

12. Consideration of a Memorandum of Understanding between the City's Community & Economic Development and Utilities Departments for septic-to-sewer conversion assistance for income-eligible households funded through the American Rescue Plan Act (\$420,000).



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Clinton Hatcher, Community & Economic Development Director

DATE: October 17, 2024

RE: Consideration of a Memorandum of Understanding between the City's Community & Economic Development and Utilities Departments for septic-to-sewer conversion assistance for income-eligible households funded through the American Rescue Plan Act (\$420,000).

SUMMARY:

Under the American Rescue Plan Act (ARPA), the City of Palm Bay received \$18,009,865 in Coronavirus State and Local Fiscal Recovery Funds. On June 17, 2021 the City received the first disbursement of funds totaling \$9,004,932.50. The second disbursement will be received in June 2022 for the equal amount. All funds shall be committed by December 31, 2024 and fully expended by December 31, 2026.

At the Regular Council Meeting on December 15, 2022, Palm Bay City Council allocated \$420,000 in ARPA to provide monetary assistance for septic-to-sewer conversions for eligible low and moderate-income households. On November 2, 2023, City Council adopted a mandatory connection ordinance requiring households with access to the City's centralized sewer system to connect within 365 days of notice. The Community & Economic Development Department shall be responsible for receiving applications from low and moderate-income households in Palm Bay and verifying income eligibility. CED will coordinate with the Utilities Department, which is the lead on septic-to-sewer conversions. The two departments shall work in coordination to identify, certify, fund, and complete construction for septic-to-sewer conversions, with the goal of expending all ARPA funds by December 31, 2026. This agreement meets the City's requirement to encumber all ARPA funds by December 31, 2024.

REQUESTING DEPARTMENTS:

Community & Economic Development; Utilities Department

FISCAL IMPACT:

There is no fiscal impact with this item. ARPA funds totaling \$420,000 were already allocated for this purpose by City Council on December 15, 2022

STAFF RECOMMENDATION:

Motion to approve Memorandum of Understanding (MOU) between the City's Community & Economic Development Department and Utilities Department funding septic-to-sewer conversions for income-eligible households funded through American Rescue Plan Act (\$420,000); and authorize the City Manager to execute the MOU, and any subsequent amendments that to do not increase the funding award.

ATTACHMENTS:

1. Memorandum of Understanding (MOU) between the City's Community & Economic Development Department and Utilities Department funding septic-to-sewer conversions for income-eligible households funded through American Rescue Plan Act (\$420,000)

**AMERICAN RESCUE PLAN (ARPA)
INTER-DEPARTMENTAL MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN THE CITY OF PALM BAY COMMUNITY & ECONOMIC DEVELOPMENT
DEPARTMENT AND THE UTILITIES DEPARTMENT**

THIS ARPA INTERDEPARTMENTAL MOU (herein referred to as the “Agreement”) is made and entered into by and between the **City of Palm Bay Community & Economic Development Department** herein referred to as "**CED**" whose address is 120 Malabar Rd. SE Palm Bay, FL 32907, and the **City of Palm Bay Utilities Department** herein referred to as "**APPLICANT**" whose address is 250 Osmosis Drive SE, Palm Bay Florida 32909.

WITNESSETH

WHEREAS, the City of Palm Bay, is a municipal corporation organized and existing in accordance with the laws of the State of Florida, and is authorized to accept and administer grants from State and Federal authorities to enhance the quality of life in the City of Palm Bay; and

WHEREAS, Congress passed the American Rescue Plan Act (ARPA) on March 10, 2021, and President Biden signed the American Rescue Plan Act into law on March 11, 2021; and

WHEREAS, the American Rescue Plan Act, in part, amends the Social Security Act (42 U.S.C. 601) by establishing the Fund in the amount of \$350 billion dollars for payments to States, Tribal governments and units of local government based on their populations.

WHEREAS, the City of Palm Bay accepted American Rescue Plan Act funding from the United States Department of the Treasury; and

WHEREAS, at the Regular City Council Meeting on December 15, 2022, Council approved the use of ARPA funds in the amount of Four Hundred Twenty Thousand Dollars and Zero Cents (\$420,000) to provide monetary assistance for septic-to-sewer conversions with priority to income eligible households; and

WHEREAS, this agreement is consistent with American Rescue Plan Act guidelines to respond to the public health emergency or its negative economic impacts; and

WHEREAS, the Utilities Department is the “Lead Department” for Septic-to-Sewer conversions and Community & Economic Development is overseeing the ARPA income qualifications for income eligible households; and

WHEREAS, Septic-to-Sewer projects are funded with ARPA from FY 2025 beginning October 1, 2024, through December 31, 2026. This activity is listed as an eligible activity, known as Expenditure Category 5 (EC) in accordance with the [Coronavirus State and Local Fiscal Recovery Funds \(treasury.gov\)](https://www.treasury.gov) . The Project serves residents that are low- and moderate- income; and

WHEREAS, the Project meets Title 31 Subtitle A Part 35 Subpart A

WHEREAS, **CED** is responsible for ensuring monitoring and compliance of the Project; and

WHEREAS, the **APPLICANT**, an internal department within the City of Palm Bay, shall enter into this Agreement, and agree to the terms and conditions hereto, with **CED** to ensure the grant funds are expended and reported in compliance with the requirements of the ARPA regulations.

NOW THEREFORE, in consideration of the mutual covenants and obligations contained, including the attachments, and subject to the terms and conditions herein stated, the parties mutually understand and agree as follows:

SECTION 1: SCOPE OF SERVICES AND USE OF FUNDS

1. **Recitals.** The recitals set forth above are true and correct and are incorporated herein and made a part of this Agreement.

2. **Project and Expenditure Use.** **APPLICANT** certifies that the activities carried out with the funds provided under this Agreement will meet the ARPA program Title 31 Subtitle A Part 35 Subpart A.

3. **ARPA Funds.** Under the terms and conditions of this Agreement, the City has awarded **APPLICANT** grant funds in an amount up to **Four Hundred Twenty Thousand Dollars and Zero Cents (\$420,000.00)**, herein referred to as “Grant”, for the Project to be expended in accordance with all requirements imposed by federal statutes, regulations, and the terms of this Agreement. Any remaining grant funds unexpended or not disbursed to **APPLICANT** as authorized by **CED** as of December 31, 2026, shall be returned to the U.S. Department of The Treasury.

4. **Goals and Performance Measures: Implementation Schedule.** **APPLICANT** shall ensure the contractor performs the work in accordance with its agreement (Service Agreements for Solicitations #07-0-2024/NC Prequalification for Septic to Sewer, Centerlin Utilities, Inc d/b/a Centerline, Inc. (contract in H.T.E.) 07-0-2024C, Prime Construction Group, Inc 07-0-2024P, Total Plumbing Inc. 07-0-2024T) with the City and agrees to work diligently towards the completion by December 31, 2026. **APPLICANT** shall ensure all improvements comply with local, state, and federal

regulations to include building permits. **APPLICANT** shall provide advanced notification to **CED** of any construction-related bids or quotes, permits, invoices, change orders and changes in the Project timeline. By October 31, 2026, the Project shall be substantially complete., having at least 90% of the Grant expended. If substantial completion is not met, **CED** will review **APPLICANT'S** progress to determine its ability to meet the completion deadline of December 31, 2026, and maintain compliance with U.S. Department of The Treasury expenditure requirements.

5. **Expenditure of Funds/Budget.** **APPLICANT** shall use the Grant for eligible expenses permitted under the ARPA regulations. Any deviation shall require advanced written approval by **CED** in writing prior to commencement. **CED** may from time-to-time require budget detail for records maintenance and auditing purposes. **APPLICANT** shall provide such supplementary budget detail immediately upon request. Expenditures shall be directly attributable to the Project. **APPLICANT** shall be responsible for any costs exceeding **\$420,000.00**. **APPLICANT** shall not use Grant funds for prohibited activities and is also prohibited from using the Grant or personnel employed in the administration of activities under this Agreement for political activities, inherently religious activities, or lobbying.

Notwithstanding anything to the contrary in this Agreement, **APPLICANT** acknowledges that the Grant is a reimbursement grant and requires the City to pay all invoices for work performed prior to seeking reimbursement from the Grant. All reimbursement requests shall be reviewed and authorized by **CED**. **CED** reserves the right to request and approve documentation any and all supporting documentation for reimbursement to verify the reasonableness and validity of such costs. **APPLICANT** acknowledges and agrees that any funds not used in accordance with the Budget and ARPA regulations shall be the responsibility of the City.

6. **Performance Monitoring.** **CED** shall monitor **APPLICANT'S** performance in accordance with 2 CFR §200.330-.332 to ensure compliance with all of the requirements of this Agreement, to include timeframes and performance standards as required herein. Further monitoring requirements are set forth in Section 2 herein. Substandard performance as identified by **CED** shall be outlined in writing and shall constitute non-compliance with this Agreement. If action to correct substandard performance is not taken by **APPLICANT** within thirty (30) days of notified, **CED** may impose additional conditions on **APPLICANT** and its use of funds, suspend or terminate this Agreement, or initiate other remedies for non-compliance as appropriate under 2 CFR §200.332.

7. **Term.** The term of this Agreement shall be in effect for the period commencing October 1, 2024, and terminating on December 31, 2026. Costs may not be incurred after December 31, 2026. Notwithstanding anything herein to the contrary, **APPLICANT'S** obligations under this Agreement shall not end until all close-out requirements are completed, including, but not limited to, such things as making final payments, disposing of program assets, retention of records, and use and maintenance requirements for the Project. Also, notwithstanding the foregoing, the term of this

Agreement and the provisions herein shall be extended to cover any additional time period during which **APPLICANT** remains in control of the Grant or other assets, including applicable Program Income or for audit purposes.

SECTION 2: ADMINISTRATIVE REQUIREMENTS

1. **Applicable Laws and Regulations.** **APPLICANT** shall comply with the requirements of, all ARPA program requirements, and other laws and regulations and regulatory guidance governing the use of these funds, whether set forth herein or not, and any amendments or policy revisions thereto which shall become effective during the term of this Agreement. **APPLICANT** shall be responsible for understanding and complying with these laws and regulations. In addition, **APPLICANT** shall abide by any and all other applicable federal state and local laws, rules, regulations, U.S. Department of The Treasury. guidance and policies governing the funds provided under this Agreement, whether presently existing or hereafter promulgated. **APPLICANT** shall also comply with all other applicable federal, state, or local laws, statutes, ordinances, rules, and regulations including, but not limited to, all applicable provisions of the City of Palm Bay Code of Ordinances.

2. **Uniform Administrative Requirements and Cost Principles.** **APPLICANT** shall comply with the uniform administrative requirements specified at 2 CRF Part 200. Although 2 CFR part 200 addresses many requirements, some of the items it addresses includes, but is not limited to, standards for financial and program management, property and procurement standards, performance and financial monitoring and reporting, subrecipient monitoring and management, record retention and access, remedies for noncompliance, FFATA, and closeout. **APPLICANT** shall comply with whatever guidance U.S. Department of The Treasury requires. Costs incurred must be in conformance with 2 CFR part 200, subpart E. **APPLICANT** shall adhere to the accounting principles and procedures required therein, utilize adequate internal controls, maintain necessary source documentation for all costs incurred, and submit an indirect cost allocation plan in accordance with 2 CFR 200 subpart E, if such plan is required.

3. **Procurement/Subcontracting/Third Party Contracts.** **APPLICANT** shall procure all material, property, or services in accordance with state and local requirements and the requirements of 2 CFR §200.318-§200.326, including the procurement of recovered materials (Resource Conservation and Recovery Act) in compliance with 2 CFR §200.322 regarding the use of specific products made or used with recovered materials. **APPLICANT** shall insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements and secure at least two (2) price bids from qualified licensed general contractors, building contractors, or other qualifying license. **APPLICANT** shall incorporate in any and all bid documents and contracts with third parties the provisions required in 2 CFR §200.326 including, but not limited to, provisions which will obligate each of its subcontractors to comply with all notices pertaining to guidelines such as bidding procedures, Davis Bacon, Equal Employment Opportunity

requirements, Section 3 requirements, all affirmative action laws, nondiscrimination requirements, anti-kickback requirements, federal labor standard provisions, and lobbying prohibitions issued by various federal agencies applicable to the ARPA program. **APPLICANT** shall not enter into any subcontract with any entity, agency or individual in the performance of this Agreement without the written consent and approval of **CED**, prior to execution of the agreement or contract. **APPLICANT** shall furnish to **CED** a copy of each third-party contract it enters into an agreement with for the performance of work to be undertaken within the scope of this Agreement along with documentation concerning the selection process. The lowest responsive bidder shall be recommended by **APPLICANT** to **CED** as the general contractor. **APPLICANT** shall require and monitor compliance by all contractors, subcontractors and other third parties. **APPLICANT** shall monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in the monthly report. Upon completion of construction, the general contractor shall file an executed notice of completion or termination and record it in the Brevard County Public Records. Copies of this notice and lien releases shall be filed with **APPLICANT** and **CED**. **CED** shall not be obligated or liable hereunder to any party **APPLICANT** enters into agreements with for the Project.

4. **Records to be Maintained.** **APPLICANT** shall maintain all records required by 2 CFR part 200, and [Coronavirus State and Local Fiscal Recovery Funds \(treasury.gov\)](https://www.treasury.gov). Such records shall include but are not limited to:

- a) Records providing a full description of each activity undertaken and its ARPA eligibility, including its location, and the amount of ARPA funds budgeted, obligated, and expended for the activity;
- b) Records demonstrating that each activity undertaken meets EC 5.
- c) Records required to determine the eligibility of activities and that it benefits low- and moderate- income persons keeping documents and the income and characteristics of the household;
- d) Records required to document the acquisition, improvement, use or
- e) Financial records, in accordance with the applicable requirements in 2 CFR 200, including source documentation for entities not subject to 2 CFR 200; all documents for all transactions that demonstrates how funds are expended, including but not limited to and to the extent applicable, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, and construction progress schedules signed by appropriate parties (e.g. general contractor and/or a project architect), and /or other documentation appropriate to the nature of the activity;
- f) Records and agreements documenting compliance with Davis Bacon and federal labor regulations and Section 3; and racial and ethnic characteristics of each entity receiving a contract or subcontract paid with ARPA funds of \$25,000 or more, the amount of the contract or subcontract, data indicating which of these entities are women's business enterprises; and documentation of the

affirmative steps taken to ensure minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts or subcontracts as sources of supplies, equipment, construction, and services;

- g) Copies of all bid documents, bids received, Requests for Proposals, Requests for Qualifications and any other procurement documents;
- h) Copies of all third party or subcontracts;
- i) Detailed records of **APPLICANT's** organization, financial and administrative systems, and the specific ARPA-funded project or activities; and
- j) All other records necessary to document compliance with this Agreement, any other applicable federal statutes and regulations, and the terms and conditions of the City's federal award.

Please note that the above descriptions are brief and provide only a summary of the records APPLICANT is required to maintain. APPLICANT agrees to consult 2 CFR part 200 for a detailed description of the required records.

5. **Retention of Records.** All records must be accurate, complete, and orderly. **APPLICANT** shall retain all accounting records, financial records, statistical records, supporting documents, source documentation and all records to support how Grant were expended, and all other documents pertinent to the Project and this Agreement in accordance with the retention requirements of 2 CFR §200.333. These documents must be retained for a period of three (3) years from the date of submission of the final expenditure report or for federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or City in the case of a subrecipient. For subrecipients, the retention period for individual ARPA activities shall be the longer of three (3) years after the expiration or termination of the subrecipient agreement or in which the activities assisted under the Agreement are reported on for the final time.

Notwithstanding the above, 2 CFR §200.333 states that **APPLICANT** may need to keep the records for longer if they fall into one of the following exceptions: if any records are the subject of any litigation, claim, or audit that started before the expiration of the three (3) year period, then such records must be kept until such litigation, claims, or audit findings have been resolved, completed, and final action taken; if **APPLICANT** is notified by the City, U.S. Department of The Treasury , its cognizant agency for audit, its oversight agency for audit, its cognizant agency for indirect costs, or the City to extend the retention period; records for program income after the period of performance; and indirect cost rate proposals and cost allocation plans. Additionally, **APPLICANT** shall keep records documenting compliance with the equal access requirements for a period of 5 years.

6. **Monitoring and Inspections/Access to Records.** **APPLICANT** shall

monitor the progress of the Project covered by this Agreement and shall submit appropriate reports to **CED**. **CED** shall monitor **APPLICANT**'s performance and financial and programmatic compliance. **APPLICANT** shall allow on-site monitoring of the Project, associated records, and financial statements as **CED** deems necessary and at any other time that may be required by U.S. Department of The Treasury to determine compliance with ARPA regulations and this Agreement. **APPLICANT** shall also furnish and cause each of its own subcontractors, if any, to furnish all information and reports required hereunder and will permit access to its books, records, and accounts by **CED**, U.S. Department of The Treasury or any other authorized official or designee for purposes of investigation to ascertain compliance with the rules, regulations, and provisions stated herein.

APPLICANT shall comply with 2 CFR §200.331(a)(5), and 2 CFR §200.336, regarding access to its records and financial statements. Also, as required in 2 CFR §200.331(5), **APPLICANT** shall permit **CED**, the City and its auditors to have access to **APPLICANT**'s records and financial statements as necessary to meet the City's audit requirements under the federal award. All files, records, and documents, including financial statements and data, shall be made available for review to **CED**, any auditors, the City's Finance Department, U.S. Department of The Treasury, the Inspector General, and/or any of their authorized representatives, who shall have access to and the right to audit, examine, inspect, make transcripts or excerpts of any of the above records, financial statements, documents, or papers related to the Project or are pertinent to the federal award or to meet any U.S. Department of The Treasury requirements during normal business hours and any other reasonable time requested. This right also includes timely and reasonable access to **APPLICANT**'s personnel for the purpose of interviewing and discussion related to said documents. This same right to review and access will be imposed upon any third party or subcontractor, and it is **APPLICANT**'s responsibility to ensure that any contract entered into with third parties contain all necessary clauses and language required by **CED** and/or U.S. Department of The Treasury to ensure compliance with this Agreement and with all federal, state, and local laws and regulations. This right of access is not limited to the required retention period but lasts as long as the records are retained. This section shall survive termination of this Agreement. In monitoring **APPLICANT**, **CED** may also need to follow-up to ensure that **APPLICANT** takes timely and appropriate action on all deficiencies pertaining to the federal award detected through audits, on-site reviews, inspections, or other means. **CED** may also issue management decisions and may consider taking enforcement actions if noncompliance is detected during the monitoring or audits.

7. **Program Income.** **APPLICANT** shall comply with all Program Income provisions in [Coronavirus State and Local Fiscal Recovery Funds \(treasury.gov\)](https://www.treasury.gov/press-releases/Pages/pr20200420.aspx). **APPLICANT** shall report all Program Income, as defined, and required at [Coronavirus State and Local Fiscal Recovery Funds \(treasury.gov\)](https://www.treasury.gov/press-releases/Pages/pr20200420.aspx), in a monthly report to CED. Documentation of the receipt of Program Income, such as supporting schedules identifying the project and the source of income, must be submitted to CED within five (5) days of its receipt. At the end of the program year or upon expiration or earlier termination

of this Agreement, **APPLICANT** shall transfer all ARPA Program Income to the City's Finance Department within five (5) days of the expiration or termination of this Agreement. If **APPLICANT** receives any Program Income after this Agreement expires or is terminated, **APPLICANT** shall immediately remit said Program Income balances to **CED** as required, within five (5) days of receipt. If applicable, **APPLICANT** shall file reports of Program Income as set forth in the below section entitled "Reports".

8. **Reports.** All recipients of federal funds must complete financial, performance, and compliance reporting as required and outlined in Part 2 of this guidance. Expenditures may be reported on a cash or accrual basis, as long as the methodology is disclosed and consistently applied. Reporting must be consistent with the definition of expenditures pursuant to 2 CFR 200.1. Your organization should appropriately maintain accounting records for compiling and reporting accurate, compliant financial data, in accordance with appropriate accounting standards and principles. In addition, where appropriate, your organization needs to establish controls to ensure completion and timely submission of all mandatory performance and/or compliance reporting. See Part 2 of this guidance for a full overview of recipient reporting responsibilities. Consolidated jurisdictions or other types of jurisdictions that received multiple SLFRF allocations (e.g., a county and city with a consolidated government) are only required to file once per reporting period, and such reports will cover the total SLFRF allocations received by the jurisdiction. This includes non-entitlement units of local government ("NEUs") and/or units of general local government located within counties that are not units of general local government. In addition, the total SLFRF allocations across all sources for a given jurisdiction will be used to identify that jurisdiction's Reporting Tier

Use and Maintenance of Property During Construction. **APPLICANT** shall ensure the Property is well maintained and in good repair at all times and perform appropriate repairs as necessary in accordance with all applicable health, building, and safety codes of the City and state of Florida, during the construction phase of the Septic-to-Sewer Conversion.

Payment Procedures/Reimbursement of Funds. This is a cost reimbursement agreement. Reimbursement of funds under this Agreement may be requested only for necessary, reasonable, and allowable costs for which **APPLICANT** has made payment. Upon compliance with the terms of this Agreement, **APPLICANT** shall reimburse funds to **Contractors** only after completion of the work and following review and acceptance of invoice and supporting documentation. Invoices shall be submitted in accordance with the Budget specifying the services performed and expenses incurred. All invoices must be accompanied by adequate billing documentation of payment for eligible expenses and other supporting documentation **CED** may request. Invoices shall include adequate documentation of expenditures and any other pertinent information. **APPLICANT** shall not be reimbursed for costs inconsistent with this Agreement, federal statutes, regulations (including cost principles in 2 CFR part 200, subpart E) or the terms and conditions of the City's federal award with U.S. Department

of the Treasury or that would otherwise result in the City charging improper, unauthorized, or otherwise unallowable costs to the City's federal award. Failure by **APPLICANT** to provide invoices in a timely manner, complete and error-free, shall reflect on the administrative performance rating of **APPLICANT** for subsequent funding awards. **APPLICANT** shall provide payment within thirty (30) days from the date of receipt of complete invoices. Incomplete invoices or invoices that fail to include the necessary supporting documentation may result in delay or denial of payment. All invoices submitted must be signed by an authorized signatory of **APPLICANT** and certified in accordance with 2 CFR §200.415. Notwithstanding anything herein to the contrary, **APPLICANT** shall not request payment under this Agreement for any portion which has been paid from another source of revenue and further agrees to utilize Grant to supplement rather than supplant funds otherwise available.

9. **Retention.** **APPLICANT** agrees that **CED** shall retain ten percent (10%) of the contractor draw requests (the "retention"), which will be paid out as part of outstanding invoices for services rendered, by **CED**, in compliance with the terms of this Agreement. The retention shall be withheld until **APPLICANT** provides **CED** with releases of liens from all contractors, subcontractors and suppliers and otherwise demonstrates that it has fully complied with the requirements of part 1, Construction Liens, Chapter 713, Florida Statutes, and has fully complied with all the terms and conditions contained in this Agreement and other loan documents executed in connection with this Agreement. If **APPLICANT** does not comply with the terms of this Agreement, **CED** shall not disburse the retainage.

10. **Withholding Payments.** **CED** shall withhold payments for any portion of the Project that is not in compliance with this Agreement.

11. **Closeout.** **APPLICANT** shall follow all closeout procedures required by the local procurement and finance policies.

SECTION 3: PERSONNEL AND PARTICIPANT CONDITIONS

1. **Non-Discrimination.** **APPLICANT** shall also comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d, et seq.) (Non- discrimination in Federally assisted Programs). Title VI provides that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance. U.S. Department of The Treasury Title VI regulations list examples and specify types of prohibited discrimination and specific actions that are prohibited. For example, **APPLICANT** shall not discriminate on the basis of race, color, or national origin or deny any individual any facilities, services, financial aid, or other benefits; provide different housing or services or benefits than those provided others; subject a person to segregation or separate treatment in the receipt of facilities or services; restrict an individual's access to, or enjoyment of, any advantage or privilege enjoyed by others in connection with the facilities, services, financial aid or other benefits; use different

admission or eligibility requirements for facilities, services, or other benefits; or select a housing site or location with the purpose or effect of excluding or denying benefits to persons in protected classes.

APPLICANT shall not discriminate on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §6101, et. seq.). The Age Discrimination Act provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance. U.S. Department of The Treasury regulations list examples and specify types of prohibited discrimination and specific actions that are prohibited. **APPLICANT** shall not discriminate on the basis of handicap as provided in Section 504 of the Rehabilitation Act of 1973. Section 504 provides that no otherwise qualified individual with handicaps in the United States shall, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance. **APPLICANT shall adhere to Civil Rights Compliance as required in [Coronavirus State and Local Fiscal Recovery Funds \(treasury.gov\)](https://www.treasury.gov)**

Any contracts entered into by **APPLICANT** shall include a provision for compliance with each these regulations. **APPLICANT** shall keep records and documentation demonstrating compliance with these regulations.

2. **Equal Employment Opportunity.** **APPLICANT** shall comply with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (Equal Employment Opportunity Programs), and Executive Order 13279 (Equal Protection of the Laws for Faith Based Community Organizations) and the implementing regulations in 41 CFR Part 60, and the provisions of the Equal Employment Opportunity Clause. Executive Order 11246 prohibits discrimination on the basis of race, color, religion, sex, or national origin in any phase of employment during the performance of the federally assisted construction contract in excess of \$10,000. Any contracts or subcontracts entered into by **APPLICANT** or its contractors shall also require compliance with these regulations and will, in all solicitations or advertisements for employee's state that it is an Equal Opportunity/Affirmative Action employer and attach this clause. **APPLICANT** shall keep records and documentation demonstrating compliance with these regulations.

3. **Compliance with Davis-Bacon Act.** **APPLICANT** shall comply with [Coronavirus State and Local Fiscal Recovery Funds \(treasury.gov\)](https://www.treasury.gov) for Davis Bacon Compliance, as applicable.

4. **Contract Work Hours and Safety Standards Act.** **APPLICANT** agrees to comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §327-333), as supplemented by the Department of Labor regulations contained in 29 CFR Part 5. Any construction contracts entered into by **APPLICANT** over \$100,000 shall include a provision for compliance with these regulations. **APPLICANT** shall maintain

documentation and records which demonstrate compliance with these regulations. Such documentation shall be submitted to CED for review on a monthly basis.

5. **Handicapped Accessibility Requirements.** **APPLICANT** shall design, construct, and rehabilitate the Project so that it is accessible to and useable by individuals with handicaps, in compliance with the Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151-4157), the Uniform Federal Accessibility Standards, as set forth in the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §12131) and its implementing regulations in 28 CFR Parts 35 and 36, Section 504 of the Rehabilitation Act of 1973, and all state and local laws requiring physical and program accessibility to people with disabilities. Any contracts entered into by **APPLICANT** shall include a provision for compliance with these regulations. **APPLICANT** shall keep records demonstrating compliance with these regulations. Specifically, any household recognized as having an individual with handicaps undergoing Septic-to-Sewer conversion, should not have any obstructions to walkways, entrances and/or exits to the structure.

6. **Utilization of Minority/Women's Business Enterprises.** **APPLICANT** shall take affirmative steps to ensure that minority/women's business enterprises are used when possible, including for consideration for participation in all construction, supply, or service contracts or in the performance of this Agreement. Affirmative steps include those items required in 2 CFR §200.321 which include: 1) placing qualified small and minority businesses and women's business enterprises on solicitation lists; 2) assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources; 3) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; 4) establishing delivery schedules where the requirement permits which encourage participation by small and minority businesses, and women's business enterprises; 5) using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and 6) requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in 1-5.

APPLICANT shall also comply with Executive Order 11625, as amended by Executive Order 12007 (Minority Business Enterprises); Executive Order 12432 (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (Women's Business Enterprise).

Any contracts entered into by **APPLICANT** shall include a provision for compliance with these regulations. **APPLICANT** shall keep records demonstrating compliance with this provision.

7. **Political Activities.** **APPLICANT** shall comply with ARPA funds regarding political activities. ARPA funds shall not be used for lobbying or political patronage activities. **APPLICANT** further agrees that no funds provided, nor personnel employed

under this Agreement, shall be in any way or to any extent be engaged in the conduct of political activities in violation of Chapter 15 of Title V, United States Code (Hatch Act).

8. **Anti-Lobbying Provision.** **APPLICANT** shall comply with the requirements set forth in 31 U.S.C. §1352. **APPLICANT** and any contractors who apply or bid for an award of \$100,000 or more shall execute and comply with the "Certification Regarding Lobbying" attached hereto as part of **Attachment "1"** and made a part hereof by this reference. **APPLICANT** shall execute the "Certification Regarding Lobbying" and a copy shall be kept in the files of each of the parties of this Agreement.

9. **Conflict of Interest.** In the procurement of supplies, equipment, construction, and services, **APPLICANT** shall comply with the conflict of interest rules in [SLFRF-Final-Rule-Overview.pdf \(treasury.gov\)](#). **APPLICANT** agrees and warrants that it will establish and adopt written standards of conduct governing conflicts of interest and the performance of its officers, employees, or agents engaged in the selection, award and administration of contracts supported by these federal funds. At a minimum these safeguards must ensure that no employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated in 2 CFR §200.318, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of **APPLICANT** shall not solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. These standards of conduct must also provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of **APPLICANT**. If **APPLICANT** has a parent, affiliate, or subsidiary organization, **APPLICANT** shall also maintain written standards of conduct covering organizational conflicts of interest.

APPLICANT to individuals, businesses, and other private entities under eligible activities that authorize such assistance (i.e. rehabilitation)., **APPLICANT** shall also keep records supporting requests for waivers of conflicts.

APPLICANT shall disclose in writing any potential conflicts of interest to **CED**. By executing this Agreement, **APPLICANT** covenants and certifies that none of its employees, officers, or agents described in these regulations have any interest in this Agreement or the Property being rehabilitated or any other interest which would conflict in any manner with this Agreement or the performance of this Agreement.

10. **Drug Free Workplace.** **APPLICANT** shall provide a drug-free workplace. **APPLICANT** shall comply with the Drug-Free Workplace Act of 1988 regarding maintenance of a drug-free workplace. **APPLICANT** shall ensure that the provisions of the clauses in are included in all third-party contracts, subcontracts, and purchase orders that exceed ten thousand dollars (\$10,000), so that the provisions will be binding upon each subcontractor or vendor. **APPLICANT** shall complete this certification, and a copy

shall be kept in the files of each of the parties of this Agreement.

11. **Program Requirements.** **APPLICANT** shall comply and carry out all of its activities in accordance with the ARPA program requirements

12. **Debarment and Suspension.** **APPLICANT**, and its contractors, shall comply with the debarment and suspension requirements. **APPLICANT** shall not enter into a contract with any person, agency or entity that is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 or 12689, "Debarment and Suspension," which is made a part of this Agreement by reference. In the event that **APPLICANT** has entered into a contract or subcontract with a debarred or suspended party, no ARPA funds will be provided as reimbursement for the work done by that debarred or suspended contractor or subcontractor. **CED** shall keep copies of the debarment and suspension certifications and a copy of the sheet documenting that the federal debarment list was checked.

13. **Florida Statutes, City of Palm Bay Code of Ordinances, and Permits.** **APPLICANT**, and its contractors, shall comply with all laws of the State of Florida and the City of Palm Bay Code of Ordinances. In particular, **APPLICANT** shall comply with all licensing, registration, and other applicable regulations governing their ability to administer the services it provides, and all other applicable building and zoning laws and regulations and obtain all necessary permits for intended improvements or activities for the Project.

14. **Agreement.** The agreement between City and Applicant shall be bound by the standard terms and conditions used in the ARPA Agreement between the City and, U.S. Department of The Treasury, and such other rules, regulations or requirements as, U.S. Department of The Treasury may reasonably impose in addition to the conditions of this Agreement or subsequent to the execution of this Agreement by the parties hereto.

15. **Training.** **APPLICANT** shall attend any training sessions, including but not limited to, in- person seminars and webinars that **CED** requires as a means for complying with the ARPA Program and associated regulations.

SECTION 4: ENVIRONMENTAL

1. **Environmental Review Requirements.** Activities under this Agreement are subject to environmental review requirements [Coronavirus State and Local Fiscal Recovery Funds \(treasury.gov\)](https://www.treasury.gov/press-releases/Pages/coronavirus-recovery-funds.aspx). **CED** shall be responsible for identifying any environmental risks or hazards prior to the start of the project. **APPLICANT** is not required to assume responsibility for an environmental review or assessment of this program, nor responsibility for initiation of an intergovernmental review of this program and its activities. **APPLICANT** shall provide information as requested by **CED** about its activities to ensure

compliance. **APPLICANT** shall submit in writing to **CED** any changes to the original proposed scope of work that may require further environmental review. Such changes shall be submitted to **CED** in writing at least 45 days and is subject to the review and approval by **CED** prior to any commencement of work.

2. **Environmental Protection.** **APPLICANT**, and its contractors, shall comply with all applicable standards, orders, or regulations of the Clean Air Act (42 U.S.C. §7401 et. seq.); Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)); Section 508 of the Clean Water Act (33 U.S.C. Section 1368); Executive Order 11738; the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251, et. seq.); EPA regulations pursuant to 40 CFR Part 50; National Environmental Policy Act of 1969; standards and policies relating to energy efficiency contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act. Violations shall be reported to the City, U.S. Department of The Treasury, and EPA.

3. **Flood Disaster Protection.** **APPLICANT**, and its contractors, shall comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. §4106) and implementing regulations in 44 CFR Parts 59 through 79 in regard to the sale, lease or other transfer of land acquired, cleared, or improved under the terms of this Agreement, as it may apply to the provisions of this Agreement.

4. **Flood Insurance Program.** Should any construction or rehabilitation of existing structures with assistance provided under this Agreement occur in an area identified as having special flood hazards by the Director of Federal Emergency Management, **CED** shall comply with all relevant and applicable provisions concerning the National Flood Insurance Program. **CED** agrees that if any portion of the Property is located in a special flood hazard area proof of flood insurance will be required by **CED**.

5. **Historic Preservation.** **CED** shall comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470) and the procedures set forth in 36 CFR §800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. **CED** shall determine that a property may fall into this category.

SECTION 5: DEFAULTS AND REMEDIES

1. **Events of Default.** The following shall constitute an Event of Default under this Agreement:

- (a) Failure to use the proceeds of the Grant in the timeframes set forth herein or fails to use the proceeds in the manner or for the purposes set forth herein;

- (b) Failure to comply with any of the terms of this Agreement or with any rules, regulations, executive orders, U.S. Department of The Treasury guidelines, or guidance governing ARPA awards, including, but not limited to, or fails to comply with any of the terms contained in this Agreement and such failure continues for a period of thirty (30) days following written notice thereof given by **CED**;
- (c) Failure to disclose to **CED**, upon demand, the name of all persons with who **APPLICANT** has contracted or intends to contract with for the construction or management of any portion of the Project, including contracts for services and/or labor;
- (d) Failure to start or complete Project within the timeframe set forth in this Agreement;
- (e) Sale or transfer of the Property.

Notwithstanding any of the forgoing provisions to the contrary, if **APPLICANT** has failed to cure any default within (5) days prior to the expiration of any applicable cure period, **CED** may, at its sole option, cure such default, provided, however, that **CED** shall be under no duty or obligation to do so.

2. **Remedies for non-compliance.** If **APPLICANT** commits an Event of Default or fails in any way to comply with Federal or state statutes, local laws or regulations, or the terms and conditions of this Agreement, **CED** may impose additional conditions as described in 2 CFR §200.207. If **CED** determines that noncompliance cannot be remedied by imposing additional conditions, **CED** may take one or more of the following actions, including but not limited to:

- (a) Temporarily withhold cash payment pending correction of the deficiency or more severe enforcement action by **CED**;
- (b) Disallow both use of funds and any applicable matching credit for all or part of the cost of the activity or action not in compliance;
- (c) Wholly or partly suspend or terminate the award;
- (d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and applicable regulations or recommend such proceedings be initiated by U.S. Department of The Treasury;
- (e) Withhold further federal awards for the project or program; or
- (f) Take other remedies that may be legally available including, but not limited to litigation, declaratory judgment, specific performance,

damages, injunctions, termination of the Agreement, or any other available remedies.

3. **Remedies/Suspension and Termination.** **APPLICANT** and **CED** will comply with the noncompliance and termination provisions in 2 CFR part 200, subpart D. In addition to the remedies for non-compliance in 2 CFR §200.338, in accordance with 2 CFR §200.338 and .339, **CED** may suspend or terminate this Agreement in whole or in part whenever **CED** determines that **APPLICANT** has failed to comply with any terms, conditions, or requirements of this Agreement or upon the occurrence of any Event of Default or any other breach of this Agreement. **CED** can withhold all funding and disbursements, demand repayment for amounts disbursed, terminate all payments, and/or exercise all rights and remedies available to it under the terms of this Agreement, under statutory law, equity or under common law. If **CED** terminates this Agreement, **APPLICANT** shall also forfeit to **CED** all unexpended monies awarded under the Agreement. Upon termination, **CED** also retains the right to recover any improper expenditures from **APPLICANT**, and **APPLICANT** shall return to **CED** any improper expenditures no later than thirty (30) days after the date of termination.

In accordance with 2 CFR §200.339, **CED** can terminate the Agreement with the consent of **APPLICANT** in which case **APPLICANT** and **CED** must agree upon the termination conditions, including the effective date, and in the case of partial termination, the portion to be terminated.

In accordance with 2 CFR §200.339(a)(4), the Agreement may also be terminated by **APPLICANT** or **CED** with written notification setting forth the reason for such termination, the effective date and in the case of partial termination, the portion to be terminated. However, if **CED** determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purposes for which the award was made, **CED** may terminate the award in its entirety.

If this award is terminated or partially terminated, **APPLICANT** remains responsible for compliance with the closeout requirements in 2 CFR §200.343 and post-closeout requirements set forth in 2 CFR §200.344.

All remedies shall be deemed cumulative and, to the extent permitted by law, the election of one or more remedies shall not be construed as a waiver of any other remedy **CED** may have available to it.

4. **No Waiver.** Failure of **CED** to declare a default shall not constitute a waiver of any rights by **CED**. Furthermore, the waiver of any default by **CED** shall in no event be construed as a waiver of rights with respect to any other default, past or present.

SECTION 6: INSURANCE

1. **Insurance and Bonding.** Without limiting **APPLICANT**'s indemnification, **APPLICANT** shall ensure that its contractors maintain in force at all times during the performance of this Agreement all appropriate policies of insurance hereinafter described and as required by 2 CFR part 200, concerning its operations. Certificates with valid and authorized endorsements, evidencing the maintenance and renewal of such insurance coverage shall be delivered to **CED** prior to execution of this Agreement. **CED** shall be given notice in writing at least thirty (30) calendar days in advance of cancellation or modification of any policy of insurance. The City, its officers and employees shall be named as an additional named insured on all policies of liability insurance.

- a.) All policies of insurance shall be in a company, or companies authorized by law to transact insurance business in the State of Florida. In addition, such policy shall provide that the coverage shall be primary for losses arising out of **contractor's** performance of the Agreement. Neither the City nor any of its insurers shall be required to contribute to any such loss. The required certificate shall be furnished prior to execution of this Agreement.
- b.) At least thirty (30) calendar days prior to the expiration of any of the above referenced insurance policies, **contractor** shall provide **CED** with evidence of the renewal of said insurance policies in a form satisfactory to **CED**.
- c.) The policies and insurance required by **CED** include:
 - (1) **Commercial General Liability Insurance.** Commercial general liability insurance to include, but not be limited to bodily injury and property damage coverage. The policy's limit liability amount shall not be less than Five Hundred Thousand Dollars (\$500,000) per person/per occurrence for bodily injury to, or death to one or more than one person and not less than One Hundred Thousand Dollars (\$100,000) per occurrence for property damage.
 - (2) **Workers' Compensation Coverage.** Workers' Compensation insurance for all its employees in an amount and with coverage to meet all requirements of the laws of the State of Florida.
 - (3) **Flood Insurance.** Flood insurance as required under applicable regulations.
 - (4) **Employee Fraud Insurance.** Sufficient insurance to protect from loss due to fraud, theft, and physical damage and shall

purchase a bond or insurance covering all employees for theft or fraud.

- (5) Bonding requirements. Bonding requirements in 2 CFR §200.325.
- (6) Property /Building Insurance. Building insurance for the replacement value of the Property.

SECTION 7: MISCELLANEOUS PROVISIONS

1. **Assignment.** **APPLICANT** shall not assign or transfer any interest in this Agreement without the prior written consent of **CED**.

2. **Entire Agreement/Modification.** This Agreement, together with all of the Exhibits, constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof. Any representations or statements heretofore made with respect to such subject matter, whether written or verbal, are merged herein. This Agreement may only be modified in writing, signed by both of the parties hereto.

3. **Notices.** Whenever by the terms of this Agreement, notice is to be given to either party, such notice shall be in writing and shall be hand delivered or sent by certified mail, return receipt requested, postage prepaid to:

Clinton Hatcher, Director
City of Palm Bay
Community & Economic Development Department
120 Malabar Road SE
Palm Bay, Florida 32907

Gabriel Bowden, Director
City of Palm Bay
Utilities Department
250 Osmosis Drive SE
Palm Bay Florida 32909

4. **Compliance with all Laws.** Notwithstanding anything herein to the contrary, the Project shall be operated consistent with all applicable federal, state and local laws and regulations.

IN WITNESS WHEREOF, the parties hereto have executed these presents and have set their hands and seals as set forth below.

**City of Palm Bay
Utilities Department**

By _____
Signature

Title: Gabriel Bowden, Director

**STATE OF FLORIDA
COUNTY OF BREVARD**

SWORN to (or affirmed) and subscribed before me by means of [] physical presence or [] online notarization, this ____ day of _____, 202____ by _____ who is personally known to me or did produce _____ as identification.

NOTARY SEAL/STAMP:

NOTARY PUBLIC, STATE OF FLORIDA
MY COMMISSION EXPIRES ON: _____

**City of Palm Bay
Community and Economic Development Department**

By _____
Signature

Title: Clinton Hatcher, Director

**STATE OF FLORIDA
COUNTY OF BREVARD**

SWORN to (or affirmed) and subscribed before me by means of [] physical presence or [] online notarization, this ____ day of _____, 202____ by _____ who is personally known to me or did produce _____ as identification.

NOTARY SEAL/STAMP:

NOTARY PUBLIC, STATE OF FLORIDA
MY COMMISSION EXPIRES ON: _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

EXHIBIT “A”