

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
NATURAL RESOURCES DEFENSE COUNCIL, INC.  
AND  
THE CITY OF MADISON**

**I. PURPOSE**

This Memorandum of Understanding (“MOU”) establishes the terms and conditions for the working agreement (“Agreement”) between the Natural Resources Defense Council, Inc. (“NRDC”) and the City of Madison (the “City”), in support of the Food Matters Regional Initiative (the “Project”). NRDC together with the City are also referred to as the “Parties”.

**II. BACKGROUND**

The Project is an initiative to reduce food waste by partnering with cities to intentionally integrate strategies to advance food waste prevention, surplus food rescue, and recycling of food scraps. The partnership between NRDC and the participating cities will support bold solutions that can be replicated by other municipalities nationwide and around the world to advance local economic prosperity and reduce pollution. Funding for the Project is provided jointly by a number of private funders, (collectively, the “Project Funders”), and administered through NRDC.

NRDC is a 501(c)(3) public charity established in 1970 with the mission to safeguard the Earth: its people, its plants and animals and the natural systems on which all life depends. NRDC has the experience and ability to support the citywide execution of food waste strategies, which will enhance the City’s ability to achieve the long-term success of those strategies and benefit other communities seeking to implement similar strategies.

**III. AGREEMENT TO PARTICIPATE**

The City will participate in the Project and agrees to pursue the execution of all such strategies, measures and other actions and goals to which it has committed. NRDC will support the City in achievement of all such strategies, measures and other actions and goals to which it has committed, for the duration of the City’s participation in the Project, as more specifically set forth in this MOU, particularly in Section IV, below.

**IV. COMMITMENTS BY THE CITY**

The City commits to pursue, to the best of its ability and in a manner that complies with applicable laws, ordinances, rules and policies and that facilitates collaboration among the City and its major stakeholders, the following initiatives, by June 30, 2023, to undertake the following strategies with the goal of reducing food waste within the City:

1. Make a public commitment to reduce food waste or public announcement regarding this new commitment to participate.
2. In collaboration with NRDC and local partners, develop and implement a multi-year Work Plan (the “Work Plan”) to address food waste, which will include:
  - a. At least 4-5 NRDC-recommended strategies;
  - b. A metrics framework to track food waste production.
3. Convene a local working group consisting of city staff, local partners, and other stakeholders, regularly (at least once a month) to drive progress on selected strategies.

In support of the implementation of these strategies, the City commits to undertake the following actions to coordinate with NRDC and other Food Matters participants:

1. Assign a point person for the initiative (“City Project Lead) who can devote an estimated average of 3-5 hours per week.
2. Provide a written update every six (6) months in accordance with template provided by NRDC.
3. Participate in the Project network of peer cities to attend 1 cohort meeting per month and 1-2 convenings per year and to share information on strategic approaches with NRDC and other cities participating in the Project, including work products and materials, programmatic concepts, and processes.
4. Make the City Project Lead available to meet with designees of NRDC and cohort cities at least once every month (at a time to be mutually agreed upon by the parties acting reasonably) for the duration of the City’s involvement with the Project.
5. Use reasonable best efforts to take all necessary and appropriate actions to complete the work stated in Work Plan in accordance with the timeline and other provisions set forth therein.
6. Use reasonable best efforts to provide information that will facilitate coordination between NRDC and other entities also involved in the Project, including cooperating with and supporting NRDC’s compliance with all requirements of funding provided to NRDC for use on Project expenses, by adhering to the requirements set forth in Exhibit A hereto (the “Funding Requirements”).

#### **V. COMMITMENTS BY NRDC**

NRDC, for the duration of the City’s participation in the Project and at no expense to the City, will use commercially reasonable efforts to provide the following support, resources and opportunities to assist the City in achieving the goals contained in its Work Plan:

1. Make reasonable best efforts to share best practices and expertise on initiative design and implementation including regular access to project staff at NRDC.
2. Provide assistance on establishing baseline data (where not already completed) and tracking progress.
3. As determined by NRDC at its sole discretion, provide additional discretionary resources to support local organization involvement in the Project; stakeholder engagement; and enhanced technical, analytical, and communications capabilities of the City, either through direct payment to vendors or reimbursement to the City, where applicable. All payments and reimbursements must be approved by NRDC in writing in advance, and the city must submit an invoice to receive any reimbursement.
4. As needed, and as determined by NRDC at its sole discretion, identify and assist the City in securing additional resources to achieve the goals in its Work Plan.
5. Assist the City in peer-to-peer networking with other cities, including enabling participation in online and/or in-person forums involving other cities and partners participating in the Project as relevant.
6. Designate an NRDC employee to direct NRDC’s work with the City on the Project and to serve as City’s primary NRDC contact (“NRDC Project Lead”).

## **VI. TERM**

This Agreement shall be for a term commencing on December 1, 2020 and shall expire on June 30, 2023, unless earlier terminated or extended in accordance with the provisions herein. The term of this Agreement shall not dictate the duration of the activities of the City undertaken as part of the Work Plan.

## **VII. LOBBYING AND ETHICS**

The City affirms that (a) the work performed by NRDC, the Action Fund, or independent contractors retained by NRDC or the Action Fund under this Agreement shall not be considered to be lobbying under Madison General Ordinances Sec. 2.40, and shall not be subject to or limited by any such local laws, ordinances, codes, rules or regulations, and (b) the City shall not request that NRDC, the Action Fund, or independent contractors retained by NRDC or the Action Fund perform any work that violates any applicable local laws, ordinances, rules, or regulations.

The City represents that its participation in the Project under the terms and conditions of this MOU and its acceptance of resources from NRDC for these purposes complies with applicable government ethics laws. The City also represents that it has obtained all approvals from legal counsel and other authorities necessary to participate in the Project under the terms and conditions of this MOU and to accept resources from NRDC for these purposes.

## **VIII. AFFILIATION WITH THE PROJECT**

NRDC supports the integration of all initiatives that are undertaken by the City with support from the Project into the City's own long-term vision for sustainability, including any applicable sustainability, health, solid waste, food systems or climate action plans. NRDC may use the City's name and describe the activities the City undertakes in conjunction with the Project, including in web and print materials produced for public consumption, subject to the terms and conditions in the Confidentiality Section (Section XIII) of this MOU. Furthermore, NRDC may promote the involvement of the City in the Project through case studies, reports, and other media, subject to the conditions in the Other Public Communications Section (Section IX) and Confidentiality Section (Section XIII) of this MOU.

## **IX. OTHER PUBLIC COMMUNICATIONS / PUBLICITY**

The City and NRDC agree to reasonably coordinate with each other on public communications initiated by either party that refer to the Project, and any such public communications must be mutually approved in advance when possible by the City and NRDC. Any such public communications made by one party referring to the other party or displaying the other party's logo or other intellectual property must be approved by the other party.

The City will be available within reason to work with NRDC on communication needs from high-level city officials, during the life of the Project.

## **X. MODIFICATION OF THE WORK PLAN**

Any one of the parties to this MOU may propose modifications to the Work Plan based upon internal or external circumstances that affect the City's ability to achieve the milestones and goals outlined in the plan or NRDC's ability to provide the support requested. All substantive

modifications to the programs the City will pursue or to the Project timeline must be agreed upon by the City Project Lead and the NRDC Project Lead, who bear primary responsibility for day-to-day management and execution of the Project, and are also accountable for the overarching structure and strategy of the Project. The NRDC Project Lead shall not unreasonably withhold approval. If the City Project Lead and the NRDC Project Lead cannot reach an agreement about the terms of any such proposed modification, or NRDC determines it is unable to provide the requested change to assistance, NRDC shall have the right to terminate this MOU in accordance with Section XI.

## **XI. TERMINATION OF THE AGREEMENT**

This MOU may be terminated by the parties under to the following conditions:

1. Failure by the City to Achieve Milestones: NRDC may terminate this MOU if, more than six months after the execution of this MOU, it determines that the City is substantially unable to achieve the milestones and goals outlined in its Work Plan, or that the City has demonstrated an inability to dedicate the required resources to the achievement of the milestones and goals in the Work Plan. Prior to terminating this MOU as provided in this Section XI.1, NRDC may initiate a process under Section X to propose modifications to the Work Plan and clearly communicate these proposed modifications to the City.
2. For Cause: Either the City or NRDC may terminate this MOU if the other party is in material breach of its obligations under this MOU, and such breach has not been corrected to the non-breaching party's reasonable satisfaction in a timely manner after written notice of such breach has been provided to the breaching party.
3. Lack of Funding: In the event the City is unable to meet its financial obligations and commitments under this MOU, the Parties shall make reasonable best efforts to revise the MOU to allow for continued collaboration in pursuit of the Project's goals. Neither Party shall unreasonably withhold approval of such revisions. In the event the Parties cannot reach agreement, either Party may move to terminate this MOU.
4. Mutual Termination: If both the City and NRDC agree, this MOU may be mutually terminated by the Parties, which agreement shall be in writing.
5. Notice: Unless otherwise specified herein, written notice of termination pursuant to this Section XI shall be given by the party terminating this MOU to the other not less than 30 calendar days prior to the effective date of termination.

## **XII. RELATIONSHIP**

This MOU shall not be construed as a joint venture or so as to make any one of the parties an agent or representative of any of the other parties. Each of the parties hereto expressly disclaims any intention to enter into any such agency or joint venture and agrees to conduct itself so as not to act or purport to act on behalf of the other. This MOU does not authorize any party to act as the agent or legal representative of any other party for any purpose whatsoever and no party is granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of any other party, or to bind any other party in any manner or thing whatsoever.

### **XIII. CONFIDENTIALITY OF INFORMATION AND PROTECTION OF INTELLECTUAL PROPERTY**

Each party recognizes that, while engaging in activities under this MOU, it may have access to information of a proprietary, private or confidential nature owned by another party (a “Disclosing Party”). Each party acknowledges that any proprietary, private and confidential information it shares with any other party under this MOU must be identified as such at the time of communication. As such, each party that receives or has access to information that has been so identified (a “Receiving Party”) agrees that, to the extent possible, it shall keep such information in strictest confidence and protect it from disclosure, provided that the parties may disclose such information as required by any applicable laws or regulations that govern the Receiving Party, including, specifically, the Wisconsin Public Records law (Wis. Stat. §§ 19.21-19.39) and Madison General Ordinances Section 3.70. The provisions of this Section XIII shall not apply to (a) information that is publicly known or publicly available, other than as a result of breach of this Section XIII; (b) information obtained by a Receiving Party from a source other than a Disclosing Party, which the Receiving Party knows is not under an obligation of confidentiality to the Disclosing Party; (c) information that is independently developed by a Receiving Party without access to a Disclosing Party’s confidential information; (d) information already in the possession of Receiving Party, provided that such information is not known by Receiving Party to be subject to any legal or contractual obligation of confidentiality owed to Disclosing Party; and (e) information that cannot be treated as proprietary, private, or confidential pursuant to applicable law. Each party, to the extent possible, hereby waives any and all right, title and interest in and to such information of the other and, where allowable, agrees to return all physical copies, and destroy all electronic copies, of such information, except as otherwise agreed, at the expense of the party returning or destroying the information, upon request at the expiration or termination of this MOU. NRDC understands and acknowledges that the City is subject to State and Local laws and policies regarding records retention and that it may not be able to immediately return and/or destroy all such information. NRDC retains the right to aggregate otherwise confidential information for use in publications or other materials intended for public consumption, providing that individual confidentiality is maintained.

All rights and intellectual property rights (including copyrights), in any work, including, without limitation, all plans, research results, publications, developments, reports, processes, programs, analyses, website content, and other materials created or developed by or on behalf of the City and/or by NRDC (“Works”) under this MOU will be licensed to NRDC on a royalty-free basis to facilitate sharing best practices and lessons learned among participating cities in the Project and other interested cities. Notwithstanding the foregoing, the City shall not be restricted from the use of any such Works, provided the City provides sufficient credit to NRDC.

### **XIV. DISPUTE RESOLUTION**

Any dispute or misunderstanding that may arise under this MOU shall first be addressed through negotiations, if possible, between the parties. If the official representatives of the parties do not reach a resolution within a reasonable period of time, the parties may pursue other legal means to resolve such disputes, including alternate dispute resolution processes, with mediation to be the first such process pursued by the parties.

**XV. LIMITATION OF LIABILITY**

Each party shall be responsible for its own acts, errors or omissions and for the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions, and shall be responsible for any losses, claims, and liabilities that are attributable to such acts, errors, or omissions including providing its own defense, arising out of this Agreement. In situations involving joint liability, each party shall only be responsible for such losses, claims, and liabilities that are attributable to its own acts, errors, or omissions and the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions. It is not the intent of either party to waive, limit or otherwise modify the protections and limitations of liability found in Wis. Stat. 893.80 or any other protections available to the parties by law. This paragraph shall survive the termination or expiration of this agreement.

**XVI. NOTICES**

All notices and other communications pursuant to this MOU must be in writing, addressed to the parties at the applicable address set forth on the signature page hereof (or such other address as a party may from time to time specifically designate in writing). Physical notice must be sent by a nationally recognized overnight courier and will be deemed given on the date delivery is first accepted or refused. Electronic notice must be sent to the individuals signing on behalf of the Parties at their official email addresses and will be deemed given upon arrival in the individual's inbox.

**XVII. MISCELLANEOUS PROVISIONS**

Neither this Agreement, nor any rights or obligations hereunder, may be assigned, delegated, transferred or sublicensed by any party, by operation of law or otherwise, without the express prior written approval of the other parties. This Agreement cannot be modified orally, and none of the terms hereof will be deemed to be waived or modified except by an express agreement in writing signed by the party against whom such waiver or modification is sought to be enforced. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter.

**XVIII. NON-DISCRIMINATION.**

In the performance of the services under this Agreement, NRDC agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, or student status. NRDC further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Operating Agreement because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

**XIX. COUNTERPARTS; DIGITAL EXECUTION.**

This Agreement may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Agreement may be exchanged between the Parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or

not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties to this MOU have affixed their signatures:

DocuSigned by:  
*Avi Kar*  
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Date: 2/10/2021

Avi Kar  
Interim Senior Director, Health & Food  
Natural Resources Defense Council, Inc.  
40 West 20<sup>th</sup> Street  
New York, NY 10011



FOR THE CITY OF MADISON

\_\_\_\_\_  
Satya Rhodes-Conway, Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Maribeth Witzel-Behl, City Clerk

\_\_\_\_\_  
Date

Countersigned:

\_\_\_\_\_  
David P. Schmiedicke, Finance Director

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Michael R. Haas, City Attorney

\_\_\_\_\_  
Date

Execution of this Agreement by Madison is authorized by Resolution Enactment No. RES 21-\_\_\_\_\_, ID No. \_\_\_\_\_, adopted by the Common Council of the City of Madison on \_\_\_\_\_, 2021.

## **EXHIBIT A – FUNDING REQUIREMENTS**

The City shall use its best efforts to assist NRDC in:

- Complying with applicable laws, including by ensuring that resources provided to the City by NRDC are not used: (i) in support of, or to promote, violence, terrorist activity or related training, whether directly through its own activities and programs, or indirectly through its support of, or cooperation with, other persons and organizations known to support terrorism or that are involved in money laundering activities; (ii) for purposes of, or in connection with, bribery or in contravention of the U.S. Foreign Corrupt Practices Act of 1977, as amended, or other applicable anti-bribery law; and (iii) in compliance with all applicable government ethics and transparency laws;
- Ensuring that resources provided to the City by NRDC are used only to advance the official purposes of the City and are not used for lobbying (without the express advance written consent of NRDC), for political contributions, to support political campaigns, or to benefit any City official personally;
- Maintaining accurate and updated books and records related to the Project, including by making such City's books and records related to the Project available for inspection at reasonable times by NRDC;
- Providing information regarding the progress of the Project, including by: (i) assisting NRDC in drafting a narrative account of the progress of the Project and what was accomplished with the resources provided by NRDC to the City as requested and (ii) providing NRDC with copies of any media coverage of the Project and working files and electronic copies of any publication, audio or video program, film or other media project produced by the City related to the Project for archival, research, promotion, or presentation purposes;
- Documenting the Project, including by assisting upon request and within reason with any efforts by NRDC to facilitate or produce publications, audio or video programming, film or other media regarding the Project;
- Complying with any restrictions on, or requirements for the prior approval of, any Media Release (as defined below) which references the funding or the funding sources of the Project, by providing such Media Release to NRDC prior to distribution and complying with any requirements relayed by NRDC with respect to the content, timing and means of distribution of any such Media Release. For the purposes of this Agreement, "Media Release" shall mean any publication, advertising, speech, lecture, interview, press release, internet web page or other media venue of any kind.

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