

ORDINANCE NO. 23-228

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A SUBGRANT AGREEMENT WITH COMMUNITY BUILDING PARTNERS, LLC, RELATING TO THE USE OF AMERICAN RESCUE PLAN ACT (ARPA) STIMULUS FUNDS FOR THE RENOVATION OF REAL PROPERTY LOCATED AT 920 WEST OSBORNE STREET (FORMER OSBORNE ELEMENTARY SCHOOL) IN THE AMOUNT OF \$750,000; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, this City Commission authorized the purchase of real property located at 920 W. Osborne Street (former Osborne Elementary School), and identified as Parcel No. 58-65001.000 from the from the Board of Education of the Sandusky City School District by Ordinance No. 23-210, passed on October 23, 2023; and

WHEREAS, it is being requested in companion legislation to authorize the City Manager to enter into a Real Estate Purchase Agreement to sell the property located at 920 W. Osborne Street (former Osborne Elementary School) to Community Building Partners, LLC for the purpose of the development of affordable senior housing; and

WHEREAS, the City desires to provide American Rescue Plan Act (ARPA) Stimulus Funds to Community Building Partners, LLC, in the amount of \$750,000, for this project and the Subgrant Agreement provides all the determinations as to the eligible use of funds which are at the sole discretion of the City; and

WHEREAS, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to immediately proceed with execution of the agreements and allow the development plans to proceed; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments, including the Department of Community Development, of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. The City Manager is hereby authorized and directed to enter into a Subgrant Agreement with Community Building Partners, LLC, relating to the use of American Rescue Plan Act (ARPA) Stimulus Funds for the renovation of real property located at 920 W. Osborne Street, substantially in the same form as

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reflected in Exhibit "1" which is attached to this Ordinance and specifically incorporated as if fully rewritten herein together with such revisions or additions as are approved by the Law Director as not being adverse to the City and as being consistent with carrying out the terms of this Ordinance.

Section 2. This City Commission authorizes and approves the grant funding to the Community Building Partners, LLC, in an amount **not to exceed** Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000) from the American Rescue Plan Act (ARPA) Funds of the City of Sandusky to and in accordance with the terms of the Agreement.

Section 3. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 4. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 5. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.



RICHARD R. BRADY
PRESIDENT OF THE CITY COMMISSION



ATTEST:

CATHLEEN A. MYERS
CLERK OF THE CITY COMMISSION

Passed: November 27, 2023

SUBGRANT AGREEMENT

Title: American Rescue Plan Act – Coronavirus Local Fiscal Recovery Fund

Funding Organization: U.S. Department of Treasury

Prime Recipient: City of Sandusky, Erie County

Assistance Listing Number and Grant Name: 21.027 – Coronavirus State and Local Fiscal Recovery Fund

Grantor: City of Sandusky, Erie County, Ohio

Subgrantee: Community Building Partners, LLC

Payment Method: Reimbursement Only

THIS SUBGRANT AGREEMENT (“Agreement”) is made as of _____, 2023 (the “Effective Date”), by and between the City of Sandusky, Erie County, State of Ohio (the “City”), and Community Building Partners, LLC, an Ohio limited liability corporation with a mailing address of 388 West Sixth Avenue, Columbus, Ohio 43201, (“Subgrantee”, and with the City both of which may be referenced herein as the “Parties” and each a “Party”).

RECITALS:

WHEREAS, the City is directing the use of federal stimulus it has received from the U.S. Treasury Secretary to fund, at least in part, projects, services, and/or the purchase of goods under this Agreement, pursuant to American Rescue Plan Act, Pub. L. 117-2 [H.R. 1319], signed into law March 11, 2021 (“ARPA”), Title IX, Subtitle M, Section 9901 amending the Social Security Act, in relevant part by adding new Sec. 603, Coronavirus Local Fiscal Recovery Fund; and,

WHEREAS, under the ARPA’s funding methodology, the City was allocated approximately \$18,000,000 (the “ARPA Funds”) to “mitigate the fiscal effects stemming from the public health emergency with respect to the Coronavirus Disease (COVID-19)”; and,

WHEREAS, the ARPA and its supporting U.S. Treasury guidance provide that ARPA Funds may only be used by the City to finance costs that (a) respond to the COVID-19 public health emergency or its negative economic impacts; (b) respond to workers performing essential work; (c) provide government services to the extent of a reduction in revenue; and (d) make necessary investments in water, sewer, or broadband infrastructure (collectively, the “Eligibility Criteria”); and,

WHEREAS, the City desires to provide ARPA Funds to Subgrantee for the purpose of developing affordable housing (the “Project”), and all determinations as to the eligible use of funds hereunder are at the sole discretion of the City, pursuant to certain advice it has received from its legal counsel, which is attached hereto as EXHIBIT A; and,

WHEREAS, Subgrantee is an Ohio limited liability corporation and as such is a mission-based for-profit developer with experience in scoping large, complex projects and in using tax credits, loans, and grants to finance projects for the public benefit, and therefore an eligible transferee under the ARPA to carry-out the Project, which represents federally funded programming of the City, all pursuant to Title IX, Sec. 603(c)(3); and,

WHEREAS, Subgrantee has proposed the means of accomplishing such Project at a budgeted cost of approximately Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000) as set forth in writing (the "Project Proposal"), attached hereto and incorporated herein as EXHIBIT B; and,

WHEREAS, the Parties acknowledge the Subgrantee's Project under this Agreement is eligible for reimbursement by the City from its ARPA Funds, to wit: the development, repair, and operation of affordable housing and services or programs to increase long-term housing security, pursuant to 31 CFR 35.6(b)(3)(ii)(A)(5); and,

WHEREAS, the City, by and through its legal counsel, has reviewed Subgrantee's Project Proposal in relation to U.S. Treasury guidance concerning ARPA, the ARPA Funds, and the Eligibility Criteria, and has determined the Project is an allowable expenditure of the City's federal stimulus allocation, subject to the terms and conditions set forth herein; and,

WHEREAS, the Subgrantee has the requisite personnel, facilities, and equipment available to execute the Project; and,

WHEREAS, the City and Subgrantee desire to enter into this Agreement for Subgrantee's Project, all in accordance with Ohio law, the terms and conditions of this Agreement, and the federal procurement requirements restated as "Contract Provisions for Non-Federal Entity Contracts under Federal Award" attached hereto and incorporated herein as EXHIBIT C. Said Contract Provisions for Non-Federal Entity Contracts under Federal Award set forth herein must be included as terms and conditions in any subcontract entered into by and between the Subgrantee and contractor(s) it engages in pursuit of the Project.

NOW, THEREFORE, the City and the Subgrantee acknowledge the receipt and sufficiency of valid consideration for this Agreement and agree as follows:

ARTICLE I TERM OF CONTRACT

The term of this Agreement shall commence on the Effective Date and continue through December 1, 2026, unless otherwise terminated earlier as provided below (the "Term").

ARTICLE II DUTIES OF THE SUBGRANTEE

2.1 The Subgrantee shall carry-out the Project materially in the form and phasing as set forth in the Proposal. The Subgrantee has no authority to enter into contracts or agreements on behalf of the City. The City may, at its discretion, provide the Subgrantee with direction as to the Project, but the Subgrantee is solely responsible for determining the means and methods of performing the Project.

2.2 The City and the Subgrantee agree that they may amend, in writing, from time to time, the scope of the Project. The Parties acknowledge and agree the Project to be performed under this Agreement is not in the nature of legal or accounting services.

2.3 The Subgrantee shall ensure that the Project is performed in a manner that is consistent with applicable federal, state, and local laws and regulations. The City shall have the right to refuse reimbursement of Project costs of the Subgrantee under this Agreement for any lawful reason.

2.4 The Subgrantee shall comply with “Contract Provisions for Non-Federal Entity Contracts under Federal Award”, which appear in EXHIBIT C, and such provisions of the Uniform Guidance 2 CFR 200, including but not limited to the following federal procurement requirements:

- (1) Subgrantee shall provide evidence of Subgrantee’s written federal procurement procedures in compliance with 2 CFR 200.318(a).
- (2) Subgrantee shall maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts in compliance with 2 CFR 200.318(c)(1).
- (3) Subgrantee shall procure engineering/design services using a qualifications-based competitive proposal selection procedure in compliance with 2 CFR 200.320(a)(b)(2). The requirements include (a) public advertisement of requests for proposals that identify all evaluation factors and their relative importance, (b) solicitation from an adequate number of qualified firms, and (c) a written method for conducting technical evaluations of proposals and selection process. The contract must be awarded to the responsible engineering/design firm whose proposal is most advantageous to Subgrantee, with price and other evaluation factors considered.
- (4) Subgrantee shall procure construction services using a sealed competitive bidding process in compliance with 2 CFR 200.320(a)(b)(1). The requirements include public advertisement of the Project with the following conditions present: (a) complete, adequate and realistic specifications; (b) two or more responsible bidders willing to compete effectively for the work; (c) a firm fixed price bid so the selection can be made principally on the basis of price. The Subgrantee must open the bids publicly and a firm fixed price contract shall be awarded to the lowest responsive and responsible bidder. Any or all bids may be rejected if there is a sound documented reason.
- (5) Subgrantee shall maintain records sufficient to detail the history of procurement, including the method of procurement, contract type, and basis for contractor selection in compliance with 2 CFR 200.318(i).

2.5 This Project shall be subject to Ohio Prevailing Wage laws. To the extent the Project is not sourced from any other federal funds other than the ARPA Funds, the federal Davis-Bacon Act does not apply to this Project. Subgrantee shall ensure that the contractor(s), and any subcontractors, pay their respective employees at a rate not less than the Ohio prevailing wage rates.

2.6 Subgrantee agrees to include the Contract Provisions for Non-Federal Entity Contracts under Federal Award set forth in EXHIBIT C as terms and conditions in any contract entered into by and between the Subgrantee and contractor(s) it engages in pursuit of the Project. Subgrantee further agrees to require contractor(s) to include the terms and conditions in EXHIBIT C in all subcontractor agreements.

2.7 Subgrantee agrees to comply with all ARPA statutory requirements and U.S. Department of Treasury and the U.S. Treasury Office of Inspector General implementation rules and regulations.

2.8 Subgrantee agrees to keep all records, financial and otherwise, relating to ARPA funds received pursuant to this Subgrant Agreement for at least three (3) calendar years following final close-out of the Project in compliance with 2 CFR 200.334.

2.9 Subgrantee agrees to provide the City with access to and the right to review or audit any and all such records pertinent to this Subgrant Agreement for the purpose of making audits, examinations, excerpts, and transcriptions in compliance with 2 CFR 337. This right also includes timely and reasonable access to Subgrantee's personnel for the purpose of interview and discussion relating to such documents. Subgrantee further agrees to keep said records in a manner to facilitate such reviews and audits.

2.10 If at any time by audit or other review, it is determined that any part of Subgrantee's Project costs was not eligible for reimbursement, Subgrantee agrees to immediately repay the ineligible portion of funds to the City.

2.11 Subgrantee certifies it is an equal opportunity employer and shall remain in compliance with state and federal civil rights and nondiscrimination laws and regulations including but not limited to Title VI, and Title VII of the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Age Discrimination Act of 1975, the Age Discrimination in Employment Act, as amended, and Ohio Civil Rights Law.

ARTICLE III COMPENSATION

3.1 The City shall compensate the Subgrantee for eligible Project costs only on a reimbursement basis and according to the disbursement schedule in Section 3.1. The Subgrantee's requests for reimbursement must include copies of detailed invoices and corresponding proof of payment (i.e., copy of canceled checks), the sufficiency of which is at the sole discretion of the

City. In all instances, the City's compensation to the Subgrantee under this Agreement will not exceed Seven Hundred Fifty Thousand Dollars (\$750,000) ("Total Payment"), which such amount represents the City's full and complete reimbursement payment for the Project performed hereunder. The disbursement schedule shall be as follows:

- (1) \$200,000 due to the Subgrantee immediately upon closing
- (2) \$400,000 due to the Subgrantee after substantial completion of accessibility and safety improvements
- (3) \$150,000 due to the Subgrantee after the completion of the Project in accordance with the terms of this Agreement.

3.2 The City shall issue payment within thirty (30) days of receipt and approval of Subgrantee's request for reimbursement. If the City disputes any portion of the request for reimbursement and delays in paying a portion pending resolution of the disputed amount, the undisputed amount requested for reimbursement will be paid by the City in accordance with the terms hereof. In the event of and during any pending dispute between the Parties regarding their respective rights and obligations hereunder including, but not limited to, questions regarding any portion of the request for reimbursement and resulting delays in payment of that portion pending resolution of such dispute, unless instructed otherwise in writing by the City, the Subgrantee shall continue to perform the Project, and the City shall continue to reimburse all undisputed amounts in accordance with the terms hereof.

3.3 The City and the Subgrantee agree that, during the term of this Agreement, the Subgrantee shall be responsible for all its own business expenses, unless otherwise provided herein, including all payroll functions, employees' wages and salaries, insurance of every type and description, other employee benefits of any nature whatsoever and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any. The City shall issue a 1099 for all monies paid to the Subgrantee, as applicable.

3.4 The Parties acknowledge and agree the Subgrantee's Project costs are eligible for reimbursement under this Agreement by the City with ARPA Funds. Specifically, this Project includes the development, repair, and operation of affordable housing and services or programs to increase long-term housing security, pursuant to 31 CFR 35.6(b)(3)(ii)(A)(5).

ARTICLE IV CONTRACT TERMINATION

4.1 This Agreement may be terminated by either of the Parties upon thirty (30) days' written notice to the other Party, subject to the provisions of this Article IV. Further, this Agreement is subject to annual appropriation by the City pursuant to Ohio Revised Code Section 5705.44, and in the event such annual appropriation is not made, this Agreement will terminate.

4.2 To the extent allowable under federal law, including provisions of 2 CFR 200.340, the City may terminate this Agreement at any time by sufficient notice to the Subgrantee, in the event of any of the following circumstances:

- (1) A receiver for Subgrantee's assets is appointed by a court of competent jurisdiction.
- (2) Subgrantee is divested of its rights, powers, and privileges under this Agreement by operation of law.
- (3) Subgrantee fails to comply with any term, covenant, or condition of this Agreement to be kept, performed, and observed by it, and the Subgrantee fails to remedy such noncompliance within thirty (30) days from the date of written notice from the City as set forth in Sec. 4.1 herein, and all pursuant to 2 CFR 200.339 *et seq.*
- (4) Subgrantee's violation of any applicable federal, state, or local law applicable to the Project and completion thereof.
- (5) If, prior to the receipt of any ARPA Funds from the City hereunder and upon giving thirty (30) days prior written notice, Subgrantee desires to terminate this Agreement.

4.3 In the event of termination under this Article IV, the Subgrantee shall, unless the notice directs otherwise, immediately discontinue work related to the Project and discontinue the placing of orders for materials, facilities, and supplies in connection with the performance of their obligations under this Agreement, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to the City or, at the option of the City, give the City the right to assume those obligations directly, including all benefits to be derived therefrom. The Subgrantee shall thereafter do only such work as may be necessary to preserve and protect the work already in progress and to protect material and equipment on the job site or in transit thereto. Upon termination under this Article IV, the Subgrantee shall be entitled to payment for all eligible costs incurred up to the date of termination. In no event shall the payment due hereunder exceed the Total Payment under this Agreement. Under no circumstances is the Subgrantee entitled to reimbursement for any lost profits, lost opportunity costs, productivity losses, lost efficiencies, or any other direct, indirect, or consequential damage or cost occasioned by the City's termination herein.

4.4 Subgrantee's audit and indemnification obligations hereunder are to survive the termination of this Agreement

ARTICLE V NOTICE

5.1 Notices provided by one Party to the other Party under this Agreement shall be in writing and shall be: (i) delivered personally; (ii) delivered by express delivery service; (iii) mailed, certified mail, return receipt requested; or (iv) delivered by electronic mail, with confirmed receipt, to the following addresses or to such other address as either Party shall designate by proper notice

to the other Party. Unless otherwise provided herein, notices will be deemed given as of the date of actual receipt.

Notices to Subgrantee: Community Building Partners, LLC
C/O Joseph Recchie
388 West Sixth Avenue
Columbus, OH 43201
email: joe@praxia-partners.com

Notices to the City: City of Sandusky
C/O City Manager
240 Columbus Avenue
Sandusky, OH 44870
email: jorzech@cityofsandusky.com

with a copy to:

City of Sandusky
C/O Director of Community Development
240 Columbus Avenue
Sandusky, OH 44870
email: cgilson@cityofsandusky.com

ARTICLE VI MODIFICATIONS AND AMENDMENTS

The City reserves the right to revise this Subgrant Agreement if (i) the U.S. Department of Treasury amends its guidance regarding any matter involving this Subgrant Agreement and (ii) solely at the discretion of the City, based on advice from its legal counsel, such changes by the U.S. Department of Treasury to its published guidance materially alters the eligibility of the Project and the use of ARPA Funds contemplated herein.

ARTICLE VII GOVERNING LAW

This Agreement is to be construed in accordance with the laws of the United States and the State of Ohio.

ARTICLE VIII INDEMNIFICATION

The Subgrantee shall protect, indemnify, and save the City harmless from and against any damage, cost, or liability resulting from claims for any or all injuries to persons or damage to property, arising from intentional, willful or negligent acts or omissions, or any breaches of any of the obligations or covenants set forth in this Agreement, of the Subgrantee, its officers, employees, agents, or subcontractors. In case any claim is at any time made, or action or proceeding is brought, against the City in respect of which indemnity may be sought under this Agreement, the City will give prompt written notice of that action or proceeding to the Subgrantee, and the Subgrantee, upon receipt of that notice will have the right, but not the obligation, to assume the defense of the action or proceeding. The City agrees to lend the Subgrantee such assistance as the Subgrantee will reasonably request in defense of any claim, demand, action or proceeding.

ARTICLE IX ENTIRE AGREEMENT

This Agreement and its incorporated exhibits represent and are the entire agreement between Subgrantee and the City and supersedes any previous agreement or representation with respect to the subject matter described in this Agreement. This Agreement may not be altered or amended except by the mutual agreement of Subgrantee and the City, made in writing and signed by both Parties. This Agreement may be executed in counterparts, each of which is deemed an original, and such counterparts together are to constitute but one and the same agreement. The captions and headings of the paragraphs of this Agreement are inserted solely for the convenience of reference; they in no way define, limit, extend, or aid in the construction of the scope, extent, or intent of this Agreement. In the event that any provision contained in this Agreement is determined to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement is to continue in full force and effect and not be affected by such determination. A Party's failure to enforce the provisions of this Agreement will not be construed as a waiver of any provision, and such failure will not limit the right of such Party to enforce each and every provision of this Agreement. Neither Party shall transfer or assign this Agreement without advanced written notice to the other Party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as evidenced by their signatures below:

[_____]:

Signature of Authorized Agent

Printed Name and Title

Date

CITY OF SANDUSKY,
ERIE COUNTY, OHIO:

Approved as to form:

Law Director

Date

CERTIFICATION REGARDING THE AVAILABILITY OF FUNDS

I, Michelle Reeder, Fiscal Officer, hereby certify that the money to meet this Agreement has been lawfully appropriated for the purpose of this Agreement and is in the treasury of the City of Sandusky or is in the process of collection to the credit of the appropriate fund, free from prior encumbrance. This certification is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Amount - \$750,000.00

Michelle Reeder, Fiscal Officer

Date

Exhibit 1

EXHIBIT A

Guidance from Legal Counsel

MEMORANDUM

TO: Arin Blair, Chief Planner, City of Sandusky Community Development Department

FROM: Bricker Graydon LLP

DATE: November 22, 2023

RE: ARPA Use of Funds – Osborne Elementary School Redevelopment

PROJECT DESCRIPTION:

The City of Sandusky seeks to utilize a portion of its ARPA - Local Fiscal Recovery Funds in support of renovating the Osborne School located at 920 West Osborne Street, resulting in proposed twenty new, age-restricted (55+), one- and two-bedroom units; the total project costs are estimated as \$3,750,000 (the “Project”). Per the developer’s plans to use low income housing tax credits (“LIHTC”) in its capital stack, all units are to be income-restricted at or below 65% of Area Median Income (“AMI”) for 20 years or greater. Further, the developer may hold four (4) such units as income-restricted at or below 50% of AMI for twenty years or greater. The Project also includes the creation of interior and exterior common areas to be utilized for healthcare consultations for residents, recreational activities, parking and landscaping.

The Project developer, Community Building Partners, LLC (“CBP”), is a mission-based for-profit developer with experience in scoping large, complex projects and in using tax credits, loans, and grants to finance projects for public benefit.

Further Project details and information on CBP can be found in the Project Proposal, attached hereto as Exhibit A-1.

Total amount: \$750,000.00

BRICKER GRAYDON RESPONSE:

Eligible under the 1st bucket use of funds (as a response to COVID-19) in the subgranting of ARPA funds to a multi-unit affordable housing project, the entirety of which will be rented to tenants that otherwise satisfy one or more federal affordable housing programs identified by the U.S. Treasury in its Final Rule guidance (e.g., federal LIHTC and/or HOME requirements).

CBP is a *subrecipient* of the City’s ARPA funds, and therefore is subject to the federal Uniform Guidance and reporting obligations applicable in the latter’s use of its Local Fiscal Recovery Funds. Hence our recommendation of the use of a subgrant agreement between the parties that includes the required federal compliance terms and conditions imposed on the City under ARPA.

In turn, such subgrant instrument should be employed for each, if any, subsequent (i.e., cascading) affiliate entities which the developer may use; each such subsequent entity would be a subrecipient in the Project.

We urge CBP, as such a subrecipient of the City's Local Fiscal Recovery Funds, to obligate, expend, and complete all construction work procured with such funds, within the ARPA statutory deadline (i.e., December 31, 2026). The federal Uniform Guidance requires the City (and CBP) to monitor and track project completion.¹ And the U.S. Treasury provides specific guidance as to recipients' monitoring and tracking of project completion through the *period of performance*, which is defined under the ARPA Final Rule as ending December 31, 2026. We view these federal authorities as requiring the City (and CBP) to *complete by December 31, 2026 all construction work under the Project*.

Finally, given the absolute bar in the use of ARPA funds to service debt, CBP must take steps to avoid comingling federal stimulus funds and debt proceeds and/or debt service. We recommend CBP use a separate fund account to receive the City's subgrant and disburse therefrom the federal funds for construction expenditures.²

ANALYSIS:

Under the Final Rule, ARPA allows four buckets of eligible use, of which the first is relevant here: **“(A) To respond to the public health emergency or its negative economic impacts, including assistance to households**, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality; (B) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers; (C) For the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and (D) To make necessary investments in water, sewer, or broadband infrastructure” [emphasis added] (see U.S. Treasury, Final Rule, Supplementary Information, at pages 4-5).

Subrecipients

The Treasury in its Final Rule makes clear that transfers may be made from recipients of ARPA funds (here, the City) to private entities. (See U.S. Treasury, 2022 Final Rule, Supplementary

¹ The City and its subrecipients are required under the Uniform Guidance to monitor and report on the status of projects funded under federal grants, including ARPA, with an emphasis on tracking of project completion. 2 CFR 200.329(a): “The non-Federal entity [the City] is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and *performance expectations are being achieved*.”

² We note here that the Project is alternatively eligible as a provision of government services under the 3rd bucket of use, to the extent of the City's revenue loss; under this analysis, CBP would not be treated as a subrecipient of federal funds.

Information, at page 358). Such transfers are to subrecipients (*Id.*: “recipients may transfer SLFRF funds to any entity to carry out as a subrecipient an eligible use of funds by the transferor, as long as they comply with the Award Terms and Conditions and other applicable requirements, including the Uniform Guidance”). Such subaward may be provided through any form of legal agreement; the terms and conditions of the City’s ARPA award flow down to such subrecipients, the latter of which “must comply with the applicable requirements of the Uniform Guidance.... This includes requirements such as the treatment of eligible uses of funds, procurement, and reporting requirements.” (*Id.* at page 210).

Here, CBP is poised to receive the City’s ARPA funds as a subrecipient under the terms set by the City in its subaward. The Treasury provides a point of guidance that is helpful:

- “Eligible subrecipients include... other units of government... nonprofits and other civil society organizations, and **private entities** ... [and] transfers may be made to both constituent and non-constituent units of government.... [The transferor] must receive a benefit proportionate to the amount transferred” [emphasis added] (U.S. Treasury, 2022 Final Rule, Supplementary Information, at pages 358 – 359).

Here, CBP, as a private entity, is authorized under the ARPA’s statutory requirements to stand in the role of transferee (i.e., the City may transfer amounts from its Local Fiscal Recovery Funds to a private organization; *see* ARPA, Title IX Sec. 603(c)(3)).

Care must be taken that the amount transferred to CBP is proportionate to the benefit received by the City under the Project. Documentation must be prepared and included in the audit file that sets forth such benefit to the City.

1st Bucket Eligibility – Responding to COVID-19

When using funds under this 1st bucket, the City must satisfy the U.S. Treasury’s two-part framework set forth under the Final Rule: (1) there must be a negative public health or economic impact resulting from or exacerbated by COVID-19; and (2) the City’s response must be designed to address the identified health or economic impact, which such response must be “reasonably proportional” (i.e., the scale of the response as compared to the scale of the harm) (*see* 31 CFR 35.6(b)(1); *see also* U.S. Treasury, 2022 Final Rule, Supplementary Information, at pages 21 – 22, and at page 194).

Under this two-part framework to determine eligible responses under the 1st bucket of use, the U.S. Treasury requires a beneficiary or class of beneficiaries to have experienced an identified harm caused by or exacerbated by the pandemic. And therefore, the City must assess whether the beneficiaries of any element of the residential development (i) belong to an impacted or disproportionately impacted household, population, or community and (ii) whether the use of funds in such ways address negative public health or economic impacts within those cohorts. (*See* 31 CFR 35.6(b)(1)).

- First prong: Harm to beneficiaries

Under the Final Rule, households or populations presumed to have been *impacted* by the pandemic's negative economic impacts are those comprised by "a household or population that experienced unemployment, experienced increased food or housing insecurity, or is low or moderate income" (U.S. Treasury, 2022 Final Rule, Supplementary Information, at page 78).³

- Second prong: Response is reasonably proportional to the harm

The City must show the Project is reasonably proportional in response to COVID-19's negative economic impacts on households and populations in the City.

- Applying the Two-Part Test to the Project

The City may provide a subgrant of ARPA funds to this housing project per the following discussion.

- *Affordable housing as a response to the negative economic impacts of the pandemic*

So long as the Project is keyed to, or otherwise limits participation by, those City residents who have experienced unemployment, experienced increased food or housing insecurity, or are low or moderate income, the City "may provide services to them that respond to [the pandemic's] impacts, including the[] enumerated eligible uses" such as services or programs to increase long-term housing security (see 31 CFR 35.6(b)(3)(ii)(A)(5); and see generally U.S. Treasury, 2022 Final Rule, Supplementary Information, at pages 78 – 79, 102 – 110).

Moreover, the Treasury calls out *additional* programs and services that may be provided via ARPA funding to *disproportionately impacted* households, populations, or communities.

The Final Rule presumes a beneficiary is *impacted* or *disproportionately impacted* by the public health emergency or its negative economic impacts "if funds are to be used for affordable housing programs, [and] qualify for the National Housing Trust Fund (12 U.S.C. 4568) or the Home

³ In turn, the Treasury's Final Rule defines a household as *low income* if it has (i) income at or below 185 percent of the Federal Poverty Guidelines (FPG) for the size of its household based on the most recently published poverty guidelines by the Department of Health and Human Services (HHS) or (ii) income at or below 40 percent of the Area Median Income (AMI) for its county and size of household based on the most recently published data by the Department of Housing and Urban Development (HUD). (See U.S. Treasury, 2022 Final Rule, Supplementary Information, at page 30).

The Final Rule goes on to define a household as *moderate income* if it has (i) income at or below 300 percent of the FPG for the size of its household based on the most recently published poverty guidelines by HHS or (ii) income at or below 65 percent of the AMI for its county and size of household based on the most recently published data by HUD. (*Id.* at pages 30 – 31).

Investment Partnerships Program (42 U.S.C. 12721 *et seq.*)” (31 CFR 35.6(b)(2)(i); *and see* U.S. Treasury, 2022 Final Rule, Supplementary Information, at page 103).

The Final Rule states the objectives pursued under this provision are to improve access to “stable, affordable housing, including through interventions that increase the supply of affordable and high-quality living units” (U.S. Treasury, 2022 Final Rule, Supplementary Information, at page 103). And so long as affordable housing is developed to increase supply of affordable and high-quality living units, such activities are “*responsive to individuals and households* that were impacted by the pandemic in addition to those that were disproportionately impacted” [emphasis added] (U.S. Treasury, 2022 Final Rule, Supplementary Information, at page 105).

Here, the Treasury specifically calls out “projects that would be eligible for funding under the National Housing Trust Fund or the Home Investment Partnership Program are eligible uses” of the City’s Local Fiscal Recovery Fund (U.S. Treasury, 2022 Final Rule, Supplementary Information, at page 106).

On July 27, 2022, the U.S. Treasury expanded the number of federal affordable housing programs beyond the HTF and HOME.

Under its so-called “Presumption 1”, the Treasury listed additional housing programs, the use of whose income thresholds and program requirements likewise would render the Project a *presumed eligible use of ARPA funds* (if units were held for residents meeting such defined incomes). (See Final Rule: FAQs as of July 27, 2022, Item 2.14). Affordable housing built to such requirements and specifications as under any of the following programs is an eligible response to COVID-19:

- ***Low-Income Housing Tax Credits, administered by Treasury***
- Public Housing Capital Fund, administered by HUD
- Section 202 Supportive Housing for the Elderly Program, administered by HUD
- Section 811 Supportive Housing for Persons with Disabilities Program, administered by HUD
- Project-Based Rental Assistance (PBRA), administered by HUD
- Multifamily Preservation & Revitalization Program, administered by USDA
- Finally, the U.S. Treasury stated that “[h]omeownership assistance that would be eligible under the Community Development Block Grant (at 24 CFR 570.201(n)) is also an eligible use of SLFRF funds” (*Id.*) In turn, the cited federal regulation states, “CDBG funds may be

used to provide direct homeownership assistance to low- or moderate-income households in accordance with section 105(a) of the Act.”

Similarly, under Treasury’s “Presumption 2”, an investment of ARPA funds by the City in any affordable housing unit is presumed eligible if such unit is held (“limited”) for households / renters with maximum income of 65% AMI (Final Rule: FAQs as of July 27, at Item 2.14). To hold units under this threshold involves recording a deed restriction or covenant declaration on the subject property, with such income restriction to be in place and enforceable for at least 20 years. A key difference from the Treasury’s Presumption 1: so long as the income restrictions are enforceable on the subject property, the presumed eligible use of funds holds even if the affordable housing unit doesn’t qualify under any of the listed federal housing programs.

Here, we see CBP has committed to the City, and the City is considering funding the Project on the basis of, twenty units held for households with incomes of 65% AMI or below for 20 years. As such, we may discern costs associated with the Project are presumed eligible under the U.S. Treasury’s “Presumption 2” issued in late July 2022.

- *Capital Expenditures under the 1st Bucket*

We note here the subgrant constitutes a capital expenditure⁴ under this 1st bucket of use analysis. And the City must follow certain protocols involving capital expenditures:

- Since the subgrant by the City is \$1 million or less (i.e., Treasury’s “safe harbor”), the City only needs to write-up sufficient supporting information (i.e., answer the two-part framework) for its audit file as to that grant funding or financing.

Note federal procurement rules apply to CBP under 2 CFR Part 200.

Placing Purchased Goods in Service

The federal Uniform Guidance governs the City’s Local Fiscal Recovery Funds. The City therefore must measure performance, and report such, as to *achievement* of ARPA program goals and objectives (see 2 CFR 200.301). And the City is subject to the requirement to prepare and submit regular construction performance reports, specifically including *certified percentage of completion data* (see 2 CFR 200.329).

Under the Uniform Guidance, then, we urge caution in construction of housing units that may not be delivered before December 31, 2026. The City will have to report to the Treasury the

⁴ The Treasury will view this housing project as constituting “capital expenditures” under the Final Rule (see 31 CFR 35.3: “capital expenditures has the same meaning given in 2 CFR 200.1”, which in turn, defines them to include “additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets”). And the Treasury’s general position holds that capital expenditures are not presumed to be reasonably proportional responses to an identified harm. (See U.S. Treasury, 2022 Final Rule, Supplementary Information, at page 57).

Project's respective achievement of reported goals and objectives. If the Project's construction costs are underway but remain unfinished on or after December 31, 2026, the City cannot "show achievement" under the Uniform Guidance. Note that reporting under ARPA is "[b]ased on the period of performance" and as such will be collected through April 30, 2027 (see U.S. Treasury Compliance and Reporting Guidance, Version 4.1 (published June 17, 2022) at page 15).

Under the ARPA, we urge still further caution. First, given the 1st bucket of use analysis to support the subgrant to the Project, such expenditures are considered capital expenditures, and therefore are subject to heightened justification protocols, described above. (U.S. Treasury, 2022 Final Rule, Supplementary Information, at page 194).

Second, all uses of ARPA funds (irrespective of the buckets of use as rationale) are subject to the Treasury's Timeline for Use of SLFRF Funds, which is a stand-alone section of the Final Rule's Supplementary Information. And this section provides guidance that directly instructs the City to ensure all project elements are completed by December 31, 2026:

- "[T]he period of performance will run until December 31, 2026... as the end of the period of performance to provide a reasonable amount of time for recipients to liquidate obligations incurred by the statutory deadline" at pages 354 – 355; and,
- "[T]he period of performance... provides the deadline by which recipients must expend obligated funds... meaning they have over three years to obligate and over five years to expend funds. This provides a sufficient amount of time for recipients to plan and *execute* projects" [emphasis added] at page 357.

Given the Uniform Guidance, generally, and the 2022 Final Rule, specifically, we recommend the City and its subrecipient, CBP, only expend ARPA funds on the construction of affordable housing units that can be fully delivered by the December 31, 2026 statutory deadline, and which can be reported as completed.

Project Proposal

Development Team Background

Community Building Partners is a mission-based for-profit developer with a wealth of experience in scoping large, complex projects— including both adaptive reuse and new construction —and in using tax credits, loans, and grants to finance projects for public benefit. A significant portion of these projects focus on affordable housing and continue to serve their intended purpose today after decades of service. CBP principles have over 40 years of experience in community and economic development, specializing in public-private initiatives designed to increase housing, educational, and employment opportunities for marginalized populations in metropolitan areas while promoting environmental stewardship and social equity.

CBP was founded and is led by CEO Joseph J. Recchie, who as an attorney, development advisor, and builder/developer, has demonstrated his ability to support non-profit faith-based and community-based organizations, real estate developers, contractors, cooperatives, and institutional corporate investors in leveraging minimal resources to develop housing, neighborhoods, commercial development, community facilities, and job training programs. Throughout his career, Mr. Recchie has aimed to achieve equitable and economic outcomes by prioritizing integrity, ingenuity, and commitment. He has advanced multiple clearly identified social objectives while creating sustainable economic advantages for the communities he serves. His accomplishments have resulted from broad collaborative efforts and a uniquely innovative approach to finance. His real estate development, management, and complex structuring experience has been honed through the development of thousands of housing units in Ohio, Indiana, Illinois, Pennsylvania, Colorado, and North Carolina, where he has developed expertise in unique entitlement processes in hundreds of legal jurisdictions.

CBP has a deep and always-growing network of experts to draw on for additional support as opportunities emerge. These trusted partners include well-known entities such as OHM Planners, National Land Advisory Group, and Moody Nolan Architects. A robust network of third-party experts also include expertise in construction, architecture, design, historic preservation, engineering, planning, and research professionals; each brings a wealth of knowledge and experience that we select to tailor to the project or client as needed. Furthermore, we maintain ongoing productive relationships with financial institutions, lenders, equity providers, and investors that benefit our clients, including but not limited to the Finance Fund, Ohio Housing Finance Agency, Key Bank, Commodore Bank, Marble Cliff Capital, LISC, and Huntington Bank.

Project

- Renovation of all existing improvements at 920 West Osborne Street
- Adherence to the Secretary of the Interior Standards of Historic Preservation for all interior and exterior work

- Addition of modern safety and accessibility improvements including elevator, sprinkler system, ADA-compliant accessibility to the building, and full ADA accessibility to select living units
- Creation of a minimum of 20 living units, proposed as 1- and 2-bedroom dwellings
 - Age restricted to 55+
 - A minimum of 4 units will be at or below 50% AMI for 20 years

If IRC Section 42 Federal Housing Credits are utilized for the community, the affordability will extend to all residential units.

Creation of attractive common areas interior and exterior of the building

- Creation of interior common room / appropriate capacity to host wrap-around services such as healthcare consultation for residents
- Enhancement and retention of playground area open to community access
- Exterior parking, lighting, and landscape improvements

Timeline

December 2023	Purchase Agreement and ARPA Subgrant Agreement with City of Sandusky
May 2024	Execution of purchase
May 2024	Financing plan
November 2024	Financing secure
March 2025	Commencement of Construction
December 2026	ARPA funds must be dispersed

Notes

- All activities will follow the appropriate permitting and approvals process as set by the City of Sandusky code including but not limited to:
 - Landmarks Commission approval for any exterior changes to the historic structure
 - Planning Commission site plan approval
 - Building Division permitting and approvals
- CBP will create and enact a community engagement plan to engage neighborhood residents.

EXHIBIT B

Subgrantee's Project Proposal

Development Team Background

Community Building Partners is a mission-based for-profit developer with a wealth of experience in scoping large, complex projects— including both adaptive reuse and new construction —and in using tax credits, loans, and grants to finance projects for public benefit. A significant portion of these projects focus on affordable housing and continue to serve their intended purpose today after decades of service. CBP principles have over 40 years of experience in community and economic development, specializing in public-private initiatives designed to increase housing, educational, and employment opportunities for marginalized populations in metropolitan areas while promoting environmental stewardship and social equity.

CBP was founded and is led by CEO Joseph J. Recchie, who as an attorney, development advisor, and builder/developer, has demonstrated his ability to support non-profit faith-based and community-based organizations, real estate developers, contractors, cooperatives, and institutional corporate investors in leveraging minimal resources to develop housing, neighborhoods, commercial development, community facilities, and job training programs. Throughout his career, Mr. Recchie has aimed to achieve equitable and economic outcomes by prioritizing integrity, ingenuity, and commitment. He has advanced multiple clearly identified social objectives while creating sustainable economic advantages for the communities he serves. His accomplishments have resulted from broad collaborative efforts and a uniquely innovative approach to finance. His real estate development, management, and complex structuring experience has been honed through the development of thousands of housing units in Ohio, Indiana, Illinois, Pennsylvania, Colorado, and North Carolina, where he has developed expertise in unique entitlement processes in hundreds of legal jurisdictions.

CBP has a deep and always-growing network of experts to draw on for additional support as opportunities emerge. These trusted partners include well-known entities such as OHM Planners, National Land Advisory Group, and Moody Nolan Architects. A robust network of third-party experts also include expertise in construction, architecture, design, historic preservation, engineering, planning, and research professionals; each brings a wealth of knowledge and experience that we select to tailor to the project or client as needed. Furthermore, we maintain ongoing productive relationships with financial institutions, lenders, equity providers, and investors that benefit our clients, including but not limited to the Finance Fund, Ohio Housing Finance Agency, Key Bank, Commodore Bank, Marble Cliff Capital, LISC, and Huntington Bank.

Project

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Notes

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 - Landmarks Commission approval for any exterior changes to the historic structure
 - Planning Commission site plan approval
 - Building Division permitting and approvals
- CBP will create and enact a community engagement plan to engage neighborhood residents.

EXHIBIT C

All provisions provided below are hereby incorporated by reference into the contract to which this Exhibit is attached (the "Agreement") and by entering into this Agreement, Contractor certifies the following:

Complying with Federal, State, and Local Laws

Contractor agrees to comply with federal, state, and local laws, rules, regulations, and ordinances, as applicable.

Exhibit 1