

MEMORANDUM OF UNDERSTANDING

Between

MASSACHUSETTS HEALTH OFFICERS ASSOCIATION, INCORPORATED

And

TOWN OF MANSFIELD, MASSACHUSETTS

This Memorandum of Understanding ("MOU") is entered into by and between the Massachusetts Health Officers Association, Incorporated ("MHOA"), a nonprofit corporation and 501(c)(3) public charity with an address of 11 Regan Road, Walpole, MA 02081, and the Town of Mansfield (the "Municipality"), a Massachusetts municipality having offices at 6 Park Row, Mansfield, MA (individually each a "Party," and collectively "the Parties"). This MOU is intended to be a binding agreement between the Parties.

Pursuant to the terms of this MOU, the Parties will collaborate in the development and implementation of a sustainable tobacco control program that will benefit the residents of Mansfield (the "Project"). The specifics of the Project are set forth in **Exhibit A. All MHOA items, funds, and services in this MOU are contingent upon MHOA's receipt of funding through a Massachusetts Tobacco Cessation and Prevention Program ("MTCP") grant (the "Grant") being offered by the Department of Public Health ("DPH" or "GRANTOR") and GRANTOR's approval of the services outlined in this MOU.**

In furtherance thereof the Parties hereby agree as follows:

1. Duties of Parties

MHOA will utilize its existing funds derived from the Grant to:

- Conduct merchant education to foster compliance with revised local and state regulations in conjunction with An Act Modernizing Tobacco Control.
 - MHOA will develop draft merchant education material which will be reviewed and distributed by the Mansfield Board of Health.
 - MHOA will provide group retail tobacco training for owners/managers at the request of the Mansfield Board of Health.
 - MHOA will provide online training for store employees in both English and Spanish on the website for MHOA;

- Make available the services of an MHOA inspector (the “MHOA Inspector”) trained according to MTCP protocol to conduct retail inspections and compliance checks to assess sales to people under the age of 21 and participate in the Point of Sales Toolkit (“POST”) system for state data collection on behalf of the Municipality;
 - MHOA will recruit, supervise and train the MHOA Inspector and underage buyer(s) according to MHOA policies, and according to MTCP protocol;
 - During the term of the Project, the MHOA Inspector will be an employee of MHOA; and
 - During the term of the Project, the underage buyers will be temporary, part-time employees of MHOA.
- Conduct retail tobacco inspections and compliance checks of all permitted tobacco vendors in Mansfield to determine compliance with local regulations and the state law following MTCP protocol;
 - MHOA will provide the Municipality with the results of all compliance checks the following business day, along with recommendations on enforcement in accordance with local regulations and state law;
 - MHOA will provide the Municipality with the results of all inspections the following business day, along with recommendations on enforcement in accordance with local regulations and state law;
- Conduct compliance checks according to MTCP protocol to assess sales to people under the age of 21;
- Provide technical assistance to the Municipality’s Health Department to build capacity in the areas of merchant education, retail inspections and compliance checks of their permitted tobacco sales establishments;
 - At the request of the Mansfield Health Department MHOA will provide inspection and compliance check training to the staff of the Mansfield Health Department to assist them in working toward a self-sustainable program.
 - MHOA will provide recommendations to the Mansfield Health Department on enforcement strategies according to local regulations and state law.
 - MHOA will provide the Municipality with technical assistance to ensure that local regulations are as strict or stricter than existing state law.
- Provide mentoring to increase the replication of successful tobacco cessation strategies and to increase the capacity of the Municipality to sustain sound public health policies;

- MHOA will provide available resources to the Municipality to assist them in promoting available cessation resources to the community.
- Coordinate information exchange which will support evidence-based best practices in public health.

The Municipality agrees to:

- Authorize MHOA to provide the services described above and designate a Municipality representative as a point of contact and representative for the Project;
 - The Municipality will respond to communication from MHOA or its designees in a timely manner regarding enforcement and other time sensitive issues.
 - The Municipality will provide administrative services needed for enforcement and merchant education, including but not limited to: providing the retailer with cease and desist/correction orders or 21D tickets when there is a violation, or to distribute as the Municipality sees fit, mutually agreed upon merchant education.
- Facilitate access and any approvals and/or permissions necessary for MHOA personnel, including the employees it designated to conduct retail inspections, compliance checks, and participation in the POST system for data collection, to perform the services described above;
 - Pursuant to the terms set forth in **Exhibit A**, the Municipality will appoint the MHOA Inspector as its agent for enforcement in tobacco control at the first meeting following the Municipality being apprised of the hire.
- Continue to promote policies in collaboration with the Municipality's Board of Health in order to build a sustainable tobacco control program, and otherwise, improve local public health;
 - The Municipality will enforce violations according to local regulations and state law.
 - The Municipality will work with MHOA to revise current regulations as needed to include required policies of the most recent state law and any local policies the Municipality so chooses to adopt.

Municipality will promptly notify MHOA of any concerns related to the Project and communicated to Municipality by the MHOA Inspector or underage buyers.

2. Term and Termination

The Parties anticipate the Project will commence on September 1, 2024, and be completed during the Municipality's 2025 Fiscal Year, although continuation of the Project may be offered by MHOA if grant funds continue to be available and if both Parties are in agreement, in which event a separate contract or an addendum to this MOU will be signed by both Parties.

The MOU shall terminate when the Project is completed or when the Grant funds expire, whichever is first. This MOU may be terminated by either Party at any time, with or without cause, upon written notice to the other. In the event of termination, any funds contributed by MHOA to Municipality shall be returned to MHOA forthwith, unless already committed or spent by Municipality pursuant to the terms of this MOU.

3. Funding

The Parties anticipate that this Project will be funded under the Grant with DPH. **MUNICIPALITY acknowledges that MHOA's receipt of Grant funds is not within MHOA's control and that upon the exhaustion of the current Grant funds provided to MHOA future funds may not be available. In the event that Grant funding runs out during this MOU, this MOU will be immediately terminated unless MHOA is provided with additional Grant funds in furtherance of the Project.**

4. Records and Reports

Municipality shall retain all records relating to the Project performed under this MOU for the time period required by law and as directed by MHOA during which period such records will be made available promptly to MHOA for inspection and copying upon written notice to Municipality.

Municipality will provide MHOA with periodic reports about Project activities and such other information as MHOA may reasonably request and/or as required under the terms of any agreements between MHOA and Grantor or other funders.

5. Intellectual Property

It is recognized and understood by the Parties that certain existing inventions and intellectual property, including such inventions and intellectual property that are outside the scope of this MOU, are the separate property of each Party; that no existing intellectual property right of either Party shall be affected by this MOU except as set forth herein; and that each Party retains sole ownership of all rights and title to its pre-existing, separately developed, or independently developed intellectual property except as set forth herein. MHOA shall have sole and exclusive ownership of all right, title, and interest in and to its materials, methods, and know-how that it originated and uses in its activities. As used herein, "Intellectual Property" shall include, but not be limited to, any design, tool, technology, patentable discovery, patentable invention, and copyrightable material made, created, or developed by a Party.

MHOA may collect, analyze, and, subject to the other provisions of this MOU and the Grant, disseminate data about the Project to evaluate its effectiveness, report on outcomes, and/or to comply with external funding obligations. Municipality will cooperate in these efforts by providing MHOA with the reports set forth in this MOU and such other information as MHOA may reasonably

request. Municipality acknowledges and consents that MHOA may share work on the Project and Project data with Grantor or MHOA's other funders as required under any funding agreement(s).

Municipality may not disclose the data, materials, or work product related to the Project to third parties unless Municipality (a) obtains prior written consent from MHOA, and (b) if requested by MHOA, removes any trademark, service mark, or other identifier of MHOA from the data or work product. Municipality acknowledges that MHOA owns and retains all right, title, and interest in and to any and all proprietary know-how, copyright, and methodologies MHOA uses in creating the work and materials for the Project, and nothing shall restrict MHOA's right to use any generalizable knowledge, know-how, or methodologies for health, scientific, educational, research, scholarly, or other purposes.

In performing the services under this MOU, MHOA may share and permit use of its existing intellectual property. MHOA grants to Municipality a non-exclusive, non-transferable, non-sublicensable, and revocable license to use such MHOA intellectual property necessary for the Project and in furtherance of this MOU and for no other purpose.

MHOA may enter into grant or other funding agreements that require it to share or license intellectual property, including work product related to the Project, with funders including Grantor. MHOA will advise Municipality about any such requirements, and, to the extent necessary to comply with such requirements, and subject to this MOU, Municipality will grant MHOA royalty-free licenses to share data, work product, or joint works with funder(s), including Grantor.

Neither Party shall use the name or logo of the other, nor originate any publicity, news release or coverage, or other public announcement, whether written, digital, or oral, relating to the other Party hereto or any of its affiliates, or this MOU, any amendment hereto, or any cost, fees or prices set forth herein or contemplated hereby, without the prior written approval of the other Party.

Municipality asserts that any written content, designs, proofs, files, and the like created by Municipality for the Project will neither infringe nor violate the intellectual property rights of any third party.

6. Confidentiality

In working together on the Project, MHOA and Municipality may share non-public, confidential, and proprietary information and trade secrets ("Confidential Information") with one another and with the Grantor, including information about financial, funding, and other matters. MHOA and Municipality will each use the other party's Confidential Information only in connection with activities under this MOU and will keep this information confidential. Confidential Information does not include information that is subject to customary exceptions under a non-disclosure agreement, such as information generally available to the public, information already known by the receiving party before entering into this MOU, or information independently developed by either Party. All Confidential Information furnished under this MOU is and will remain the property of the furnishing Party.

The Parties acknowledge that Municipality is obligated to follow Massachusetts Public Records Laws.

Confidential Information includes information about financial, funding, operations, personnel, and other matters, as well as information, techniques, know-how, or data provided by one Party to the other, either orally, in writing, or in data format, and all documents or materials conceived or produced by a Party as work product. The Parties hereby agree that Confidential Information includes material which has been conspicuously marked or labeled as "confidential" at the time of delivery or which should reasonably be deemed "confidential."

Each Party to this MOU shall restrict access to such Confidential Information only to its employees, agents, consultants, or affiliates who need to know such information in furtherance of the Project and who are bound in writing by restrictions regarding disclosure of such information. Each Party agrees to safeguard the Confidential Information of the other and affirms that it will not use any Confidential Information of the other Party for any purpose except to perform its obligations under this MOU.

Each Party agrees to treat all Confidential Information of the other Party with the same degree of care as it accords its own Confidential Information of a similar nature. Each Party commits to taking reasonable security measures to ensure the protection of Confidential Information, and each shall notify the other promptly should it become aware of any loss or unauthorized disclosure of Confidential Information.

All Confidential Information furnished under this MOU is and will remain the property of the furnishing Party. Upon the written request of the disclosing Party, recipient shall return or destroy (as instructed by the disclosing party) all Confidential Information of the disclosing Party, excluding archive backups, in its possession or control and cease all further use thereof.

7. Entire Agreement, Execution

This MOU constitutes the entire agreement between MHOA and the Municipality and is intended to be a binding agreement; it supersedes all prior agreements related to the Project. This MOU may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument. A PDF or any other type of copy of an executed version of this MOU signed by a Party is binding upon the signing Party to the same extent as the original of the signed MOU. The Parties agree that this MOU may be electronically signed and that the electronic signatures appearing on such documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

8. Amendments

Any and all amendments to these terms shall only be effective upon the written agreement of MHOA and the Municipality.

9. Indemnification, Insurance

Each Party shall indemnify and hold the other harmless, including its respective directors, officers, employees, contractors, agents, and assigns, against claims or liabilities related to the Project. Neither Party will have any obligation to indemnify the other to the extent the liability is caused by the other's negligence, wrongful acts, or breach of this MOU.

The Parties agree that at all times during the term of this MOU they shall each carry customary insurance or self-insurance, each at their own expense, and shall provide evidence of such insurance upon request.

10. Compliance

In performing its obligations under this MOU, each Party shall comply with all applicable laws, rules, and regulations of governmental authorities and accrediting agencies, including, to the extent applicable: (i) laws requiring a criminal record check and/or sexual offender record information check of employees, volunteers, and/or contractors; and (ii) federal privacy and data security laws, and corresponding state laws, including for the protection of Personally Identifiable Information, Personal Information, Personal Data, and the like as those terms are defined by law.

Each Party shall maintain in effect all applicable licenses, registrations, certifications, permissions, authorizations, consents, and permits needed to carry out its obligations under this MOU.

11. Force Majeure

Except as otherwise set forth in this MOU, MHOA and Municipality shall not be liable to each other for any delays in the performance of their respective obligations and responsibilities under this MOU which arise from causes beyond their control and without their fault or negligence, including but not limited to, any of the following events or occurrences: fire, flood, earthquake, epidemic, pandemic, atmospheric condition of unusual severity, war, foreign hostilities, and strikes.

12. No Waiver

The failure of either Party to enforce any provision of this MOU shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this MOU.

13. Governing Law

This MOU and all matters arising out of and relating to this MOU shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, without regard to conflict of law rules.

14. Survival of Terms

The provisions of this MOU which by their explicit terms or their manifest intent are to survive, including without limitation those which relate to confidentiality, use of a Party's name, indemnification, and insurance, shall survive expiration or termination of this MOU.

15. Severability

If any provision of this MOU is found to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable, and the non-conforming provision shall be limited to the extent that it would become valid and enforceable.

16. Notice

Any notice under this MOU will be properly addressed to the other Party as set forth below and will be (a) dispatched by email to the address(es) below, provided receipt is confirmed (preferred method), (b) hand delivered, (c) mailed, postage prepaid, first class, certified mail, return receipt requested, or (d) sent, shipping prepaid, receipt requested via a reputable courier service or overnight delivery service.

Notices to Municipality: Amy Donovan-Palmer, Health Director/Agent

Email address: adpalmer@mansfieldma.com

Notices to MHOA: Teresa Wood Kett, Executive Director

Email address: tkett@mhoa.com.

[SIGNATURE PAGE FOLLOWS]

This MOU is hereby signed by a duly authorized officer of MHOA and a binding authority of the Municipality and effective as of the date last written below.

TOWN OF MANSFIELD

Name:

Title:

Date:

MHOA

Name:

Title:

Date:

EXHIBIT A

Project Plan

Name of Municipality: Town of Mansfield

Municipality Contact Person: Amy Donovan-Palmer, Health Agent

MHOA Contact Person: Sarah McColgan, Tobacco Control Director

Project Objectives and Key Performance Measures: Project objectives include increasing the capacity of the Municipality to accept the eventual institutionalization of tobacco control within the health department. Key performance measures include the completion of at least one retail tobacco inspection and one under age compliance check of each permitted retailer within the Municipality.

Project Meetings: Meetings between the designated representative of the Town of Mansfield and MHOA will take place virtually or on the phone as needed to provide Mansfield with any needed technical assistance.

Description of Role/Responsibilities of MHOA Inspector: Per the MOU, the Municipality will appoint the MHOA Inspector as its agent for enforcement in tobacco control by recorded appointment at a regular meeting of the Municipality's Board of Health. The MHOA Inspector, under the supervision of the MHOA Tobacco Control Director, will be responsible for completion of all assigned work as determined by the terms of this MOU. This could include, but not be limited to underage compliance checks, data entry into POST, communication with the Municipality and the MHOA Tobacco Control Director regarding outcomes, etc.

Description of Role/Responsibilities of Underage Buyers: Underage Buyers, under the supervision of the MHOA Inspector, will be trained in the state protocol of conducting a compliance check. Upon completion of this training, the underage buyer and the MHOA Inspector will conduct compliance checks of all permitted tobacco vendors in the Municipality, with the underage buyer entering the

retail establishment, attempting to purchase a tobacco product, exiting the establishment and reporting the outcome to the MHOA Inspector.

Permitted Use of Municipality's Facilities: Use of municipal facilities for this project will be limited to the administrative offices of the Mansfield Health Department for the purpose of administration required to conduct enforcement.

Joint Work Product: Joint work product is not anticipated.