

MEMORANDUM OF UNDERSTANDING (MOU)

FOR USE OF AMERICAN RESCUE PLAN ACT (ARPA) FUNDS BETWEEN CITY DEPARTMENTS FOR SMALL BUSINESS SUPPORT, PROJECT [XXXX], WAUWATOSA HOUSING REHABILITATION PROGRAM, PROEJCT 9971, AND AFFORDABLE HOUSING PROGRAM, PROJECT [XXXX]

1. **Cooperating Departments.** This Agreement is entered into between the City Wauwatosa Mayor's Office Department (Mayor), as recipient of the United States Department of the Treasury ARPA State and Local Coronavirus Fiscal Recovery (SLFRF) Funds Allocation provided to City of Wauwatosa and the Wauwatosa Community Development Authority (CDA).
2. **Authority.** SLFRF Funds Allocation FAQ 17 Obligation, specifically 17.6 MOU agreement requirements for the City. The agreement must **either**:
 - a. "Impose conditions on the use of funds by the agency, department, or part of the government receiving funds to carry out the program;
 - b. governs the provision of funds from one agency, department, or part of government to another to carry out an eligible use of SLFRF funds; or
 - c. it governs the procurement of goods or services by one agency, department, or part of government from another."
3. **Eligibility Statement.** The US Department of the Treasury authorizes the City to expend ARPA SLFRF funds awarded to the City for numerous eligible purposes as outlined in the Final Rule which include Government Services up to the amount of lost revenues. Eligibility for this program was determined under the Final rule using Expenditure Category 6.1 Provision of Government Services.
4. **Purpose.** Pursuant to the City of Wauwatosa Common Council Resolution 55-11/23, "Approval of Departmental Memorandums of Understanding for Obligation of American Rescue Plan Funds", the Common Council is authorizing the use of ARPA funds by the Community Development Authority for Small Business Support, Housing Rehabilitation, and Affordable Housing programs.
5. **Term of the Agreement.** The term of the agreement shall commence on the execution of the MOU and go through December 31, 2026 or earlier if the project is complete.
6. **Scope of Work/Deliverables.**
 - a. **Small Business Support Program:**
 - i. Funds will aid small businesses through activities such as grants to assist with building renovations, equipment purchases and professional services, startup/expansion working capital, and redevelopment efforts with a catalytic impact. Additionally, funds can be used for promotional and outreach efforts and networking events.
 - ii. Serve up to 12 small businesses with direct financial assistance awards through a combination of the grant programs; promotional, outreach and networking activities will target small businesses city-wide.
 - b. **Wauwatosa Housing Rehabilitation Program:**
 - i. Funds will continue to be used to support Wauwatosa Housing Rehabilitation Program.
 - ii. Funds may also be used to support the ARPA Affordable Housing Program, described below.
 - c. **Affordable Housing Program:**

- i. Funds will support community housing needs and may include, but are not limited to: supporting a Community Land Trust, site acquisition for affordable housing (possibly Habitat for Humanity), provide grants for lead pipe replacement, and to assist the development of Accessory Dwelling Units.

7. Funding.

- a. **Source.** This agreement is funded solely by the U.S. Department of the Treasury State and Local Coronavirus Fiscal Recovery Funds (SLFRF) as outlined within Sections 602(b) and 603(b) of the Social Security Act as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021), up to the amount outlined below.
- b. **Amount.** The amount for 2025-2026 is not to exceed the budget in 2024 which currently would be \$1,405,000. This MOU would allow for a change order to the budget should it be needed but approved through the standard City of Wauwatosa budget modification process (see Section d and Article 9.).
- c. **Payment Terms.** Since this MOU is between Administration and the Community Development Authority (CDA) and both are within the City of Wauwatosa organization, the expenses associated with this MOU shall be budgeted to and charged to ARPA grant accounts, rather than establishing separate accounts within the CDA. The CDA hereby agrees to work cooperatively with the Finance Department for payments to be processed. Payment is conditioned upon meeting the scope of work and deliverables as outlined in Article 6, Section a-c of this agreement.
- d. **Cost Increases.** This Agreement specifically allows for increased costs such as change orders and contingencies through the expenditure period consistent with Treasury's Final Rule FAQ 17.16, such increases shall be processed as amendments to this agreement.
 - i. Any funding amount modifications must be made consistent with City of Wauwatosa Purchasing and Fund Transfer policies, and Treasury Final Rule FAQ 17.16.

8. Termination.

- a. **Termination for Convenience:** Either department may, upon 30-day notice, for any reason, elect to terminate this Agreement.
- b. **For Cause.** Either Department may elect to terminate this agreement in the event of a failure to deliver services or a material breach of this Agreement.

9. **Amendments.** All changes that are mutually agreed by and between the departments, including increase or decrease in the amounts to be funded under this agreement shall be in writing and designated as written amendments to this agreement.

10. Federal Contract Terms and Conditions:

- a. **Federal Contract Terms and Conditions.** In the event of a conflict between the terms in this Article and the terms of other articles of the Agreement, the terms of this Article shall govern. The parties accept and acknowledges that it is and will continue to be in compliance with said terms and conditions for the term of the award.
- b. **Federal Agency Seal, Logo, and Flags.** The Organization shall not use the federal agency's seal(s), logos, crests, or reproductions of flags or likenesses of federal agency official without specific federal agency pre-approval.
- c. **Federal Government.** The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the City, Organization, or any other party pertaining to any matter resulting from the Agreement.
- d. **Debarment and Suspension.** The Organization represents and warrants that, as of the effective date of the Agreement, neither the Organization nor any subcontractor performing work under this Agreement (at any tier) is included on the federally debarred bidder's list listed on the

government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." If at any point during the Agreement term the Organization or any subcontractor performing work at any tier is included on the federally debarred bidder's list, the Organization shall notify the City immediately.

- e. **Record Retention.** The Organization agrees it will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the Agreement, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records. The Organization further certifies that it will comply with the record retention requirements detailed in 2 CFR §200.333. The Organization will retain all records as required by 2 CFR § 200.333 for a period of three (3) years after it receives City notice that the City has submitted final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.
- f. **Procurement of Recovered Materials.** The Organization represents and warrants that in its performance under the Agreement, the Organization shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- g. **Clean Air Act and Federal Water Pollution Control Act.** The Organization agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C.1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- h. **Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352 (as amended).** The Organization certifies the following:
 - i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Organization to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal Loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and Federal contract, grant, loan, or cooperative agreement.
 - ii. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Organization shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - iii. The Organization shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352.

Such disclosures are forwarded from tier to tier up to the Organization to be submitted to the City.

- i. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** If the Contract is in excess of \$100,000 and involves the employment of mechanics or laborers, the Organization must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, the Organization is required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty (40) hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or purchases of transportation or transmission of intelligence.
- j. **Domestic (U.S.) Procurement Preference (2 CFR § 200.322).** Organization should, to the greatest extent practicable, purchase, acquire, or use goods, products, or materials produced in the United States (including, but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this clause, (1) “produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States, and (2) “manufactured products” means items and construction materials composed in whole or in part of nonferrous materials such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- k. **False Statements.** Organization understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.
- l. **Discrimination. Statutes and regulations prohibiting discrimination applicable to the award include, without limitation, the following:**
 - i. **Civil Rights.** The Organization and subcontractor shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury’s Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with “Limited English Proficiency” in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury’s Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.
 - ii. **Age Discrimination.** The Organization and subcontractor shall comply with The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury’s implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and v.
 - iii. **Americans with Disabilities.** The Organization and subcontractor shall comply with Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
- m. **Clean Air and Water Act.** Organization and subcontractor agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251– 1387).
- n. **Publications.** Any publication produced with funds from this award must display the following language: “This project [is being] [was] supported in whole or part, by federal award number 21.027 awarded to Wauwatosa City by the U.S. Department of the Treasury. The views and

opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.”

- o. Federal Drug Free Workplace.** Organization and subcontractor agree to comply with the drug-free workplace requirements for federal contractors pursuant to 41 U.S.C.A. § 8102.
- p. Increasing Seat Belt Use in the United States.** Organization and subcontractor agree to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
- q. Reducing Text Messaging While Driving.** Organization and subcontractor agree to adopt and enforce policies that ban text messaging while driving, and should also establish workplace safety policies to decrease accidents caused by distracted drivers.
- r. Conflict of Interest.** Both parties to this Agreement mutually represent and warrant the following:
 - i. Conflict of Interest Policy.** Since both parties are members of the Wauwatosa City organization, they are governed by the Wauwatosa City Code of Ordinances 15-802 “Ethical standards for Employees.”
 - ii. No Current or Prior Conflict of Interest.** That parties have no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this agreement. If such conflict arises, parties must immediately disclose the conflict. In the event of a conflict, any remedies including termination of the agreement are available.

For Wauwatosa Mayors Office:

Signature _____

Date: _____

Dennis McBride, Mayor

For City of Wauwatosa Community Development Authority

Signature _____

Date: _____

Mark Hammond, Executive Director