

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is made and entered into as of _____ by and between La Crosse Community Foundation Corporation (“LCF” or “Contractor”), located at 401 Main Street, Suite 205 in La Crosse, WI and the City of La Crosse (“City”), located at 400 La Crosse Street in La Crosse, WI, now collectively “the Parties.”

WHEREAS, the Parties desire to enter into an agreement to facilitate the distribution of \$2,000,000 less fees of 3% of the City’s American Rescue Plan Act Coronavirus State and Local Fiscal Recovery Funds (SLFRF), Assistance Listing Number 21.027, allocation to support nonprofit organization relief and recovery needs as a result of the COVID-19 pandemic; and

WHEREAS, the Parties desire to memorialize certain terms and conditions of their anticipated partnership;

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

1. **BACKGROUND & PURPOSE.** The Coronavirus State and Local Fiscal Recovery Funds (SLFRF) Program of the American Rescue Plan Act is intended to provide a substantial infusion of resources to State and Local governments to help turn the tide on the COVID-19 pandemic, address its economic fallout, and lay the foundation for a strong and equitable recovery.

Subject to the Interim Final Rule adopted by Treasury on May 10, 2021 and to the pending Final Rule (together, the “Rule”) on the eligible uses of SLFRF Program funds under the American Rescue Plan Act, the City has allocated \$2,000,000 less LCF administrative fees specifically for nonprofits located in the City of La Crosse meeting pandemic response needs and/or building a stronger, and more equitable community. Allowable SLFRF funding categories to be addressed through this MOU are as follows:

- Support public health expenditures
- Address negative economic impacts caused by the public health emergency
- Serving the hardest-hit communities and families within Qualified Census Tracts and other populations, household or geographic areas disproportionately impacted by the pandemic
- Provide premium pay for essential workers

In an effort to adhere to the Guiding Principles defined in the Recipient Compliance and Reporting Responsibilities for eligible distribution and use of its SLFRF funding, the City has chosen to contract with LCF to help facilitate the distribution of \$1,940,000 (\$2,000,000 less LCF fees of \$60,000) to help local nonprofits and to ensure an equitable, transparent and user-friendly process.

The City recognizes that the LCF has been administering pandemic relief and recovery grant programs to local nonprofits since March of 2020, and furthermore, acknowledges LCF is well suited to facilitate the distribution decisions of SLFRF Program funds to nonprofits because of its 90+ years of experience and expertise administering nonprofit grantmaking programs.

- 2. SCOPE OF WORK.** LCF agrees to contract with the City to facilitate the distribution process, and all subsequent required post-award compliance reporting, of the City’s SLFRF allocation as described above, and will do so by adhering to the following mutually agreed upon expectations:
- a. Funds will only be recommended for distribution for purposes allowable under the Rule.
 - b. Awards will only be recommended to nonprofits who:
 - i. are tax exempt under Section 501c3 of the Internal Revenue Code;
 - ii. have a physical presence and/or office within the City of La Crosse; and
 - iii. Preference will be given to organizations who:
 1. are in good standing with all IRS reporting requirements;
 2. have been in operation for at least one full year prior to the start of the pandemic (March 2020); and
 3. any other priorities for evaluation criteria as decided by the City of La Crosse Planning Department.
 - c. Allowable funding categories — All requests, and subsequent award recommendations, must fit at least one of the following categories as identified in the Rule and the US Treasury’s June 24, 2021 Compliance and Reporting Guidance, Appendix 1, Expenditure Categories:
 1. Public Health
 2. Negative Economic Impacts
 3. Services to Disproportionately Impacted Communities
 4. Premium Pay
 - d. Evaluation — All applications will be reviewed by an independent committee that is representative of the La Crosse community. Per LCF’s Conflict of Interest Policy (attached), all individuals on the committee will be expected to disclose any conflicts of interests with the applicant organizations, and will abstain from evaluating any organization where a conflict exists. This committee will be comprised of representatives appointed as indicated below. All committee members will serve as volunteers and therefore receive no compensation.
 - i. City — up to 3 individuals
 - ii. LCF — up to 6 individuals; 3 of whom have significant experience reading and evaluating nonprofit financial statements
 - e. Final Award Decisions — The City will hold final authority for award decisions based on the recommendations provided by the independent review committee.
 - f. Award Payments — The City will pay/distribute awards directly to the final selected nonprofit recipients.
 - g. Distribution Timeline — The funding opportunity will be widely publicized no later than _____. Award recommendations will be provided to the City no later than _____.

- h. Post-Award Monitoring and Reporting — LCF will work with all final recipients throughout the grant period to obtain all required quarterly reporting data so the City may produce its reports timely and accurately to Treasury throughout the grant period. Reports will be due to the City for all it has disbursed within 15 days after the end of each quarter throughout the entire grant period or until all funds have been awarded and fully expended by all final recipients and the appropriate reporting has been completed.
- i. Recipients will be expected to expend awards by December 31, 2026, and return any funds not used to the City.

3. **CONTACT PERSONS.** Each Party will appoint a primary contact for the scope of work defined in this Agreement. The following persons have been appointed for each Party as of the effective date:

La Crosse Community Foundation	City of La Crosse
Jamie Schloegel, Executive Director	Julie Emslie, Economic Development Administrator
608.782.3223 ext. 22	608.789.7393
jamie@laxcommfoundation.com	emsliej@cityoflacrosse.org

- 4. **RECOGNITION.** The City will be recognized as the original source of all funding awarded and distributed under the terms of this Agreement. LCF will seek prior approval from the City before publicly distributing any related marketing or communication strategies (i.e. RFP document, information on LCF website, application, award letters, etc.).
- 5. **CONFIDENTIAL INFORMATION.** The parties acknowledge that they may have access to private, sensitive and/or proprietary information. The parties agree to hold such information in confidence and agree not to disclose such information, either by publication or otherwise, to any person without the prior written consent of the other party, except as may be required by law. The terms of this section shall survive the termination, expiration, non-renewal, or rescission of this Agreement. All representatives working on behalf of the Parties will use appropriate safeguards, including implementing, maintaining and using appropriate administrative, technical and physical safeguards, to prevent use or disclosure of confidential information.
- 6. **FEES.** The City agrees to compensate LCF for the work completed under the terms of this agreement. The fee will be a flat, one-time fee of 3% of the SLFRF funds allocated by the City for this purpose or \$60,000. It is understood this fee will be deducted from the \$2,000,000 allocated for the scope of work defined in this agreement. LCF reserves the right to renegotiate this fee if there is substantial change to the scope of work originally defined and mutually agreed upon in this Agreement. If the scope of work defined under this agreement ends up costing less than the 3% fee, any remaining balance will be returned to the City as all ARPA funding must be accounted for and reported by the City as being spent on eligible costs per the Rule and such funds must be spent by the deadlines imposed.

7. **RECORDS.** LCF shall retain and provide to the City when requested or at the conclusion of this agreement, any and all records kept related to the scope of work completed under the terms of this agreement.

8. **INDEMNIFICATION.** To the fullest extent allowable by law, La Crosse Community Foundation hereby indemnifies and shall defend and hold harmless, at its expense, the City of La Crosse, its elected and appointed officials, committee members, officers, employees, authorized representatives and volunteers (“La Crosse Indemnitees”) from and against third party tort suits, actions, legal or administrative proceedings, claims, costs and expenses (including, without limitation, reasonable attorney and professional fees) to the extent caused by the negligent acts, errors or omissions of the La Crosse Community Foundation, its subcontractors or of anyone acting under its direction or control or on its behalf in the performance of this Agreement. The aforesaid indemnity and hold harmless agreement shall not be applicable to any liability to the extent caused by the City of La Crosse, its elected and appointed officials, officers, employees or authorized representatives, consultants, contractors or volunteers in the performance of this Agreement. The La Crosse Community Foundation’s obligation to indemnify, defend and hold harmless shall not be restricted to insurance proceeds, if any, received by the City of La Crosse, its elected and appointed officials, officers, employees, authorized representatives or volunteers.

Nothing in this Agreement is intended or shall be construed to be a waiver or estoppel of the City of La Crosse or its insurer (or otherwise affect or alter their ability) to rely upon the limitations, defenses and immunities contained within Wis. Stat. §§ 345.05 and 893.80, or other applicable law. To the extent that indemnification is available and enforceable against the City of La Crosse, (a) the City of La Crosse or its insurer shall not be liable in indemnity, contribution, or otherwise for an amount greater than the limits of liability of municipal claims established by applicable Wisconsin or federal law; and (b) the City of La Crosse’s obligations under this Agreement are further conditioned upon the following: (i) the indemnified party shall promptly notify the City of La Crosse in writing of any such claims, demands, liabilities, damages, costs and expenses within ten (10) days of discovery; (ii) the City of La Crosse shall have sole control of, and the indemnified party shall reasonably cooperate in all respects, in the defense of the claims, demands, liabilities, damages, costs and expenses and all related settlement negotiations; and (iii) the indemnified party shall not make any admission or disclosure or otherwise take any action prejudicial to the City of La Crosse except as required by law.

Neither party shall be liable for indirect, special, exemplary, consequential or incidental damages, including, without limitation, any damages for lost profits, revenue or business interruption. The parties represent that, as of the effective date, neither party has any notice or knowledge of any claims, demands, liabilities, damages, costs and expenses asserted or threatened by any third party with respect to the matters contemplated in this Agreement. This indemnity provision shall survive the termination or expiration of this Agreement.

9. **TERM & TERMINATION.** Subject to the termination provisions set forth below in this Agreement, the term of this Agreement shall begin on the “Effective Date” and shall continue until all work as defined above is complete, but no later than September 30, 2026.

Upon termination, the parties shall not have any further obligation under this Agreement except for (i) confidentiality covenants, (ii) other covenants that expressly or by operation of law extend beyond the termination of this Agreement; and (iii) payment for services rendered.

Either party may terminate the Agreement without cause by giving the other party thirty (30) days written notice of termination. If either party breaches the terms and conditions of this Agreement and does not cure such breach within five (5) days of written notice, this Agreement shall terminate immediately.

In the event this agreement is terminated for any reason, both parties will negotiate a related applicable fee based on actual work completed by the Foundation. The fee will be in lieu of the 3% fee defined in Section 6 (not in addition to).

10. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement with respect to the subject matter thereof, and supersedes and revokes all prior Agreements between the parties. This Agreement may be modified or amended only in writing signed by both parties.

11. **ASSIGNMENT.** This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their heirs, legal representatives, successors and assigns. This agreement may not be amended or reassigned by either party without the prior written consent of the other party.

12. **TITLES.** Titles are for reference only. In the event of a conflict between the title and the content of each section, the content of the section shall control.

13. **AUTHORIZATION.** The persons signing this Agreement hereby warrants that he/she has the legal authority to execute this Agreement on behalf of his or her respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates set forth below.

La Crosse Community Foundation
By: _____
Name: _____
Title: _____
Date: _____

City of La Crosse
By: _____
Name: _____
Title: _____
Date: _____