Fiscal Sponsorship Agreement (“Agreement”) is made by and between *SouthWest Metro Educational Foundation* (“Sponsor”), and the *Hear for Diane Foundation* (“Committee”). Sponsor is a *Minnesota* nonprofit *public benefit* corporation located in *Shakopee, Minnesota*, qualified as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code (“IRC”) and classified as a public charity under IRC Sections 509(a)(1) and 170(b)(1)(A)(vi). The Committee is an unincorporated nonprofit association established to oversee the affairs of the Project described below.¹

RECITALS

A. The Sponsor Board of Directors has approved the establishment of a restricted fund to receive donations of cash and other property designated for support of the project known as the *Hear for Diane Foundation Granting Program* (the “Project”) and to make disbursements in furtherance of the Project’s mission to _____. Currently, the principal office of the Project is located in _____.

Sponsor desires to act as the fiscal sponsor of the Project, by receiving assets and incurring liabilities identified for the purposes of the Project and using them to pursue those purposes, which Sponsor’s Board has determined will further Sponsor’s charitable and educational goals. The Committee desires to oversee the Project on behalf of Sponsor, subject to Sponsor’s discretion and control.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Term of Agreement. On _____ (the “effective date”), Sponsor shall assume operation of the Project, which operation shall continue in effect unless and until terminated as provided herein.

2. Project Activities and Sponsorship Policies. All community programs, public information work, fundraising events, processing and acknowledgment of cash and noncash revenue items, accounts payable and receivable, negotiation of leases and contracts, disbursement of Project funds (including grants), and other activities conducted by the Project shall be the ultimate responsibility of Sponsor and shall be conducted in the name of Sponsor, beginning on the effective date.

¹ Some sponsors prefer to contract with the project director individually, with or without the presence of an advisory committee. In some incubation situations, the contracting party may be the new nonprofit corporation that will take over the project after it receives IRS approval. This form may be modified accordingly.

a. Unless otherwise agreed, and subject to their consent, all personnel to be compensated for working on the Project shall become at-will employees of Sponsor on the effective date and shall be subject to the same personnel policies and benefits as are required by law to apply to all employees of Sponsor. If properly classified, others may work on the Project as independent contractors pursuant to a written service agreement.

b. The parties shall abide by the Administrative Terms and Policies of Sponsor set forth on the attached Exhibit 1,² which Sponsor may amend from time to time with advance written notice to the Committee and which include administrative fees, interest, and charges for extra services, to be paid to the general fund of Sponsor from the restricted fund described in Paragraph 4 below. Such fees, interest, and charges are necessary to compensate Sponsor for its services administering the Project, and thus become unrestricted rather than restricted assets when paid.

c. Unless otherwise agreed, any tangible or intangible property, including intellectual property, such as copyrights, obtained from third parties or created in connection with the Project shall be available for the use of the Sponsor, for the charitable purposes of the Project.

d. The Project may solicit gifts, contributions, and grants to Sponsor identified as in support of the purposes of the Project. The Project's choice of funding sources to be approached, and the text of the Project's fundraising materials, are subject to Sponsor's prior written approval and shall include an express disclosure of Sponsor's variance power under Paragraph 4 below. All grant agreements, pledges, or other commitments with funding sources to support this Project shall be executed by Sponsor.

3. Delegation. As of the effective date, oversight (as defined in the Administrative Terms and Policies) of the program activities of the Project is delegated by Sponsor Board of Directors to the individual members of the Committee, subject to the ultimate direction and fiduciary responsibility of Sponsor Board. Acting in their individual capacities, the members of the Committee serve as a subordinate body to Sponsor Board to assist with the fulfillment of the purposes of the Project. In matters governed by this Agreement: (a) the Committee's separate legal existence as an unincorporated nonprofit association will be solely for the limited purpose of holding, exercising, and enforcing the contractual duties and obligations Sponsor may owe to the Committee under this Agreement, and (b) those participating on the Committee do not serve as representatives or agents of any funding source, employer, or any party other than Sponsor.

² The sponsor should compile a list of administrative policies applicable generally to its sponsorship practice, and terms (if any) specific to this agreement, and attach the list as an exhibit to this agreement. The policies should address the percentage fee (if any) that the sponsor will charge, identification of those authorized to act as agents on behalf of the project and the limits of that authority, procedures for issuing checks, employment matters, timetables for reports, and other similar issues.

4. Restricted Fund / Variance Power. Beginning on the effective date, Sponsor shall place all gifts, grants, contributions, and other revenues received by Sponsor for the purposes of the Project into a restricted fund to be used for the sole benefit of the Project's mission as that mission may be defined by the Committee from time to time with the approval of Sponsor. Neither party shall spend or otherwise obligate Sponsor to pay for an amount or amounts exceeding the balance in the restricted fund, nor shall either party authorize or permit anyone to do so. Sponsor retains the unilateral right to spend such funds so as to accomplish the purposes of the Project as nearly as possible within Sponsor's sole judgment, subject to any more specific donor-imposed restrictions, on the charitable use of such assets. The parties agree that all money and the fair market value of all property in the restricted fund be reported as the income of Sponsor on Sponsor's financial statements and tax returns. It is the intent of the parties that this Agreement be interpreted to provide Sponsor with variance powers necessary to enable Sponsor to treat the restricted fund as Sponsor's asset in accordance with Accounting Standards Codification (ASC) paragraphs ASC 958-605-25-25 and -26, formerly expressed in Statement No. 136 issued by the Financial Accounting Standards Board (FASB). Because the restricted fund is held under the charitable trust doctrine for the purposes of the Project as understood by and with funding sources, the parties intend that assets in the restricted fund are not subject to the claims of any creditor or to legal process resulting from activities of Sponsor unrelated to the Project.

5. Performance of Charitable Purposes. All of the assets received by Sponsor under the terms of this Agreement shall be devoted to the purposes of the Project, within the tax-exempt purposes of Sponsor. Expenditures for any attempt to influence legislation within the meaning of IRC Section 501(c)(3) shall be subject to limitations imposed by Sponsor. Sponsor shall not use any portion of the assets 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 IRC Section 501(c)(3). Sponsor has determined, based on the advice of tax-exempt legal counsel, that the restricted fund is not a donor-advised fund within the meaning of IRC Section 4966(d)(2) as presently interpreted under federal tax authorities.

6. Termination. This Agreement shall terminate when Sponsor determines that the objectives of the Project can no longer reasonably be accomplished by Sponsor. If the objectives of the Project can still be accomplished but either the Committee or Sponsor desires to terminate Sponsor's fiscal sponsorship of the Project, the following understandings shall apply. Either Sponsor or the Committee may terminate this Agreement on 60 days' written notice to the other party, so long as another nonprofit organization acceptable to both parties³ is found that is tax-exempt under IRC Section 501(c)(3), is not classified as a private foundation under Section 509(a) (a Successor), and is willing and able to sponsor the Project. (As used in this Paragraph 6, the word "able" shall mean that the Successor has charitable purposes compatible with the purposes of the Project and has the financial and administrative capacity to competently manage the Project.) The balance of assets in Sponsor's restricted fund for the Project, together with any other tangible and intangible assets held and liabilities incurred by Sponsor in connection with the Project, shall be transferred to the Successor at the end of the notice period or any extension thereof, subject to the approval of any third

parties that may be required. If the Committee has formed a new organization qualified to be a Successor as set forth in this Paragraph, such organization shall be eligible to receive all such assets and liabilities so long as it has received a determination letter from the Internal Revenue Service, indicating that such qualifications have been met, no later than the end of the notice period or any extension thereof. If no Successor acceptable to both parties is found within a reasonable time, Sponsor may dispose of the Project assets and liabilities in any manner consistent with applicable tax and charitable trust laws. Either party may terminate this Agreement, based upon a material breach of this Agreement by the other party, by giving 60 days' written notice to the other party, and any Project assets and liabilities shall be disposed of at the end of the notice period in a manner consistent with the provisions stated above in this Paragraph.

7. Miscellaneous. 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. 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. This Agreement shall be interpreted and construed in accordance with the laws of the State of Minnesota applicable to contracts to be performed entirely within such State. Time is of the essence of this Agreement and of each and every provision hereof. The failure of Sponsor to exercise any of its rights under this Agreement shall not be deemed a waiver of such rights.

8. Entire Agreement. This Agreement constitutes the only agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. All Exhibits hereto are a material part of this Agreement and are incorporated by reference. This Agreement, including any Exhibits hereto, may not be amended or modified, except in a writing signed by all parties to this Agreement.

³ Some sponsors, committees, and their legal counsel may prefer that the power to determine the successor reside solely in the sponsor or solely in the committee. This form contains a middle position: both must agree on the choice of successor.

IN WITNESS WHEREOF, the parties have executed this Fiscal Sponsorship Agreement as of the effective date set forth in Paragraph 1 above.

SOUTHWEST METRO EDUCATIONAL FOUNDATION

By: _____
_____, *Executive Director*

Dated: _____

HEAR FOR DIANE FOUNDATION

[authorized representative/agent]

By: _____

Dated: _____

Last revised 07/23/2019