

## ARPA SUBRECIPIENT AGREEMENT

This ARPA Subrecipient Agreement (“AGREEMENT”) is made and entered into by and between MANITOWOC COUNTY, a governmental body corporate and politic pursuant to Wis. Stat. § 59.01, whose principal address is 1010 South Eighth Street, Manitowoc, WI 54220 (“MANITOWOC COUNTY”) and *[municipality name and address]* (“SUBRECIPIENT”). MANITOWOC COUNTY and SUBRECIPIENT may be referred to individually as a “PARTY” or collectively as the “PARTIES”.

### RECITALS:

WHEREAS, on March 11, 2021, President Joseph R. Biden signed into law the American Rescue Plan Act of 2021 (the “ARPA”); and

WHEREAS, on May 10, 2021, the United States Department of the Treasury (hereinafter “US TREASURY”) published guidance regarding the allowable usage of the Coronavirus State and Local Fiscal Recovery Funds to be disseminated to local governments in accordance with the ARPA; and

WHEREAS, MANITOWOC COUNTY is allocated that certain amount of Local Fiscal Recovery Funds (“LFRF”) as published by the US TREASURY; and

WHEREAS, under section 9901 of the ARPA, MANITOWOC COUNTY may transfer LFRF funds to a constituent unit of government; and

WHEREAS, MANITOWOC COUNTY intends to allocate a direct match of the LFRF funds each constituent unit of government receives with LFRF funds MANITOWOC COUNTY receives to achieve the maximum impact of such LFRF funds; and

WHEREAS, SUBRECIPIENT is a constituent unit of government that received LFRF funds; and

WHEREAS, SUBRECIPIENT submitted a written request to the COUNTY for *[amount requested]* in LFRF matching funds to *[brief description of the project – preferably a copy of bid documents as an attachment]* (“PROJECT”);

NOW, THEREFORE, in consideration of the premises set forth above, and the mutual agreements, covenants, promises, and obligations set forth below, the sufficiency of which is hereby acknowledged, the PARTIES agree as follows:

- 1. RECITALS.** The foregoing Recitals are hereby incorporated as if fully set forth herein and are hereby made a part of this AGREEMENT.
- 2. EFFECTIVE DATE AND TERM.** This AGREEMENT shall commence when last executed by all PARTIES and shall remain in effect no later than December 31, 2024, unless earlier terminated by MANITOWOC COUNTY in writing.

**3. BID DOCUMENTS.** Prior to requesting any LFRF funds from MANITOWOC COUNTY, SUBRECIPIENT shall provide MANITOWOC COUNTY with a complete copy of all materials used in obtaining a quote, request, or bid, including the accepted quote, request, or bid, for the PROJECT.

**4. LFRF FUNDS TO BE DISSEMINATED TO SUBRECIPIENT.** MANITOWOC COUNTY will disseminate LFRF funds to SUBRECIPIENT as follows:

a. Upon SUBRECIPIENT expending 50% of its LFRF funds on the PROJECT, SUBRECIPIENT may request MANITOWOC COUNTY to disburse an equal amount to SUBRECIPIENT upon providing the materials required in Paragraph 6 (Reporting Requirements to Ensure Compliance With the ARPA) of this AGREEMENT, such that 50% of the funds that MANITOWOC COUNTY is providing SUBRECIPIENT are paid out;

b. Upon SUBRECIPIENT expending the last 50% of its LFRF funds on the PROJECT, SUBRECIPIENT may request MANITOWOC COUNTY to disburse an equal amount to SUBRECIPIENT upon providing the materials required in Paragraph 6 (Reporting Requirements to Ensure Compliance With the ARPA) of this AGREEMENT, such that 100% of the funds that MANITOWOC COUNTY is providing SUBRECIPIENT are paid out.

c. No reimbursement requests may be submitted to MANITOWOC COUNTY after December 31, 2024.

**5. LIMITATIONS REGARDING THE USE OF LFRF FUNDS.** SUBRECIPIENT agrees that all expenditures utilizing LFRF funds that SUBRECIPIENT receives from MANITOWOC COUNTY shall be used only for the PROJECT and shall be an eligible use of LFRF funds under the United States Department of the Treasury Coronavirus State and Local Fiscal Recovery Funds Final Rule implementing the LFRF provisions of the ARPA (*see* 31 C.F.R. Part 35) (the "RULE"). It is SUBRECIPIENT's sole responsibility to ensure that its use of LFRF funds complies with the RULE. To the extent that SUBRECIPIENT uses LFRF funds from MANITOWOC COUNTY in such a manner that is not an eligible use under the RULE, SUBRECIPIENT agrees to reimburse MANITOWOC COUNTY the full amount of LFRF funds that MANITOWOC COUNTY provided to SUBRECIPIENT.

**6. REPORTING REQUIREMENTS TO ENSURE COMPLIANCE WITH THE ARPA.** To ensure compliance with the RULE as set forth by the US TREASURY, when requesting reimbursement for eligible LFRF expenditures, SUBRECIPIENT shall provide to MANITOWOC COUNTY a comprehensive and detailed list of all such expenditures on an itemized invoice, and shall also provide any backup documentation to support such expenditures. Said invoice must include a statement, signed by SUBRECIPIENT, indicating that all expenditures therein comport with the RULE as set forth by the US TREASURY.

**7. TIMELINE REGARDING THE DISSEMINATION OF FUNDS TO RECIPIENT.** Upon receipt of SUBRECIPIENT's complete reimbursement request, MANITOWOC COUNTY will disseminate funds for eligible LFRF expenditures therein within twenty (20) days of receipt of said reimbursement request. The dissemination of LFRF funds shall only occur after the COUNTY reviews SUBRECIPIENT's reimbursement request to ensure that all expenditures

detailed therein qualify for reimbursement in accordance with all published guidance regarding the use of LFRF funds as specified in the RULE and the ARPA. All payments from MANITOWOC COUNTY to SUBRECIPIENT are contingent on the availability of LFRF funds to MANITOWOC COUNTY, and further subject to all applicable federal, state, and local laws regarding the governance of LFRF funds within the RULE and the ARPA.

**8. ADDITIONAL INFORMATION.** MANITOWOC COUNTY may request additional information from SUBRECIPIENT, as needed, to meet any additional guidelines regarding the use of LFRF funds that may be established by the US TREASURY during the term of this AGREEMENT.

**9. UNIFORM ADMINISTRATIVE REQUIREMENTS COMPLIANCE.** SUBRECIPIENT agrees to comply with the pertinent *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, 2 C.F.R. Part 200 (a copy of which can be found at <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200>), which includes, but is not limited to, adoption of, and compliance with, a procurement policy that ensures procurements using LFRF funds, or payments under procurement contracts using such funds, are consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR § 200.317 through 327, as applicable.

**10. TERMINATION.** MANITOWOC COUNTY may terminate this AGREEMENT for convenience or otherwise and for no consideration or damages upon prior notice to SUBRECIPIENT.

**11. COMPLIANCE WITH LAWS AND GUIDELINES.** SUBRECIPIENT agrees to comply with all federal, state, and local laws, requirements, and published guidance (including the *Compliance and Reporting Guidance: State and Local Fiscal Recovery Funds* (version 2.1) (November 12, 2021) as updated from time-to-time) that is set forth regarding the usage of any and all monies appropriated under the ARPA.

**12. MAINTENANCE AND AUDIT OF RECORDS.** SUBRECIPIENT agrees to maintain records, books, documents, and other materials relevant to its performance under this AGREEMENT for five (5) years following termination of this AGREEMENT. These records shall be subject to inspection, review, and audit by the COUNTY or its designees and the US TREASURY. If it is determined during the course of the audit that SUBRECIPIENT was reimbursed for unallowable costs under this AGREEMENT, SUBRECIPIENT agrees to promptly reimburse MANITOWOC COUNTY for such payments upon request.

**13. CIVIL RIGHTS COMPLIANCE.** Recipients of federal financial assistance from the US TREASURY are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of federal funds. Those requirements include ensuring that entities receiving federal financial assistance from the US TREASURY do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR Part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as

amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR Part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR Part 23. SUBRECIPIENT agrees to comply with all legal requirements relating to nondiscrimination and nondiscriminatory use of federal funds.

**14. INDEMNIFICATION.** SUBRECIPIENT agrees to defend, hold harmless, and indemnify MANITOWOC COUNTY, its officers, employees, departments, boards, commissions, committees, agents, elected and appointed officials, and volunteers, from and against any and all causes of action, claims, costs, demands, expenses, fees, judgments, legal fees (including, without limitation, reasonable attorney's fees), liabilities, losses, or damages of any nature whatsoever arising out of this AGREEMENT or in any way related to any act or omission of SUBRECIPIENT. SUBRECIPIENT agrees that its duty to defend, hold harmless, and indemnify MANITOWOC COUNTY shall survive the termination of this AGREEMENT.

SUBRECIPIENT further agrees to defend, hold harmless, and indemnify MANITOWOC COUNTY against any and all claims for reimbursement resulting from any improper expenditure of LFRF funds by SUBRECIPIENT. SUBRECIPIENT expressly agrees to reimburse MANITOWOC COUNTY for any funds MANITOWOC COUNTY is required to reimburse the federal government as a result of SUBRECIPIENT's noncompliance with any federal requirement.

**15. IMMUNITY.** MANITOWOC COUNTY is a governmental entity entitled to governmental immunity under law, including Wis. Stat. § 893.80, as applicable. Nothing contained in this AGREEMENT shall waive the rights and defenses to which MANITOWOC COUNTY may be entitled under law, including all immunities, limitations, and defenses under Wis. Stat. § 893.80 or any subsequent amendment thereof. The rights and obligations set forth in this Paragraph shall survive the termination or expiration of this AGREEMENT.

**16. NOTICE.** Any notice given under this AGREEMENT shall be in writing and delivered in person or by certified mail, return receipt requested, addressed as follows:

If to COUNTY:            Finance Director  
                                  1110 S 9th Street, 1st Floor  
                                  Manitowoc, WI 54220

If to CITY:                \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_

Either PARTY may, in writing, designate another address to which notice shall thereafter be given or mailed. Any notice given by mail shall be deemed delivered when deposited postage pre-paid in the United States mail.

**17. MODIFICATION.** This AGREEMENT may not be altered, amended, or modified except by a written agreement which expressly states that it constitutes an amendment to this AGREEMENT and which has been signed by duly authorized representatives of both PARTIES.

**18. DEFAULT.** The failure SUBRECIPIENT to perform any of the covenants, conditions, or obligations imposed on it by this AGREEMENT where the failure continues for a period of fifteen (15) days after written notice from MANITOWOC COUNTY shall constitute a material default and breach of this AGREEMENT.

**19. RESERVATION OF RIGHTS; NO WAIVER.** No condition, covenant, or term of this AGREEMENT shall be waived unless the waiver is made in writing and signed by duly authorized representatives of both PARTIES. The failure of MANITOWOC COUNTY to take action with respect to any breach by SUBRECIPIENT of any covenant, condition, or obligation in this AGREEMENT shall not be a waiver of such covenant, condition, or obligation or a subsequent breach of the same or any other covenant, condition, or obligation. The remedies herein provided are cumulative and not exclusive of any remedy available to MANITOWOC COUNTY at law or in equity.

**20. RELATIONSHIP OF THE PARTIES.** The PARTIES agree and understand that they shall perform their obligations under this AGREEMENT as independent parties to the AGREEMENT. Nothing in this AGREEMENT shall be construed to make either PARTY an agent, employee, employer, partner, or representative of the other PARTY or to otherwise create any other association between the parties.

**21. NO THIRD-PARTY BENEFICIARIES.** This AGREEMENT shall not provide any person not a party to this AGREEMENT with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference to this AGREEMENT. This provision shall not limit any obligation that either PARTY has to the US TREASURY in connection with the use of ARPA funds, including the obligations to provide access to records and cooperate with audits as provided in this AGREEMENT.

**22. ASSIGNMENT PROHIBITED.** SUBRECIPIENT shall not assign or transfer any interest in this AGREEMENT in any manner.

**23. SUCCESSORS AND ASSIGNS BOUND.** All of the provisions, covenants, terms, conditions, and specifications in this AGREEMENT shall extend to and bind the legal representatives, successors, and assigns of the respective PARTIES.

**24. CHOICE OF LAW AND VENUE.** This AGREEMENT shall be construed and enforced in accordance with the laws of the State of Wisconsin. Any lawsuit related to or arising out of a dispute under this AGREEMENT shall be commenced and tried in the circuit court of Manitowoc County, Wisconsin, and MANITOWOC COUNTY and SUBRECIPIENT submit to the exclusive jurisdiction of the circuit court of Manitowoc County, Wisconsin for such lawsuits.

**25. PARAGRAPH HEADINGS.** All paragraph and subparagraph headings contained in this AGREEMENT are for convenience in reference only, and are not intended to define or limit the scope of any provision.

**26. SEVERABILITY.** The provisions of this AGREEMENT are severable and if any condition, covenant, or term is found to be invalid, unenforceable, or void by a court of competent jurisdiction, then the remainder of the AGREEMENT shall remain in full force and effect and shall not in any way be affected, impaired, or invalidated.

**27. SIGNATURE AUTHORITY.** The persons signing this AGREEMENT warrant that they have been authorized to enter into this AGREEMENT by and on behalf of their respective PARTIES and that they have full and complete authority to bind their respective PARTIES by executing this AGREEMENT.

**28. COUNTERPARTS.** This AGREEMENT may be executed in several counterparts, each of which shall be taken to be an original, and all collectively but one instrument.

**29. ENTIRE AGREEMENT.** This AGREEMENT constitutes the entire agreement between the PARTIES and supersedes any and all other agreements, oral or written, between the PARTIES with respect to its subject matter. Each PARTY acknowledges that no agreement, inducement, promise, or representation has been made by or on behalf of any PARTY except as specifically set forth herein. Each PARTY agrees that no agreement, promise, or statement that is not contained in this AGREEMENT shall be binding on any PARTY. Each PARTY acknowledges and agrees it has relied on its own judgment in entering into this AGREEMENT.

**IN WITNESS WHEREOF,** the parties, intending to be legally bound, have executed this AGREEMENT effective on the date that it is signed by all parties.

MANITOWOC COUNTY

SUBRECIPIENT

By: \_\_\_\_\_  
Bob Ziegelbauer  
County Executive

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

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

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

By: \_\_\_\_\_  
Jessica Backus  
County Clerk

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

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

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