

City of Fayetteville, Arkansas

113 West Mountain Street

Fayetteville, AR 72701

(479) 575-8323



City Council Final Agenda

Tuesday, May 16, 2023

5:30 PM

City Hall Room 219

City Council Members

Council Member Sonia Harvey Ward 1

Council Member D'Andre Jones Ward 1

Council Member Sarah Moore Ward 2

Council Member Mike Wiederkehr Ward 2

Council Member Scott Berna Ward 3

Council Member Sarah Bunch Ward 3

Council Member Teresa Turk Ward 4

Council Member Holly Hertzberg Ward 4

Mayor Lioneld Jordan

City Attorney Kit Williams

City Clerk Treasurer Kara Paxton

ZOOM INFORMATION:

1. **WEBINAR: 857 3392 9264**
PUBLIC REGISTRATION LINK:
[HTTPS://US06WEB.ZOOM.US/WEBINAR/REGISTER/
WN_J1FBRTLYSSU4XFKWRR4EOA](https://us06web.zoom.us/join/join?secret=WN_J1FBRTLYSSU4XFKWRR4EOA) (2023-611)

CALL TO ORDER**ROLL CALL****PLEDGE OF ALLEGIANCE****MAYOR' S ANNOUNCEMENTS, PROCLAMATIONS AND RECOGNITIONS****CITY COUNCIL MEETING PRESENTATIONS, REPORTS AND DISCUSSION ITEMS**

1. **ARKANSAS SPECIAL OLYMPICS AWARD FOR FPD - PRESENTED BY
DONNA KILMER TO CHIEF MIKE REYNOLDS (2023-707)**

PROPOSED AGENDA ADDITIONS**A. CONSENT**

- A.1. APPROVAL OF THE APRIL 18, 2023 AND MAY 2, 2023 CITY COUNCIL
MEETING MINUTES: (2023-722)**

A.2. ELKINS SEWER EASEMENTS:

A RESOLUTION TO APPROVE THE CONVEYANCE OF EASEMENTS TO THE CITY OF ELKINS ACROSS PORTIONS OF CITY OF FAYETTEVILLE PROPERTY LOCATED NEAR LAKE SEQUOYAH FOR THE INSTALLATION OF SEWER LINES (2023-712)

A.3. 11TH STREET COTTAGES, LLC:

A RESOLUTION TO APPROVE A COST SHARE AGREEMENT WITH 11TH STREET COTTAGES, LLC FOR THE EXTENSION OF AN 8-INCH WATER MAIN NEAR THE CORNER OF EAST 11TH STREET AND SOUTH WASHINGTON AVENUE WITH A REFUND IN AN ESTIMATED AMOUNT OF \$47,834.30 TO BE PAID BY THE CITY OF FAYETTEVILLE, AND TO APPROVE A PROJECT CONTINGENCY IN THE AMOUNT OF \$4,783.43 (2023-720)

A.4. KENT B. DETMER CONDEMNATION:

A RESOLUTION TO AUTHORIZE THE CITY ATTORNEY TO SEEK

CONDEMNATION AND POSSESSION OF CERTAIN LANDS OWNED BY KENT B. DETMER NEEDED FOR THE WEST WATER TRANSMISSION MAIN PROJECT (2023-716)

A.5. FHWA, ARDOT AND NARPC GRANT PROGRAM:

A RESOLUTION TO EXPRESS THE WILLINGNESS OF THE CITY OF FAYETTEVILLE TO APPLY FOR 80/20 FEDERAL-AID TRANSPORTATION ALTERNATIVE PROGRAM, CARBON REDUCTION PROGRAM, SAFE STREETS FOR ALL, AND SURFACE TRANSPORTATION BLOCK GRANT PROGRAM - ATTRIBUTABLE FUNDS IN THE TOTAL AMOUNT OF \$25,800,000.00 (2023-718)

A.6. TAXIWAY "E" ENVIRONMENTAL ASSESSMENT:

A RESOLUTION TO AUTHORIZE THE APPLICATION FOR A FEDERAL AVIATION ADMINISTRATION GRANT IN THE AMOUNT OF \$189,450.00 TO FUND 90% OF THE COSTS OF AN ENVIRONMENTAL ASSESSMENT FOR THE PROPOSED TAXIWAY E EXTENSION PROJECT AT DRAKE FIELD AIRPORT (2023-714)

A.7. CHANGE ORDER #12 RFQ-18-11 - ARTS CORRIDOR:

A RESOLUTION TO APPROVE CHANGE ORDER NO. 12 TO THE CONTRACT WITH NABHOLZ CONSTRUCTION CORPORATION IN THE AMOUNT OF \$2,378,349.40 FOR WORK RELATED TO THE CULTURAL ARTS CORRIDOR, AND TO APPROVE A BUDGET ADJUSTMENT – 2019 CULTURAL ARTS CORRIDOR BOND PROJECT (2023-725)

A.8. ARPA - NONPROFIT ASSISTANCE APPLICATIONS:

A RESOLUTION TO APPROVE SEVENTEEN AMERICAN RESCUE PLAN ACT NONPROFIT ASSISTANCE APPLICATIONS IN THE TOTAL AMOUNT OF \$1,000,000.00 TO PROVIDE ECONOMIC ASSISTANCE TO NONPROFIT ORGANIZATIONS UTILIZING AMERICAN RESCUE PLAN ACT FUNDS (2023-724)

A.9. ARPA - ARKANSAS UNITED COMMUNITY COALITION:

A RESOLUTION TO AUTHORIZE MAYOR JORDAN TO SIGN A SUBRECIPIENT AGREEMENT WITH ARKANSAS UNITED COMMUNITY COALITION TO PROVIDE FUNDING FOR TWO COMMUNITY NAVIGATORS TO ASSIST IMMIGRANTS IN FAYETTEVILLE WITH HEALTHCARE NEEDS UTILIZING AMERICAN RESCUE PLAN ACT FUNDS IN THE AMOUNT OF \$50,000.00, AND TO APPROVE A BUDGET ADJUSTMENT (2023-706)

A.10. 2023 DTF JAG GRANT AWARD ADDENDUM:

A RESOLUTION TO AUTHORIZE ACCEPTANCE OF THE EDWARD BYRNE

MEMORIAL JUSTICE ASSISTANCE GRANT AWARD ADDENDUM FOR THE 4TH JUDICIAL DISTRICT DRUG TASK FORCE IN THE AMOUNT OF \$29,087.00, AND TO AUTHORIZE MAYOR JORDAN TO SIGN ALL NECESSARY DOCUMENTS TO RECEIVE THE GRANT FUNDS (2023-717)

B. UNFINISHED BUSINESS

B.1. AMEND §51.136 MONTHLY WATER RATES AND §51.137 MONTHLY SEWER RATES:

AN ORDINANCE TO AMEND §51.136 MONTHLY WATER RATES AND §51.137 MONTHLY SEWER RATES TO CHANGE WATER AND SEWER RATES AS RECOMMENDED BY THE COST OF SERVICE STUDY CONDUCTED BY BLACK & VEATCH (2022-319)

CONTACT CITY CLERK'S OFFICE FOR PREVIOUS ITEM HISTORY (JUNE 21, 2022 THROUGH MARCH 7, 2023).

AT THE APRIL 18, 2023 CITY COUNCIL MEETING, THIS ORDINANCE WAS LEFT ON THE SECOND READING AND TABLED TO THE MAY 16, 2023 CITY COUNCIL MEETING.

B.2. AMEND §72 PARKING REGULATIONS:

AN ORDINANCE TO AMEND CHAPTER 72 PARKING REGULATIONS OF THE FAYETTEVILLE CITY CODE TO AUTHORIZE THE MAYOR TO ESTABLISH AND ADMINISTER RULES REGULATING PARKING FEES IN ESTABLISHED PARKING ZONES, AND TO MAKE TECHNICAL REVISIONS (2023-674)

AT THE MAY 2, 2023 CITY COUNCIL MEETING, THIS ORDINANCE WAS LEFT ON THE FIRST READING.

C. NEW BUSINESS

C.1. DISSOLUTION OF ENERGY IMPROVEMENT DISTRICT 1:

AN ORDINANCE TO REPEAL ARTICLE XXVI ENERGY IMPROVEMENT DISTRICT NO. 1 IN CHAPTER 33 DEPARTMENTS, BOARDS, COMMISSIONS, AND AUTHORITIES OF THE FAYETTEVILLE CITY CODE, AND TO APPROVE THE DISSOLUTION OF ENERGY IMPROVEMENT DISTRICT NO. 1 (2023-688)

C.2. AMENDMENT: §92.04(C) PET STORE OPERATIONS:

AN ORDINANCE TO AMEND § 92.04 (C) OF THE FAYETTEVILLE CODE TO CONFORM THIS SUBSECTION WITH THE JUST ENACTED ACT 730 OF THE 94TH GENERAL ASSEMBLY (2023-740)

C.3. AMENDMENT: §97.086 VENDING AND PEDDLING IN PARKS:

AN ORDINANCE TO AMEND THE TITLE OF CHAPTER 97 PARKS AND RECREATION TO PARKS, NATURAL RESOURCES, AND CULTURAL AFFAIRS, AND TO AMEND § 97.086 VENDING AND PEDDLING TO AUTHORIZE THE DIRECTOR OF PARKS, NATURAL RESOURCES, AND CULTURAL AFFAIRS TO APPOINT A MARKET ORGANIZER TO COORDINATE VENDORS AT THE GULLEY PARK CONCERT SERIES THROUGH DECEMBER 31, 2023 (2023-715)

C.4. APPEAL: LSD-2023-0004: (SOUTH OF N. SHILOH DR/THE JUNCTION AT SHILOH, 363):

A RESOLUTION TO GRANT THE APPEAL OF CITY COUNCIL MEMBER TERESA TURK AND DENY LARGE SCALE DEVELOPMENT APPLICATION LSD-2023-004 (2023-708)

C.5. REZONE-2023-0010: (1746 N. OLD WIRE ROAD. / PERRY, 369):

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN-2023-010 LOCATED AT 1746 NORTH OLD WIRE ROAD IN WARD 3 FOR APPROXIMATELY 1.06 ACRES FROM RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE TO NC, NEIGHBORHOOD CONSERVATION (2023-711)

C.6. REZONE-2023-0011: (239 & 245 N. FLETCHER AVE/HAMBRICE, 485):

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN-2023-011 LOCATED AT 239 AND 245 NORTH FLETCHER AVENUE IN WARD 1 FOR APPROXIMATELY 0.20 ACRES FROM RMF-24, RESIDENTIAL MULTI-FAMILY, TWENTY-FOUR UNITS PER ACRE TO RI-U, RESIDENTIAL INTERMEDIATE-URBAN (2023-709)

C.7. SHORT TERM RENTAL BUSINESS LICENSE COMPLIANCE:

A RESOLUTION TO AUTHORIZE AND REQUEST THAT MAYOR JORDAN CONTRACT WITH A COMPANY TO INVESTIGATE AND REPORT BACK TO THE CITY INFORMATION ABOUT SHORT-TERM RENTAL OPERATIONS THAT DO NOT HAVE VALID BUSINESS LICENSES AND TO APPROVE AN APPROPRIATE BUDGET ADJUSTMENT TO PAY FOR THE CONTRACT (2023-739)

C.8. AMEND CITY COUNCIL RULES OF ORDER & PROCEDURE - PUBLIC COMMENT:

A RESOLUTION TO AMEND RULE A.7. D. (2) PUBLIC COMMENTS TO REDUCE THE ALLOWED SPEAKING TIME FOR THE PUBLIC FROM 5 MINUTES TO 3 MINUTES AND TO REMOVE ANY REQUIREMENT FOR SPEAKERS HAVING TO SIGN UP BEFORE THE ITEM IS OPENED FOR PUBLIC COMMENT (2023-751)

D. CITY COUNCIL AGENDA SESSION PRESENTATIONS**D.1. CITYWIDE HERITAGE & HISTORIC PRESERVATION PLAN - BRITIN BOSTICK (2023-534)****E. CITY COUNCIL TOUR****E.1. TOUR OF PROPERTY THAT IS SUBJECT OF AGENDA ITEM 2023-708**

DATE: MAY 12, 2023

TIME: 4:30 PM

ADDRESS: UNADDRESSED; SOUTH AND WEST OF 1936 N. SHILOH DRIVE

PARKING: PARKING IS AVAILABLE OFF-STREET BEYOND THE DEAD END OF SHILOH DRIVE

REQUEST: APPEAL FROM THE PLANNING COMMISSION'S APPROVAL OF LARGE SCALE DEVELOPMENT APPROVAL FOR THE JUNCTION AT SHILOH (2023-756)

F. ANNOUNCEMENTS**G. ADJOURNMENT****NOTICE TO MEMBERS OF THE AUDIENCE**

All interested persons may appear and address the City Council on Unfinished Business, New Business, and Public Hearings at City Council meetings. If you wish to address the City Council on an agenda item, please wait for the Mayor or Chair to request public comment. When the Mayor or Chair recognizes you, please start your public comment by giving your name and address. Comments are to be addressed to the Mayor or Chair. The Mayor or Chair will direct your comments to the appropriate elected officials, staff, or others for response. Keep your comments respectful, brief, to the point, and relevant to the agenda item being considered. Each speaker from the public will be allowed one turn to speak for discussion of an agenda item.

Below is a portion of the Rules of Order and Procedure of the Fayetteville City Council pertaining to City Council meetings:

Agenda Additions: A new item which is requested to be added to the agenda at a City Council meeting should only be considered if it requires immediate City Council consideration and if the normal agenda setting process is not practical. The City Council may only place such new item on the City Council meeting's agenda by suspending the rules by two-thirds vote. Such agenda addition shall be heard prior to the Consent Agenda.

Consent Agenda: Consent Agenda items shall be read by the Mayor and voted upon as a group without discussion by the City Council. If a Council Member wishes to comment upon or discuss a Consent Agenda item that item shall be removed and considered immediately after the Consent Agenda has been voted upon.

Unfinished Business and New Business:

Overview Period: Agenda items at a City Council meeting shall be introduced by the Mayor and, if an ordinance, read by the City Attorney. City staff shall then present a report. An agenda applicant (city contractor, rezoning or development applicant, etc.) may present its proposal only during this presentation period, but may be recalled by a Council Member later to answer questions. City staff, Council Members and applicants may use electronic visual aids in the City Council meeting as part of the presentation of the agenda item. City staff's presentation and an Applicant's presentation whether presented by one or more than one presenter shall each be limited to a maximum of ten (10) minutes unless the City Council by unanimous consent or majority vote allows additional time.

Public Comments: Public comment at a City Council meeting shall be allowed for all members of the audience who have signed up prior to the beginning of the agenda item they wish to address being opened for public comment. Speakers shall be limited to a maximum of five (5) minutes to discuss the agenda item being considered by the City Council. Amendments may receive public comments only if approved by the City Council by unanimous consent or majority vote. If public comment is allowed for an amendment, speakers will only be allowed to speak for three (3) minutes. The City Council may allow both a speaker additional time and an unsigned-up person to speak by unanimous consent or majority vote. As part of a person's public comments allowed above, the speaker may use electronic visual aids during their five (5) minutes presentation period concerning the agenda item being considered by the City Council.

Courtesy and Respect: All members of the public, all city staff and elected officials shall accord the utmost courtesy and respect to each other at all times. All shall refrain from comments that are harassing or amount to a personal attack against any identifiable individual including abusive comments and derogatory remarks about integrity or offer any other comments that are also not limited to the discussion of the specific agenda item being considered by the City Council. Any member of the public who violates these standards shall be ruled out of order by the Mayor, must immediately cease speaking and shall leave the podium.

Interpreters or Telecommunications Device for the Deaf (TDD), for hearing impaired are available for all City Council meetings, a 72-hour advance notice is required. For further information or to request an interpreter, please call 479-575-8330.

A copy of the complete City Council agenda is available on our website at www.fayetteville-ar.gov or in the Office of the City Clerk, 113 W. Mountain, Fayetteville, Arkansas (479) 575-8323.

All cell phones must be silenced and may not be used within the City Council Chambers.



MEETING OF MAY 16, 2023

TO: Mayor Jordan and City Council
THRU: Susan Norton, Chief of Staff
FROM: Tim Nyander, Utilities Director
DATE:
SUBJECT: City of Elkins Sewer Easements

RECOMMENDATION:

Staff recommends approval of certain sewer easements across City of Fayetteville property for the City of Elkins to allow the installation of a sewer force main line.

BACKGROUND:

The City of Fayetteville and City of Elkins have an agreement for both water and sewer services. The City of Elkins operates their own water and wastewater systems, purchasing water wholesale from Fayetteville and metering sewer wholesale from a lift station and metering site east of Lake Sequoyah. Elkins is in the process of upgrading their sewer lift station and the downstream force main that transports the wastewater to Fayetteville's system. These upgrades are needed to reduce wet weather sewer overflows and accommodate growth in their system.

DISCUSSION:

Temporary and permanent utility easement is needed for the Elkins sewer lines across several City of Fayetteville parcels as shown in the attached exhibits. These areas are generally north of Highway-16 in the vicinity of Lake Sequoyah. Staff recommends approval of the easements as requested.

BUDGET/STAFF IMPACT:

No impact.

ATTACHMENTS: Tract 2 City of Fayetteville Easement Document, Tract 3 City of Fayetteville Easement Document, Sewer Force Main Plan and Profile Drawings



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2023-712

City of Elkins Sewer Easements

A RESOLUTION TO APPROVE THE CONVEYANCE OF EASEMENTS TO THE CITY OF ELKINS ACROSS PORTIONS OF CITY OF FAYETTEVILLE PROPERTY LOCATED NEAR LAKE SEQUOYAH FOR THE INSTALLATION OF SEWER LINES

WHEREAS, the City of Elkins is in the process of upgrading its sewer lift station and the downstream force main that transports the wastewater to Fayetteville's system to reduce wet weather sewer overflows and accommodate growth in its system; and

WHEREAS, temporary construction and permanent easements are needed for the Elkins sewer lines across several City of Fayetteville parcels.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby authorizes Mayor Jordan to execute the two Easements attached to this Resolution in favor of the City of Elkins conveying permanent sewer line easements and temporary construction easements across portions of City of Fayetteville owned property located near Lake Sequoyah for the installation of sewer lines.

UTILITY EASEMENT

TRACT NO: 2

PARCEL NO: 765-13183-000 & 765-13180-000 & 76-13190-000 & 765-13188-00 & 765-13185-000 & 765-13178-000

STATE OF ARKANSAS COUNTY OF WASHINGTON

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of \$1.00 and other valuable considerations to the undersigned, City of Fayetteville, the receipt of which is hereby acknowledged, the said Grantor does hereby GRANT, SELL AND CONVEY unto the **CITY OF ELKINS**, an Arkansas municipal corporation (herein styled Grantee), its successors and assigns, the perpetual right of way and easement for the purpose of constructing, maintaining, inspecting, operating, testing, and repairing and replacing public water transmission line(s) and/or sewer collection or force main line(s) and related facilities on, over, across and under the following described real estate located in Washington County, Arkansas, to-wit:

Property Description

As described in Record Deed: Book 2020, Page 821 and Book 522, Page 52 and Book 535, Page 276

Permanent Water and Sewer Easement and Temporary Construction Easement

See attached "Exhibit A" and "Exhibit B".

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, forever or until said easement is fully abandoned.

The Grantor hereby covenants that Grantor is lawfully seized of said land and premises, and Grantor will forever warrant and defend the title to said lands against all legal claims whatsoever. The Grantor agrees not to interfere with the operation of any utility infrastructure or facilities in any way. The Grantor agrees not to erect any building, structures or fences in said utility easement. No trees shall be planted or permitted by Grantor on said utility easement. Grantor shall not be entitled to any compensation for fences or growing crops removed or disturbed

within this utility easement by virtue of Grantee's exercise of the rights under this agreement. The Grantor agrees not to permit any other utilities to be located in the easement without the written consent of Grantee.

As further consideration for the utility easement rights granted herein, it shall be Grantee's responsibility to ensure that, upon completion of construction, any driveway, parking area or fence moved, taken down, damaged or otherwise altered by Grantee or its contractor(s) during and as a result of construction is returned to the same or better condition as existed immediately prior to construction. Further, it shall be Grantee's responsibility to ensure that any yard, pasture or field lying within the easement area which is damaged by Grantee or its contractor(s) during construction shall be repaired using the same type and variety of grass as predominated the easement area immediately prior to construction.

The consideration recited herein is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

It is hereby understood and agreed that the party securing this grant in behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

TEMPORARY CONSTRUCTION EASEMENT

Grantor does further hereby grant, bargain and convey unto the said Grantee and unto Grantee's successors and assigns, agents, employees, and contractors a non-exclusive temporary construction easement for the construction and installation of utility and other related improvements upon, along and across Grantor's property described above.

The temporary construction easement shall be used by the Grantee only during periods of actual construction and installation activity and for any necessary restoration of the easement property to a clean, slightly and safe condition, with all rubbish, trash and debris removed therefrom, and all such construction, installation and restoration is to be done and completed by and under the Grantee's supervision and at the sole expense of the Grantee.

The temporary construction easement shall terminate when this project has been completed and accepted by the City of Elkins, Arkansas.

IN WITNESS WHEREOF, the Grantor hereunto sets his hand and seal this _____ day of _____, 20__

Grantor:

City of Fayetteville

BY:

ACKNOWLEDGMENT

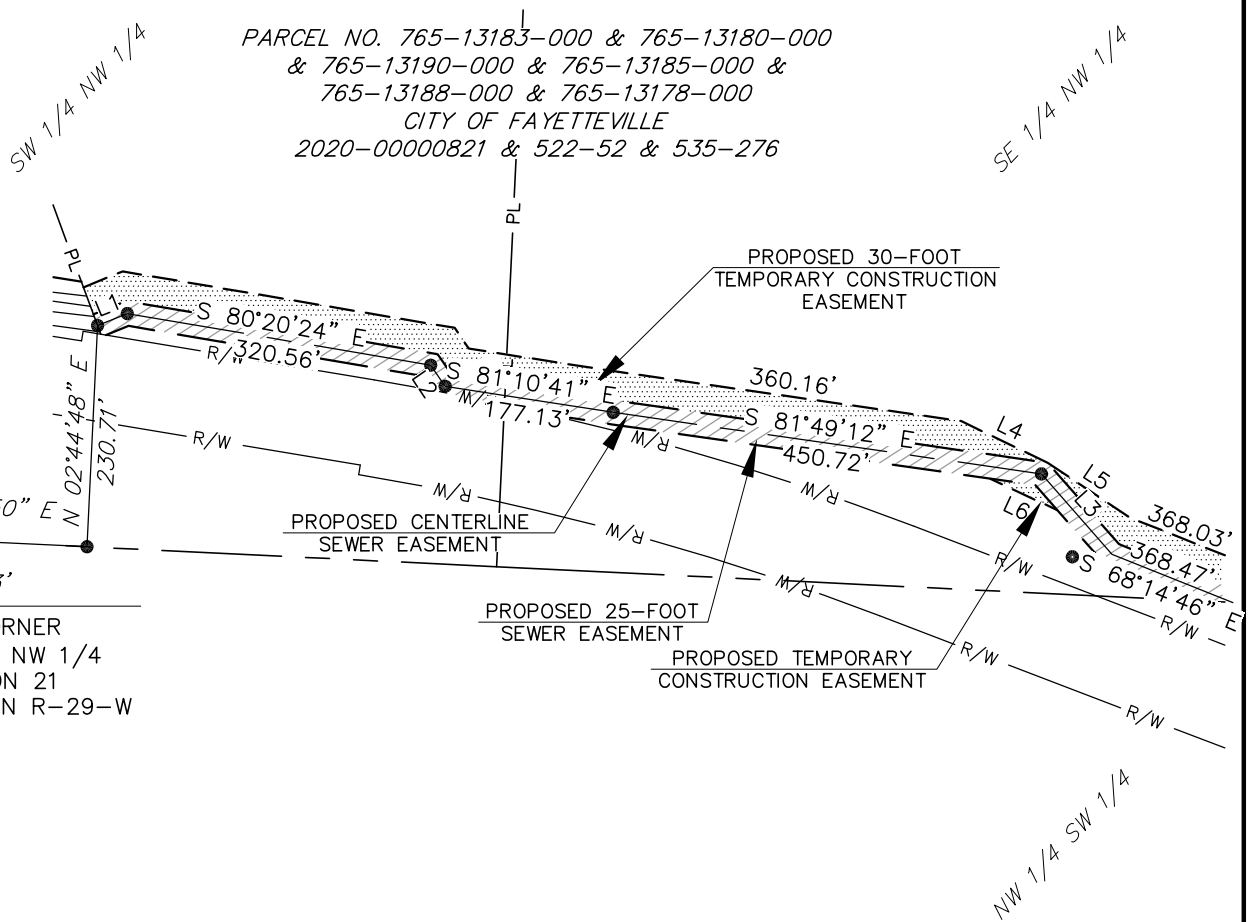
STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

On this day came before me, a Notary Public within and for the State and County aforesaid, personally appear _____, to me known (or satisfactorily proven) to be the identical persons who executed the within and foregoing instrument and acknowledge to me that they executed the same as their free and voluntary acct and deed for the uses and purposes therein set forth.

WITNESS my hand and seal as such Notary Public on this _____ day of _____, 20__.

Notary Public

My Commission Expires:



LINE	ANGLE	DISTANCE
L1	N 67°57'34" E	33.43'
L2	S 34°20'08" E	26.64'
L3	S 41°17'06" E	111.39'
L4	S 64°17'02" E	99.57'
L5	S 56°20'25" E	102.94'
L6	S 64°53'18" E	76.83'

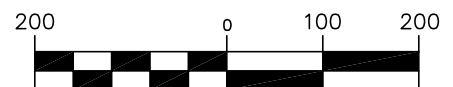
AREA CALCULATIONS	SQ. FT.	ACRES
PROPOSED UTILITY EASEMENT	98,888	2.27
PROPOSED TEMP. CONST. EASEMENT	120,737	2.77

LEGEND

—— PL —— PL ——	EXISTING PROPERTY LINE
—— R/W ——	EXISTING RIGHT OF WAY LINE
—— ———	EXISTING EASEMENT LINE
—— ———	PROPOSED EASEMENT LINE
—— ———	PROPOSED TEMP. CONST. EASEMENT LINE

BEARINGS — GRID
ARKANSAS NORTH ZONE

GRAPHIC SCALE



(IN FEET)
1 inch = 200 ft.

THIS EXHIBIT IS A SKETCH DESCRIPTIVE ONLY OF THE SIZE, SHAPE
AND LOCATION OF THE PROPOSED EASEMENTS AND DOES NOT
CONSTITUTE A PLAT OR SURVEY OF THE GRANTOR'S PROPERTY.

PAGE 1 OF 3



2049 EAST JOYCE BOULEVARD
SUITE 400
FAYETTEVILLE, ARKANSAS 72704
479 527-9100

CITY OF ELKINS
ELKINS, ARKANSAS

ELIKINS WASTEWATER
COLLECTION SYSTEM IMPROVEMENTS

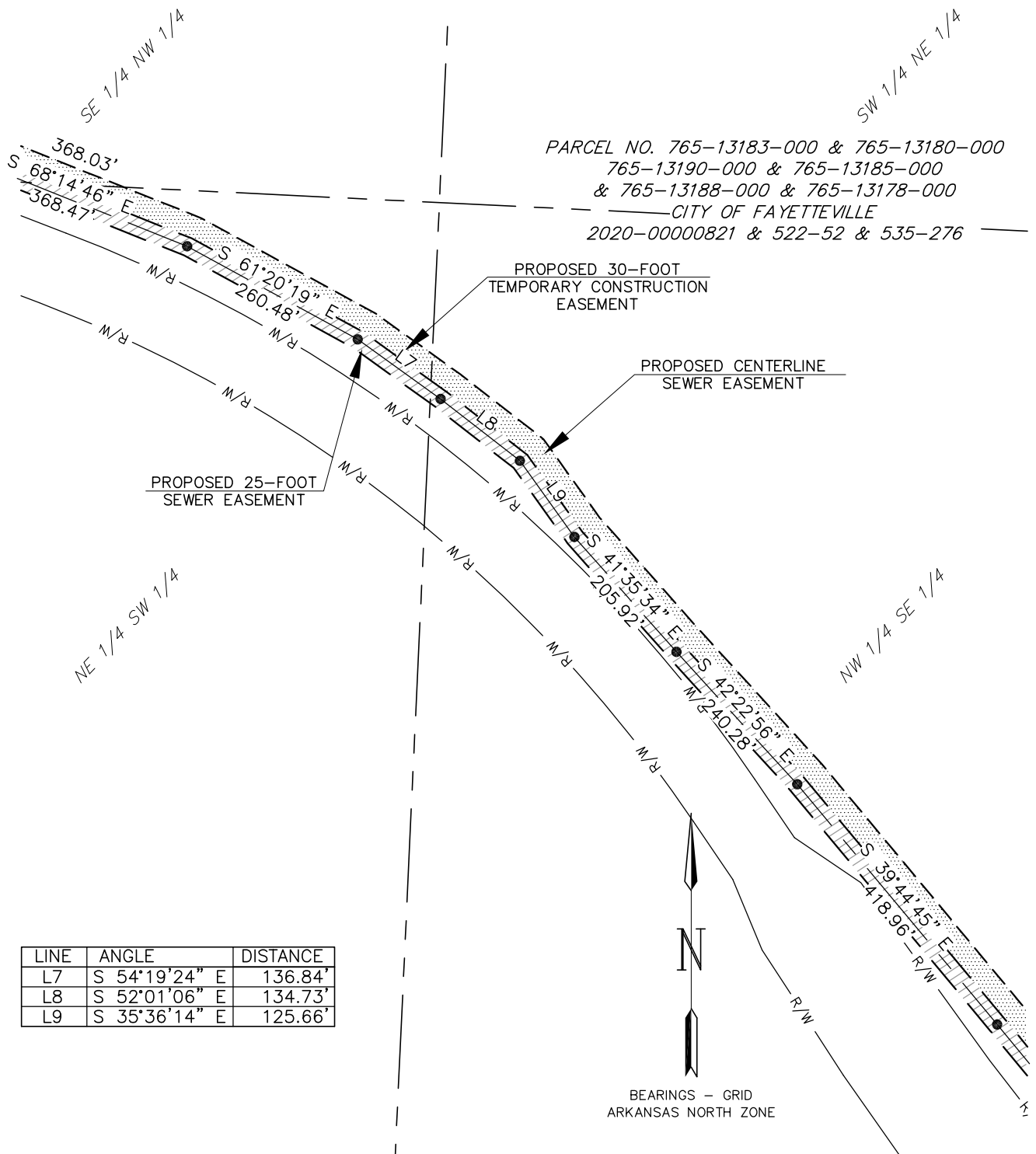


JOB NO.
19W01210

DATE
JULY 15, 2022

"EXHIBIT A"

TRACT
2



LEGEND

— PL —	— PL —	EXISTING PROPERTY LINE
— R/W —	— R/W —	EXISTING RIGHT OF WAY LINE
— — —	— — —	EXISTING EASEMENT LINE
— — —	— — —	PROPOSED EASEMENT LINE
— — —	— — —	PROPOSED TEMP. CONST. EASEMENT LINE

THIS EXHIBIT IS A SKETCH DESCRIPTIVE ONLY OF THE SIZE, SHAPE AND LOCATION OF THE PROPOSED EASEMENTS AND DOES NOT CONSTITUTE A PLAT OR SURVEY OF THE GRANTOR'S PROPERTY.

PAGE 2 OF 3



2049 EAST JOYCE BOULEVARD
SUITE 400
FAYETTEVILLE, ARKANSAS 72704
479 527-9100

CITY OF ELKINS
ELKINS, ARKANSAS

ELIKINS WASTEWATER
COLLECTION SYSTEM IMPROVEMENTS

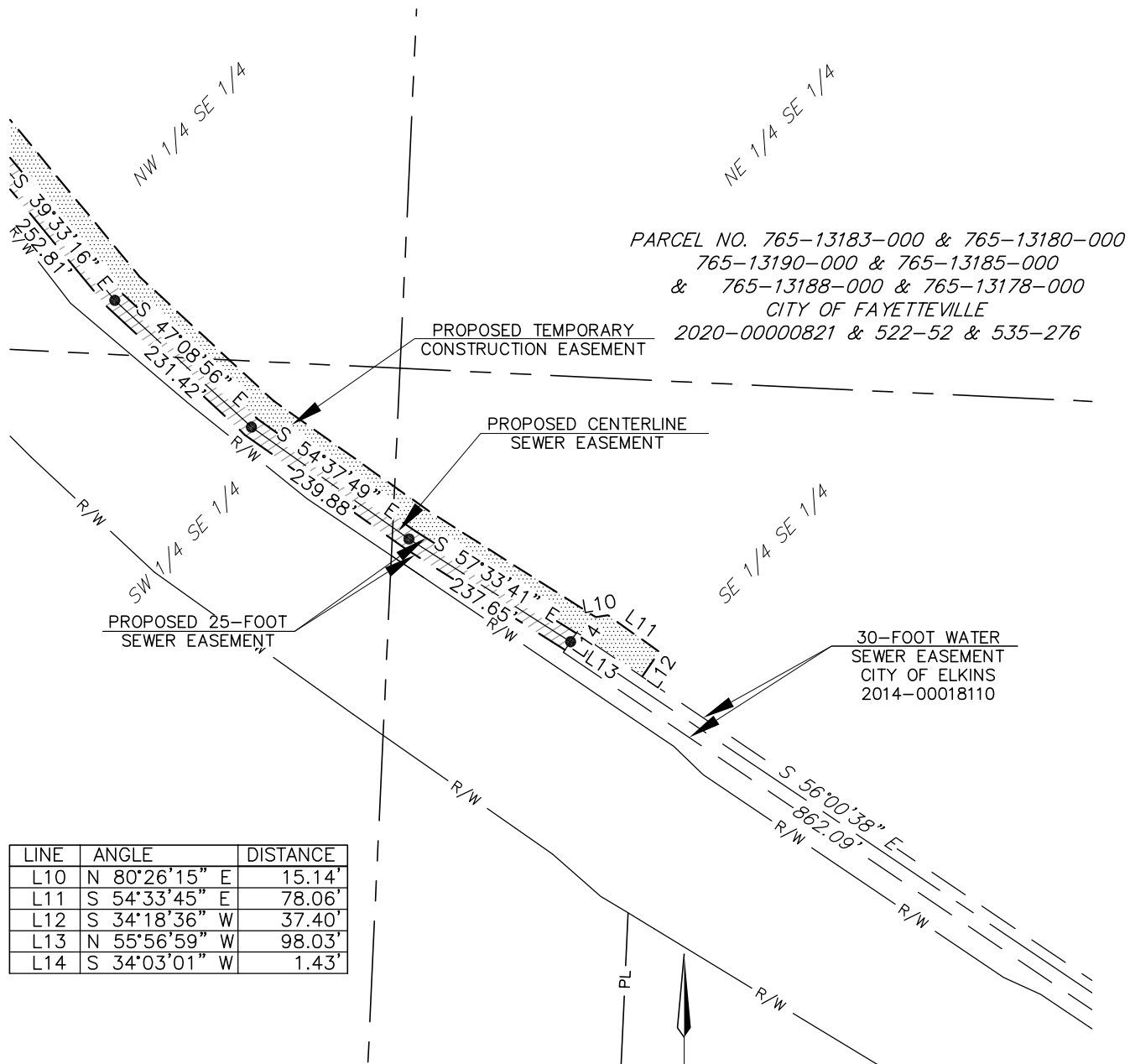


JOB NO.
19W01210

DATE
JULY 15, 2022

"EXHIBIT A"

TRACT
2



LEGEND

— PL — PL —	EXISTING PROPERTY LINE
— R/W —	EXISTING RIGHT OF WAY LINE
— — —	EXISTING EASEMENT LINE
— — —	PROPOSED EASEMENT LINE
— — —	PROPOSED TEMP. CONST. EASEMENT LINE

THIS EXHIBIT IS A SKETCH DESCRIPTIVE ONLY OF THE SIZE, SHAPE AND LOCATION OF THE PROPOSED EASEMENTS AND DOES NOT CONSTITUTE A PLAT OR SURVEY OF THE GRANTOR'S PROPERTY.

PAGE 3 OF 3



2049 EAST JOYCE BOULEVARD
SUITE 400
FAYETTEVILLE, ARKANSAS 72704
479 527-9100

CITY OF ELKINS
ELKINS, ARKANSAS

ELIKINS WASTEWATER
COLLECTION SYSTEM IMPROVEMENTS



JOB NO.
19W01210

DATE
JULY 15, 2022

"EXHIBIT A"

TRACT
2

“EXHIBIT B”

Tract: 2

Parcel: 765-13183-000 & 765-13180-000 & 76-13190-000 & 765-13188-00 & 765-1385-000
& 765-13178-000

Owner: City of Fayetteville

SEWER EASEMENT DESCRIPTION

A part of the South Half (S1/2) of the Northwest Quarter (NW1/4) and the Northeast Quarter (NE1/4) of the Southwest Quarter (SW1/4) and the West Half (W1/2) of the Southeast Quarter (SE1/4) and Southeast Quarter (SE1/4) of the Southeast Quarter (SE1/4) all in of Section Twenty-one (21), Township Sixteen (16) North, Range Twenty-nine (29) West, Washington County, Arkansas, being more particularly described as follows:

COMMENCING at the Southwest corner of said South Half (S1/2) the Northwest Quarter (NW1/4); thence S 87°12'50" E along the South line of said of said South Half (S1/2) of the Northwest Quarter (NW1/4) a distance of 896.13 feet; thence leaving said South line N 02°44'48" E a distance of 230.71 feet to the Centerline of a Twenty-five foot Sewer Easement being the **POINT OF BEGINNING** of said Centerline; thence along said centerline the following: N 67°57'34" E a distance of 33.43 feet, S 80°20'24" E a distance of 320.56 feet, S 34°20'08" E a distance of 26.64 feet, S 81°10'41" E a distance of 177.13 feet, S 81°49'12" E a distance of 450.72 feet, S 41°17'06" E a distance of 111.39 feet, S 68°14'46" E a distance of 368.47 feet, S 61°20'19" E a distance of 260.48 feet, S 54°19'24" E a distance of 136.84 feet, S 52°01'06" E a distance of 134.73 feet, S 35°36'14" E a distance of 125.66 feet, S 41°35'34" E a distance of 205.92 feet, S 42°22'56" E a distance of 240.28 feet, S 39°44'45" E a distance of 418.96 feet, S 39°33'16" E a distance of 252.81 feet, S 47°08'56" E a distance of 231.42 feet, S 54°37'49" E a distance of 239.88 feet, S 57°33'41" E a distance of 237.65 feet to the West line of an existing 30-foot Water Sewer easement recorded in file 2014-00018110 and the end of said Centerline, containing 98,888 square feet or 2.27 acres, more or less as shown on Exhibit "A". The side lines of the Easement shall be lengthened or shortened to terminate at said West line of the subject property and the said West line of existing 30-foot Water Sewer easement, as shown on "Exhibit A".

ALSO:

A Temporary Construction Easement containing 120,207 square feet, or 2.76 acres more or less, being North and East of and adjacent to the above-described Utility Easement and 530 square feet, or 0.01 acre South of and adjacent to the above-described Sewer Easement as shown on "Exhibit A".

UTILITY EASEMENT

TRACT NO: 3

PARCEL NO: 765-13178-000 & 765-13197-000

STATE OF ARKANSAS COUNTY OF WASHINGTON

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of \$1.00 and other valuable considerations to the undersigned, City of Fayetteville, the receipt of which is hereby acknowledged, the said Grantor does hereby GRANT, SELL AND CONVEY unto the **CITY OF ELKINS**, an Arkansas municipal corporation (herein styled Grantee), its successors and assigns, the perpetual right of way and easement for the purpose of constructing, maintaining, inspecting, operating, testing, and repairing and replacing public water transmission line(s) and/or sewer collection or force main line(s) and related facilities on, over, across and under the following described real estate located in Washington County, Arkansas, to-wit:

Property Description

As described in Record Deed: Book 522, Page 52 and Book 535, Page 276

Permanent Water and Sewer Easement and Temporary Construction Easement

See attached "Exhibit A" and "Exhibit B".

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, forever or until said easement is fully abandoned.

The Grantor hereby covenants that Grantor is lawfully seized of said land and premises, and Grantor will forever warrant and defend the title to said lands against all legal claims whatsoever. The Grantor agrees not to interfere with the operation of any utility infrastructure or facilities in any way. The Grantor agrees not to erect any building, structures or fences in said utility easement. No trees shall be planted or permitted by Grantor on said utility easement. Grantor shall not be entitled to any compensation for fences or growing crops removed or disturbed within this utility easement by virtue of Grantee's exercise of the rights under this agreement. The

Grantor agrees not to permit any other utilities to be located in the easement without the written consent of Grantee.

As further consideration for the utility easement rights granted herein, it shall be Grantee's responsibility to ensure that, upon completion of construction, any driveway, parking area or fence moved, taken down, damaged or otherwise altered by Grantee or its contractor(s) during and as a result of construction is returned to the same or better condition as existed immediately prior to construction. Further, it shall be Grantee's responsibility to ensure that any yard, pasture or field lying within the easement area which is damaged by Grantee or its contractor(s) during construction shall be repaired using the same type and variety of grass as predominated the easement area immediately prior to construction.

The consideration recited herein is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

It is hereby understood and agreed that the party securing this grant in behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

TEMPORARY CONSTRUCTION EASEMENT

Grantor does further hereby grant, bargain and convey unto the said Grantee and unto Grantee's successors and assigns, agents, employees, and contractors a non-exclusive temporary construction easement for the construction and installation of utility and other related improvements upon, along and across Grantor's property described above.

The temporary construction easement shall be used by the Grantee only during periods of actual construction and installation activity and for any necessary restoration of the easement property to a clean, slightly and safe condition, with all rubbish, trash and debris removed therefrom, and all such construction, installation and restoration is to be done and completed by and under the Grantee's supervision and at the sole expense of the Grantee.

The temporary construction easement shall terminate when this project has been completed and accepted by the City of Elkins, Arkansas.

IN WITNESS WHEREOF, the Grantor hereunto sets his hand and seal this _____ day of _____, 20__

Grantor:

City of Fayetteville

BY:

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

On this day came before me, a Notary Public within and for the State and County aforesaid, personally appear _____, to me known (or satisfactorily proven) to be the identical persons who executed the within and foregoing instrument and acknowledge to me that they executed the same as their free and voluntary acct and deed for the uses and purposes therein set forth.

WITNESS my hand and seal as such Notary Public on this _____day of _____, 20__.

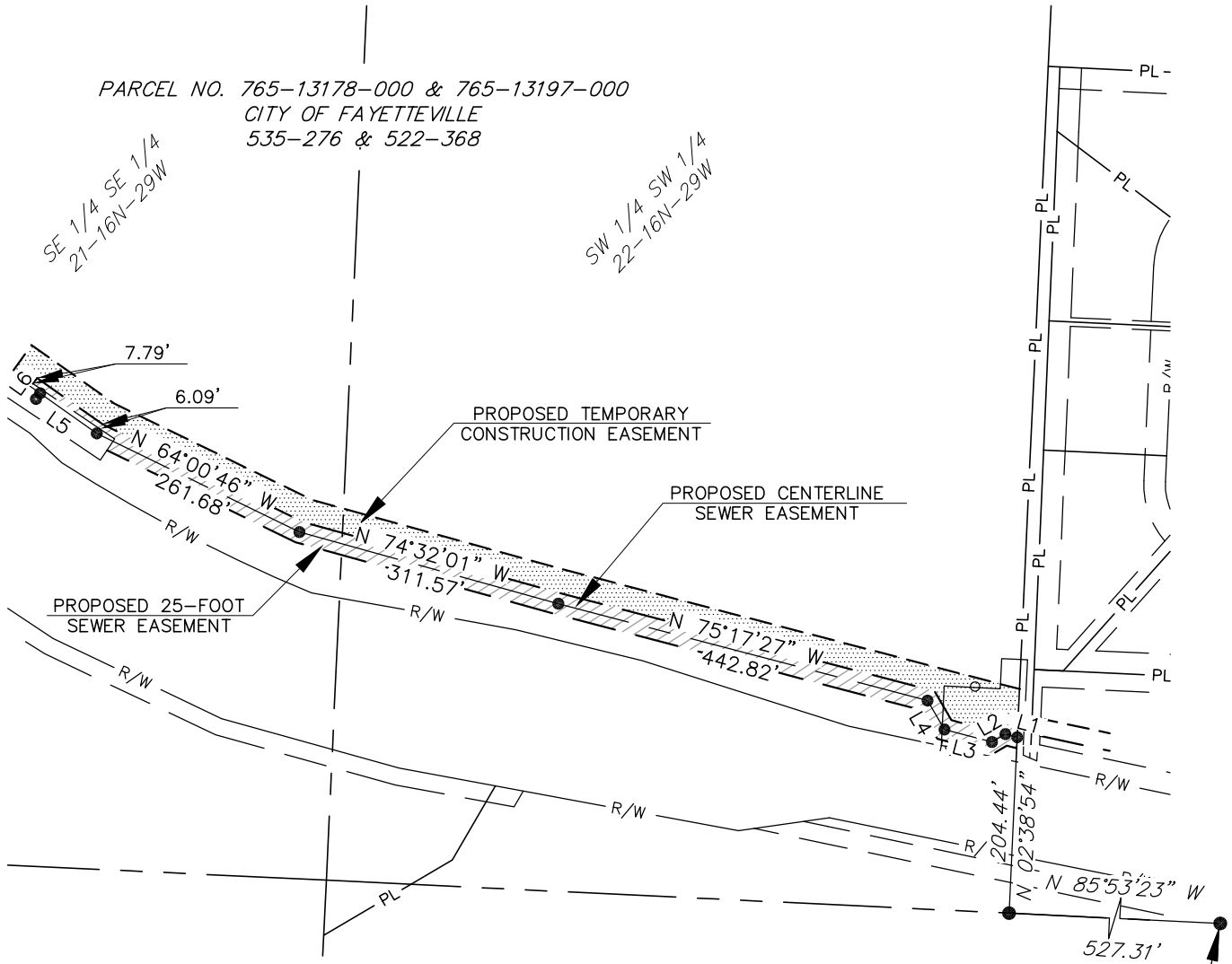
Notary Public

My Commission Expires:

PARCEL NO. 765-13178-000 & 765-13197-000
CITY OF FAYETTEVILLE
535-276 & 522-368

SE 1/4 SE 1/4
21-16N-29W

SW 1/4 SW 1/4
22-16N-29W



LINE	ANGLE	DISTANCE
L1	N 75°17'27" W	14.14'
L2	S 59°42'33" W	18.07'
L3	N 75°17'27" W	56.94'
L4	N 30°17'27" W	38.93'
L5	N 54°49'08" W	81.09'
L6	S 35°26'15" W	8.22'

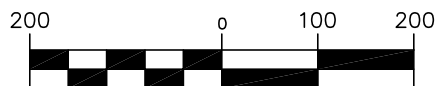
AREA CALCULATIONS	SQ. FT.	ACRES
PROPOSED UTILITY EASEMENT	28,884	0.66
PROPOSED TEMP. CONST. EASEMENT	36,205	0.83

LEGEND

— PL — PL —	EXISTING PROPERTY LINE
— R/W —	EXISTING RIGHT OF WAY LINE
— — —	EXISTING EASEMENT LINE
— — —	PROPOSED EASEMENT LINE
— — —	PROPOSED TEMP. CONST. EASEMENT LINE

BEARINGS — GRID
ARKANSAS NORTH ZONE

GRAPHIC SCALE



(IN FEET)
1 inch = 200 ft.

THIS EXHIBIT IS A SKETCH DESCRIPTIVE ONLY OF THE SIZE, SHAPE AND LOCATION OF THE PROPOSED EASEMENTS AND DOES NOT CONSTITUTE A PLAT OR SURVEY OF THE GRANTOR'S PROPERTY.



2049 EAST JOYCE BOULEVARD
SUITE 400
FAYETTEVILLE, ARKANSAS 72704
479 527-9100

CITY OF ELKINS
ELKINS, ARKANSAS

ELIKINS WASTEWATER
COLLECTION SYSTEM IMPROVEMENTS



JOB NO.
19W01210

DATE
JULY 15, 2022

"EXHIBIT A"

TRACT
3

“EXHIBIT B”

Tract: 3

Parcel: 765-13178-000 & 765-13197-000

Owner: City of Fayetteville

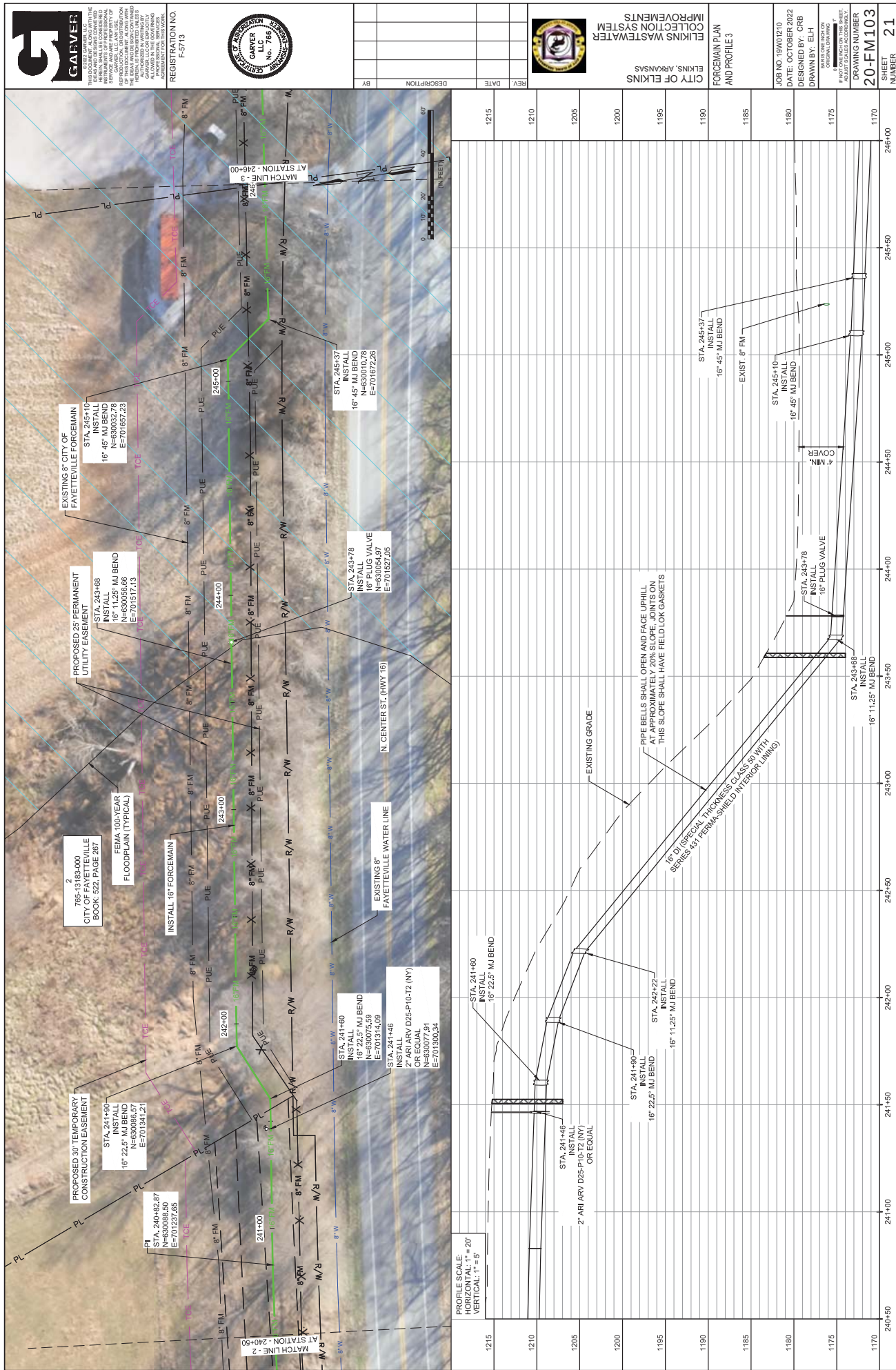
SEWER EASEMENT DESCRIPTION

A part of the Southeast Quarter (SE1/4) of the Southeast Quarter (SE1/4) of Section Twenty-one (21) and the Southwest Quarter (SW1/4) of the Southwest Quarter (SW1/4) of Section Twenty-two (22) all in Township Sixteen (16) North, Range Twenty-nine (29) West, Washington County, Arkansas, being more particularly described as follows:

COMMENCING at the Southeast corner of said Southwest Quarter (SW1/4) of the Southwest Quarter (SW1/4); thence N 85°53'23" W along the South line of said of said Southwest Quarter (SW1/4) of the Southwest Quarter (SW1/4) a distance of 527.31 feet; thence leaving said South line N 02°38'54" E a distance of 204.44 feet to the Centerline of a Twenty-five foot Sewer Easement being the **POINT OF BEGINNING** of said Centerline; thence along said Centerline the following: N 75°17'27" W a distance of 14.14 feet, S 59°42'33" W a distance of 18.07 feet, N 75°17'27" W a distance of 56.94 feet, N 30°17'27" W a distance of 38.93 feet, N 75°17'27" W a distance of 442.82 feet, N 74°32'01" W a distance of 311.57 feet, N 64°00'46" W a distance of 261.68 feet, N 54°49'08" W a distance of 81.09 feet, S 35°26'15" W a distance of 8.22 feet to the North line of an existing 30-foot Water Sewer easement recorded in file 2014-00018110 and the end of said Centerline, containing 28,884 square feet or 0.66 acres, more or less as shown on Exhibit "A". The side lines of the Easement shall be lengthened or shortened to terminate at said East line of the subject property and the North line of said existing 30-foot Water Sewer easement, as shown on "Exhibit A".

ALSO:

A Temporary Construction Easement containing 36,205 square feet, or 0.83 acres more or less, being North of and adjacent to the above-described Sewer Easement as shown on "Exhibit A".





GARVER
INCORPORATED
10000 N. 100th Ave., Suite 100
Edmonton, CO 80541
Tel: 303.440.1000
Fax: 303.440.1001
www.garverinc.com

REGISTRATION NO.
F-5713





CITY OF ELKINS
ELKINS, ARKANSAS

ELKINS WASTEWATER
COLLECTION SYSTEM
IMPROVEMENTS

FORCEMAIN PLAN
AND PROFILE 3

JOB NO. 19W01210
DATE: OCTOBER 2022
DESIGNED BY: CRB
DRAWN BY: ELH

DRAWING NUMBER
20-FM103

SHEET
NUMBER 21

\\garverinc.local\projects\2019\19w01210 - elkins wastewater improvements\Drawings\20-FM103-PP.dwg Last Saved: 10/11/2022 2:27 PM Last Saved By: ESMahmud









GARVER
ENGINEERS, ARCHITECTS, PLANNERS
1100 EAST 10TH AVENUE, SUITE 100
DENVER, CO 80202
TEL: 303.733.8800
WWW.GARVER.COM

REGISTRATION NO.
F-5713



CITY OF ELKINS
ELKINS WASTEWATER
COLLECTION SYSTEM
IMPROVEMENTS



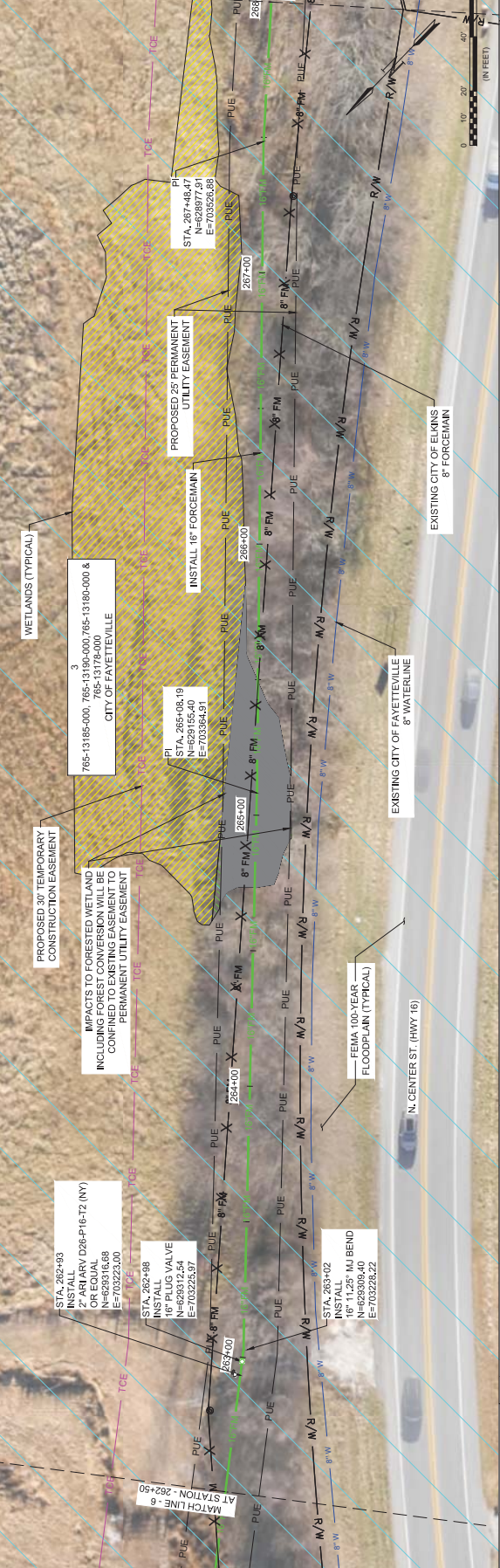
FORCE MAIN PLAN
AND PROFILE 6

JOB NO. 19W01210
DATE: OCTOBER 2022
DESIGNED BY: CRB
DRAWN BY: ELH

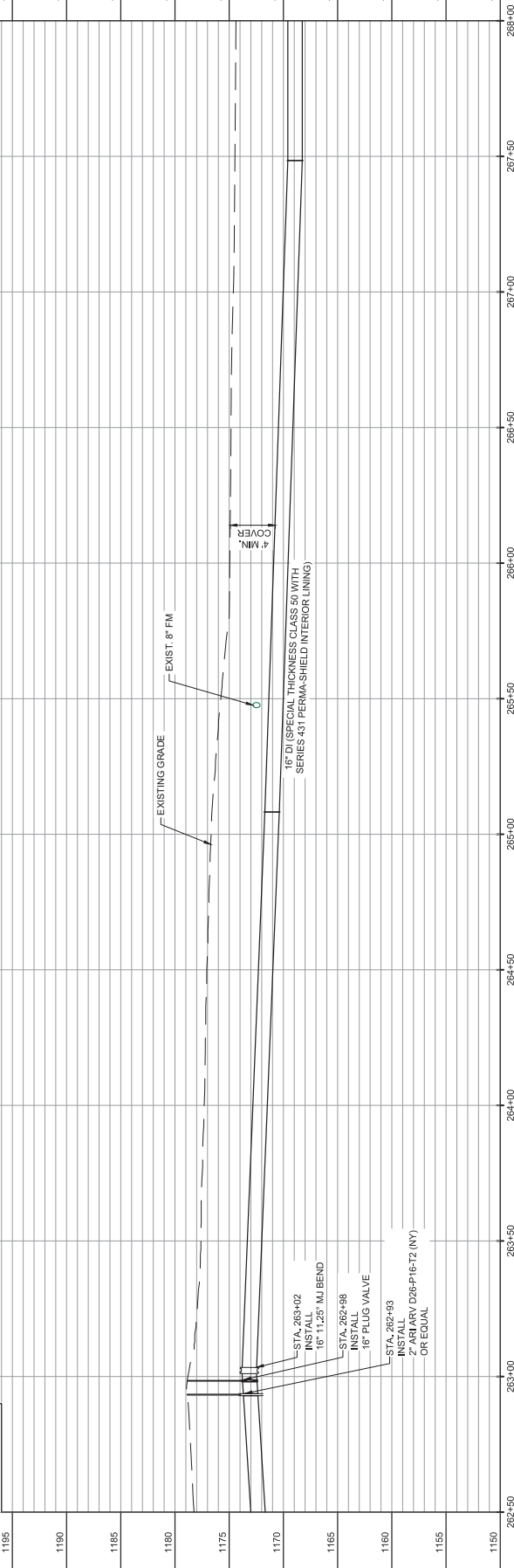
DRAWING NUMBER
20-FM106

SHEET
NUMBER 24

NOTE:
1. PER NATIONWIDE PERMIT 58 GENERAL CONDITIONS
2. ALL PROPOSED TRENCHES SHALL BE REMOVED, SIDECAST
AND BACKFILLED TO PRE-CONSTRUCTION CONTOURS.



PROFILE SCALE:
HORIZONTAL: 1" = 20'
VERTICAL: 1" = 5'





Garver, Inc.
15000 N. 10th Ave., Suite 100
Phoenix, AZ 85021
Tel: 602.998.8800
Fax: 602.998.8801
www.garverinc.com



Garver, Inc.
Professional Engineer
No. 766
State of Arizona

REGISTRATION NO.
F-5713

CITY OF ELKINS
ELKINS WASTEWATER
IMPROVEMENTS

FORCEMAIN PLAN
AND PROFILE 7

JOB NO. 19W01210
DATE: OCTOBER 2022
DESIGNED BY: CRB
DRAWN BY: ELH

DRAWING NUMBER
20-FM107

SHEET
NUMBER 25





GARVER
ENGINEERS, ARCHITECTS, PLANNERS
1500 WEST 10TH AVENUE, SUITE 100
DENVER, CO 80202
TEL: 303.733.8800
WWW.GARVER.COM



GARVER LLC
No. 768
Professional Engineer
State of Arkansas

REGISTRATION NO.
F-5713

REV.	DATE	DESCRIPTION	BY



CITY OF ELKINS
ELKINS, ARKANSAS

**ELKINS WASTEWATER
COLLECTION SYSTEM
IMPROVEMENTS**

**FORCEMAIN PLAN
AND PROFILE 8**

JOB NO. 19W01210
DATE: OCTOBER 2022
DESIGNED BY: CRB
DRAWN BY: ELH

SCALE: ONE INCH = 40 FEET
DRAWING NUMBER
20-FM108

SHEET
NUMBER **26**



NOTE:
1. PER NATIONWIDE PERMIT 58 GENERAL CONDITIONS, ALL EXISTING AND PROPOSED TRENCHES SHALL BE REMOVED, SIDECAST AND BACKFILLED TO PRE-CONSTRUCTION CONTOURS.

GARVER
ENGINEERS, ARCHITECTS, PLANNERS
1000 WEST 10TH AVENUE, SUITE 100
DENVER, CO 80202
TEL: 303.733.8800
WWW.GARVER.COM

GARVER LLC
No. 766
STATE OF ARKANSAS

**ELKINS WASTEWATER
COLLECTION SYSTEM
IMPROVEMENTS**

**CITY OF ELKINS
ELKINS, ARKANSAS**

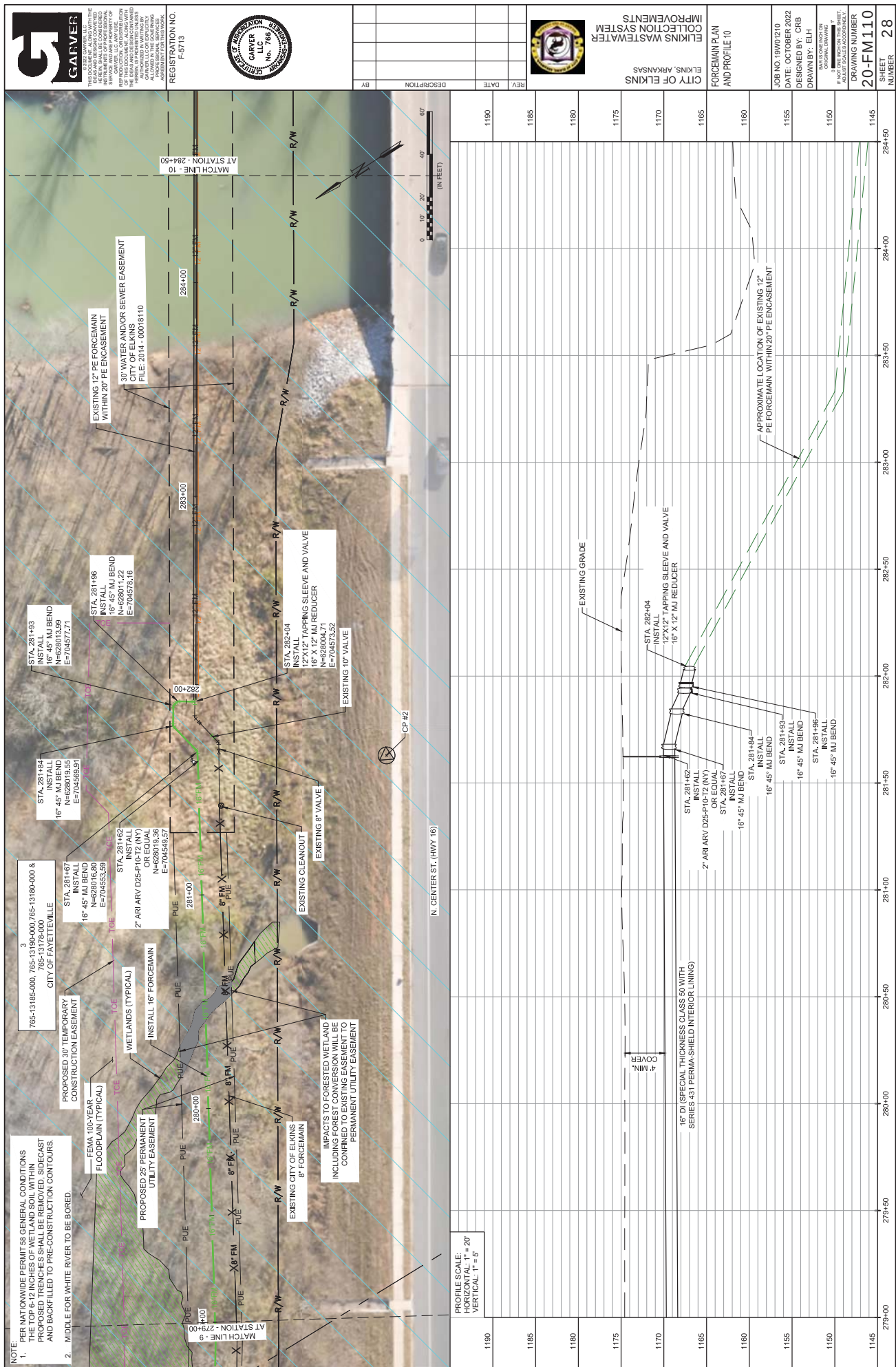
**FORCEMAIN PLAN
AND PROFILE 9**

JOB NO. 19W01210
DATE: OCTOBER 2022
DESIGNED BY: CRB
DRAWN BY: ELH

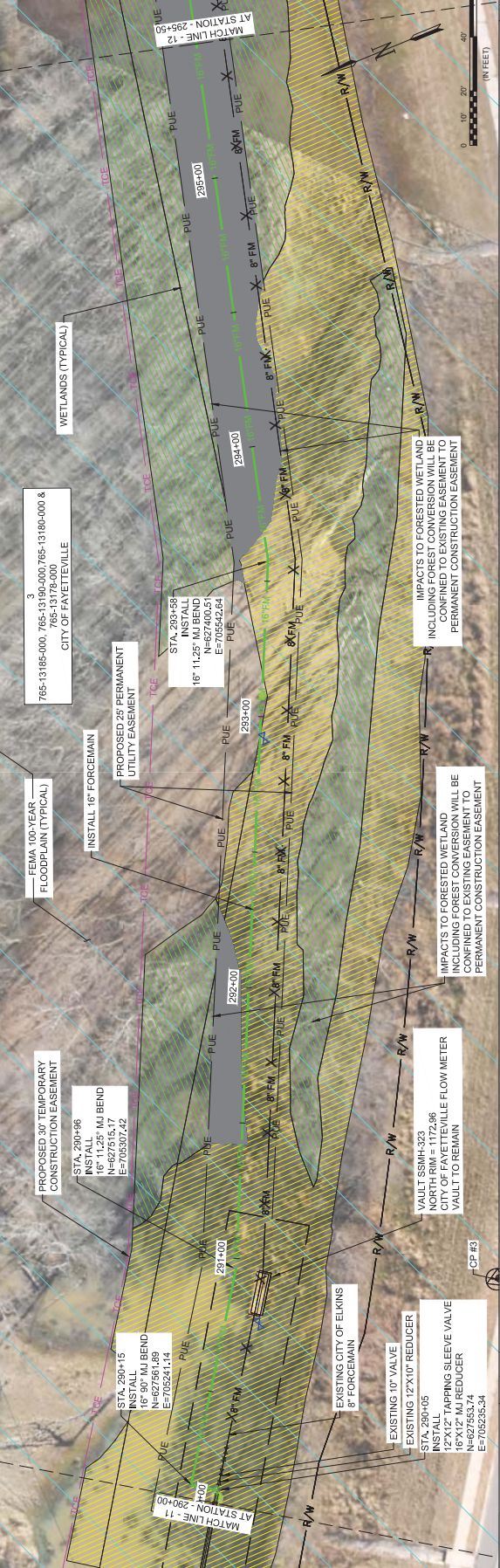
REGISTERED PROFESSIONAL ENGINEER
STATE OF ARKANSAS
NO. 766
EXPIRATION DATE: 12/31/2024

DRAWING NUMBER
20-FM109

SHEET
27



NOTE:
1. PER NATIONWIDE PERMIT 58 GENERAL CONDITIONS
APPLICABLE TO ALL PROJECTS, THE FOLLOWING
PROPOSED TRENCHES SHALL BE REMOVED, SIDECAST
AND BACKFILLED TO PRE-CONSTRUCTION CONTOURS.



STATION	DESCRIPTION	DATE	REV.
1195			
1190			
1185			
1180			
1175			
1170			
1165			
1160			
1155			
1150			



Garver
REGISTERED PROFESSIONAL ENGINEER
No. 7661
Arkansas
No. 7661

REGISTRATION NO.
F-5713





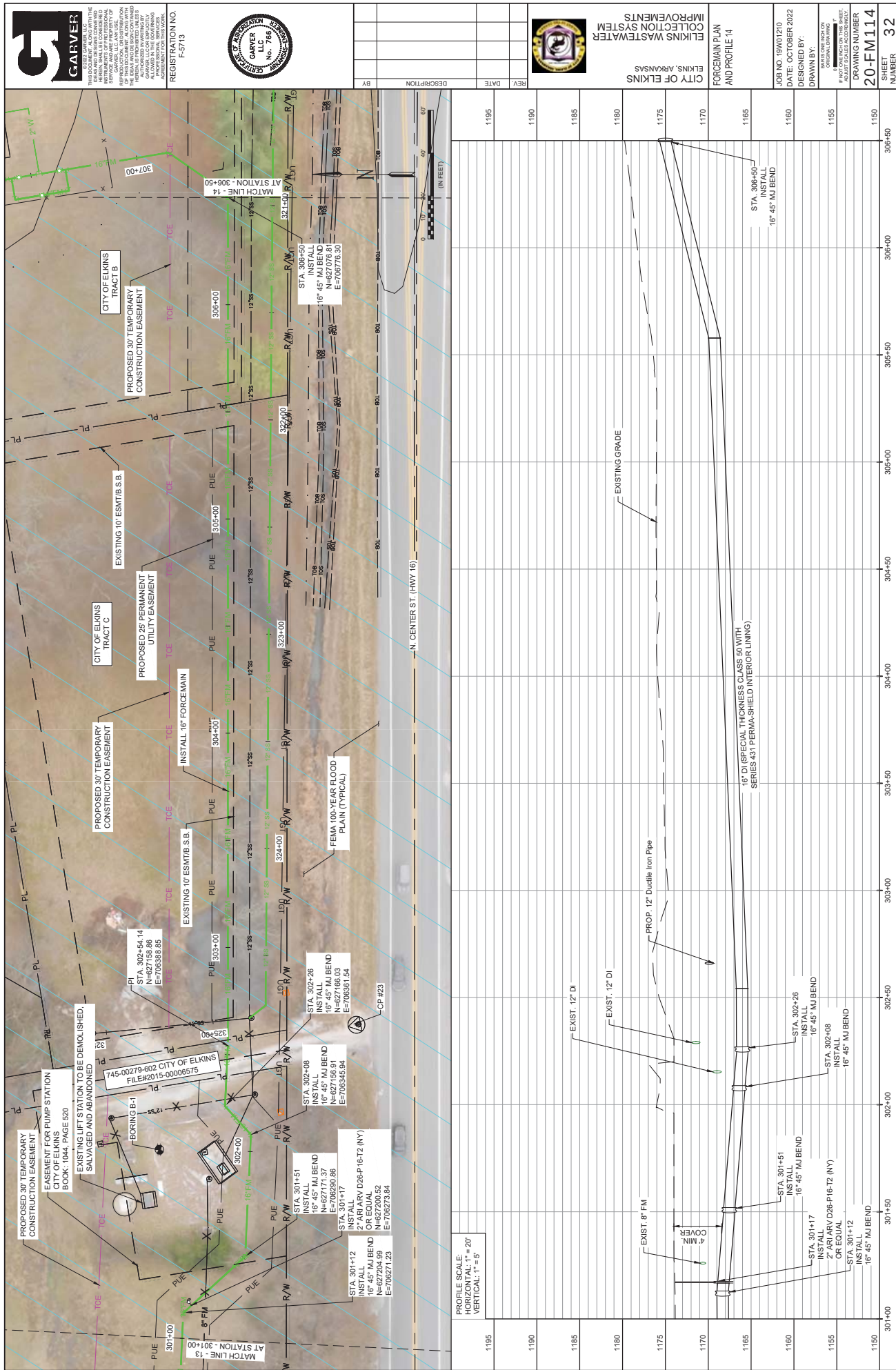
CITY OF ELKINS
ELKINS WASTEWATER
COLLECTION SYSTEM
IMPROVEMENTS

JOB NO. 19W01210
DATE: OCTOBER 2022
DESIGNED BY: CRB
DRAWN BY: ELH

FORCE MAIN PLAN
AND PROFILE 12

DRAWING NUMBER
20-FM112

SHEET
NUMBER 30





Garver, Inc.
1000 N. W. 10th Ave., Suite 100
Fort Lauderdale, FL 33311
Tel: 954.575.1000
Fax: 954.575.1001
www.garver.com



Garver, Inc.
No. 766
Professional Engineer
State of Florida

REGISTRATION NO.
F-5713

ELKINS WASTEWATER
IMPROVEMENTS
CITY OF ELKINS,
ARKANSAS

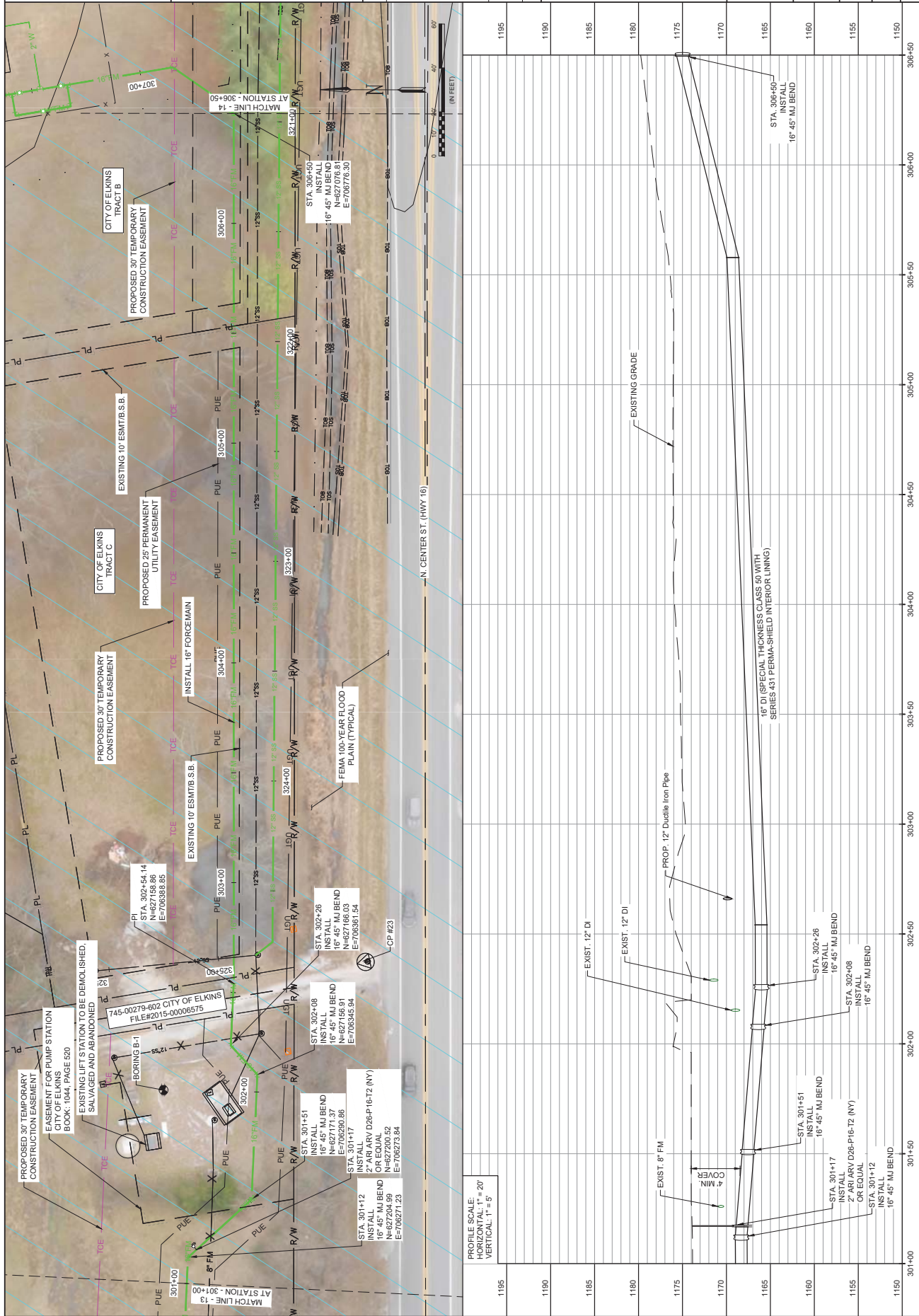


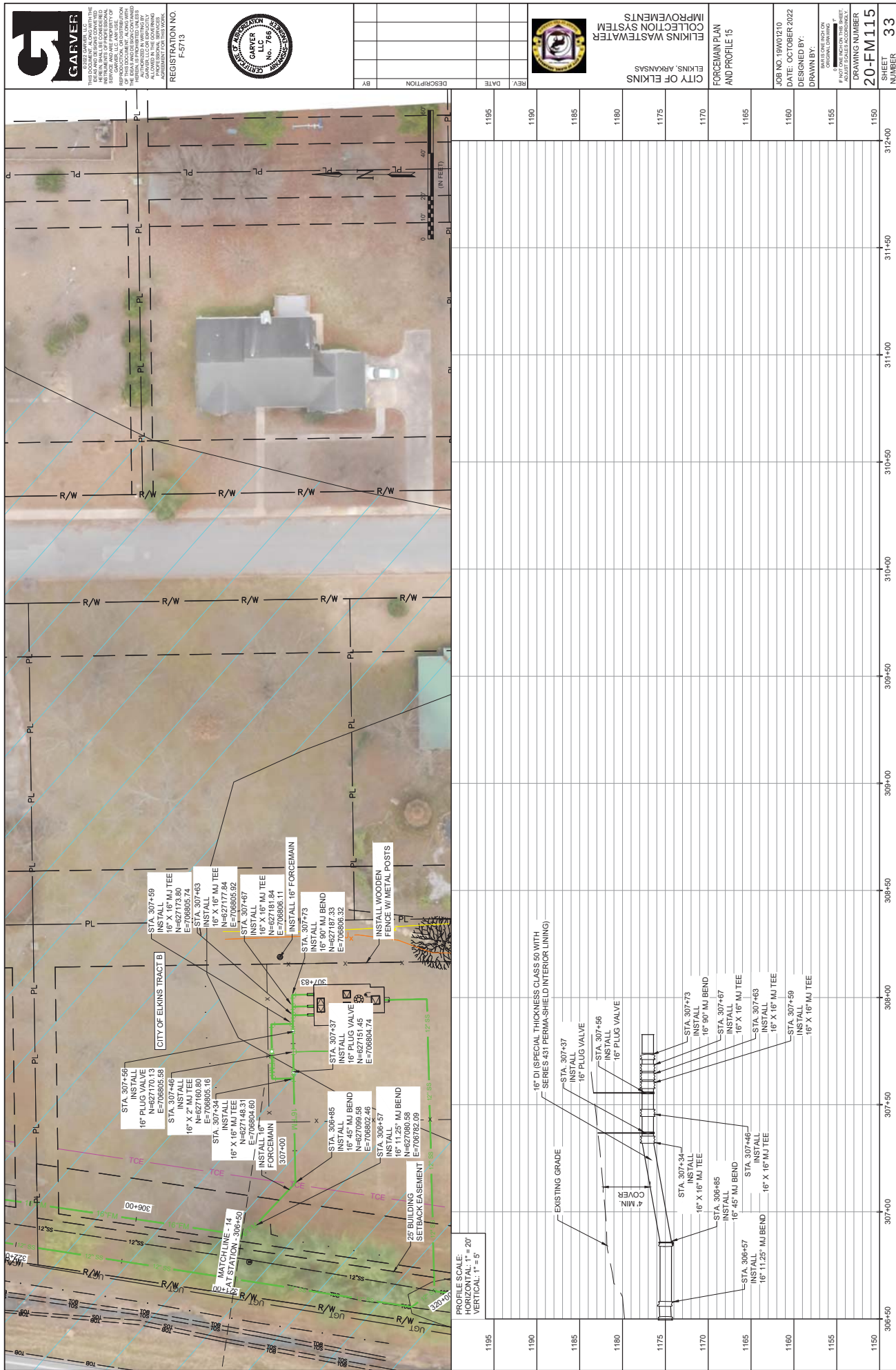
FORCE MAIN PLAN
AND PROFILE 14

JOB NO. 19W01210
DATE: OCTOBER 2022
DESIGNED BY:
DRAWN BY:

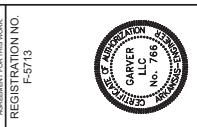
DRAWING NUMBER
20-FM114

SHEET
NUMBER
32





GARVER
REGISTERED PROFESSIONAL ENGINEER
STATE OF ARKANSAS
No. 766
REGISTRATION NO. F-5713



REV.	DATE	DESCRIPTION

CITY OF ELKINS
ELKINS WASTEWATER
IMPROVEMENTS
FORCEMAIN PLAN
AND PROFILE 15
JOB NO. 19W01210
DATE: OCTOBER 2022
DESIGNED BY:
DRAWN BY:
DRAWING NUMBER
20-FM115
SHEET
NUMBER **33**

Profile Scale: Horizontal: 1" = 20', Vertical: 1" = 5'.
1195
1190
1185
1180
1175
1170
1165
1160
1155
1150
306+50 307+00 307+50 308+00 308+50 309+00 309+50 310+00 310+50 311+00 311+50 312+00



MEETING OF MAY 16, 2023

TO: Mayor Jordan and City Council
THRU: Susan Norton, Chief of Staff
FROM: Tim Nyander, Utilities Director
DATE:
SUBJECT: 11th Street Cottages, LLC - Water Cost Share on 11th Street

RECOMMENDATION:

Staff recommends a Cost Share Agreement with 11th Street Cottages, LLC in an amount not to exceed \$47,834.30 for a water line extension near the corner of East 11th Street and South Washington Avenue, and approval of a project contingency in the amount of \$4,783.43.

BACKGROUND:

Infill development is proposed by 11th St Cottages, LLC south of 11th Street between S. Washington Avenue and S. Beebalm Ave. (parcel 765-03341-000). The site is approximately 0.66-ac, currently vacant, and is zoned RIU. The developer proposes to build 9 cottages in a cluster housing development. In order to service these houses, they will need to install a water line from Washington Ave to the corner of the subject property, approximately 174-ft, and then extend it in along the frontage of the property to the middle of the property, an additional approximately 62-ft, for a total of 236-ft.

DISCUSSION:

This waterline would also benefit any future development east and north of this project site. 11th St Cottages, LLC requests a 50% cost share on this waterline installation. The project engineering and permitting has been completed and the developer has secured three contractor quotes. The low quote is from Pavecon for \$87,183.20 and the engineering costs for the project are \$8,485.40 for a total project cost of \$95,668.60. The 50% cost share would therefore total \$47,834.30. Staff also recommends approval of a project contingency in the amount of \$4,783.43.

The cost share agreement was considered by the Water, Sewer and Solid Waste Committee on April 11, 2023, which recommended approval by a vote of 4-0.

BUDGET/STAFF IMPACT:

Funds are available in the Water/Sewer Impact Fee Cost Sharing account.

ATTACHMENTS: SRF 11th Street Cottages, LLC, 11th Street Cottages, LLC - Cost Share Agreement, Exhibit A - Map, Exhibit B - Construction Bids, 11th St Cost Share Proposal, Engineer Fee Estimate 040723



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2023-720

11th Street Cottages, LLC - Water Cost Share on 11th Street

A RESOLUTION TO APPROVE A COST SHARE AGREEMENT WITH 11TH STREET COTTAGES, LLC FOR THE EXTENSION OF AN 8-INCH WATER MAIN NEAR THE CORNER OF EAST 11TH STREET AND SOUTH WASHINGTON AVENUE WITH A REFUND IN AN ESTIMATED AMOUNT OF \$47,834.30 TO BE PAID BY THE CITY OF FAYETTEVILLE, AND TO APPROVE A PROJECT CONTINGENCY IN THE AMOUNT OF \$4,783.43

WHEREAS, 11th Street Cottages, LLC has proposed an infill cluster housing development south of 11th Street between S. Washington Avenue and S. Beebalm Avenue; and

WHEREAS, in order to service this development, 11th Street Cottages will need to install a water line from Washington Avenue to the corner of the subject property, approximately 174 feet, and then extend it along the frontage of the property to the middle of the property, an additional approximately 62 feet, for a total of 236 feet; and

WHEREAS, the installation of an 8-inch water main will allow development of this property and will provide for ample future capacity which the City recognizes will be necessary for the area served by this main; and

WHEREAS, the total cost of the water main extension is estimated to be \$95,668.60 and exceeds the rough proportionality of the development's impact so the City agrees to pay 50% of the cost.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby authorizes Mayor Jordan to sign a cost share agreement with 11th Street Cottages, LLC for the installation of an 8-inch water main near the corner of East 11th Street and South Washington Avenue, with a refund in an amount not to exceed \$47,834.30 to be paid by the City of Fayetteville, and further approves a project contingency in the amount of \$4,783.43.

City of Fayetteville Staff Review Form

2023-720

Item ID

5/16/2023

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Tim Nyander

4/27/2023

WATER SEWER (720)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends a Cost Share Agreement with 11th Street Cottages, LLC in an amount not to exceed \$47,834.30 for a water line extension near the corner of East 11th Street and South Washington Avenue, and approval of a project contingency in the amount of \$4,783.43.

Budget Impact:

5400.720.5600-5808.00

Water and Sewer

Account Number

Fund

04039.1

Water and Sewer Impact Fee Cost Sharing

Project Number

Project Title

Budgeted Item? Yes

Total Amended Budget

\$ 1,261,190.00

Expenses (Actual+Encum)

\$ 307,528.56

Available Budget

\$ 953,661.44

Does item have a direct cost? Yes

Item Cost

\$ 52,617.73

Is a Budget Adjustment attached? No

Budget Adjustment

\$ -

Remaining Budget

\$ 901,043.71

V20221130

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:

CONTRACTUAL AGREEMENT FOR
COST SHARE OF WATER MAIN INSTALLATION COSTS

This Agreement, made and entered into on this _____ day of May, 2023, by and between the City of Fayetteville, Arkansas (“City”) and 11th Street Cottages LLC (“11th Street Cottages”), witnesseth:

WHEREAS, 11th Street Cottages has requested that the City share in the cost of constructing an 8-inch water main near the corner of East 11th Street and South Washington Avenue, a distance of approximately 236 linear feet, so that 11th Street Cottages may develop a property located on East 11th Street; and

WHEREAS, constructing this segment of 8-inch water main will allow development of this property, and will provide for ample future capacity which the City recognizes will be necessary for the area that is served by this water main.

NOW, THEREFORE, the City of Fayetteville, Arkansas and 11th Street Cottages LLC agree as follows:

1. The City of Fayetteville, Arkansas agrees to:

- A. Reimburse 11th Street Cottages LLC for 50.0% of the cost to install approximately 236 linear feet of 8-inch water main in the area identified in Exhibit “A” up to a maximum-not-to-exceed amount of **\$47,834.30**, as was estimated by the builder’s representatives and shown on Exhibit “B”, attached.
- B. Payments due to 11th Street Cottages LLC, shall be remitted within sixty (60) days after receipt of valid invoices.

2. 11th Street Cottages LLC agrees to:

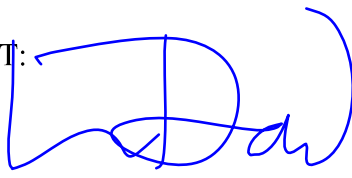
- A. Provide the necessary and normal project management, inspection, and testing as necessary for a complete and acceptable water main installation, including submittal of plans and specifications to the City’s Engineering Department, per their standard procedures.
- B. Provide a copy of the invoices from the Contractor upon City approval of the water main upgrade.
- C. Pay for the water main installation (with reimbursement of 50.0% of the cost by the City of Fayetteville in a not-to-exceed amount of **\$47,834.30**).

**IN AGREEMENT WITH ALL THE TERMS AND CONDITIONS ABOVE, WE
SIGN BELOW:**

11th STREET COTTAGES LLC

By: 
LAWRENCE FINN,
Managing Manager

ATTEST:

By: 
LAUREL DAVID, MEMBER

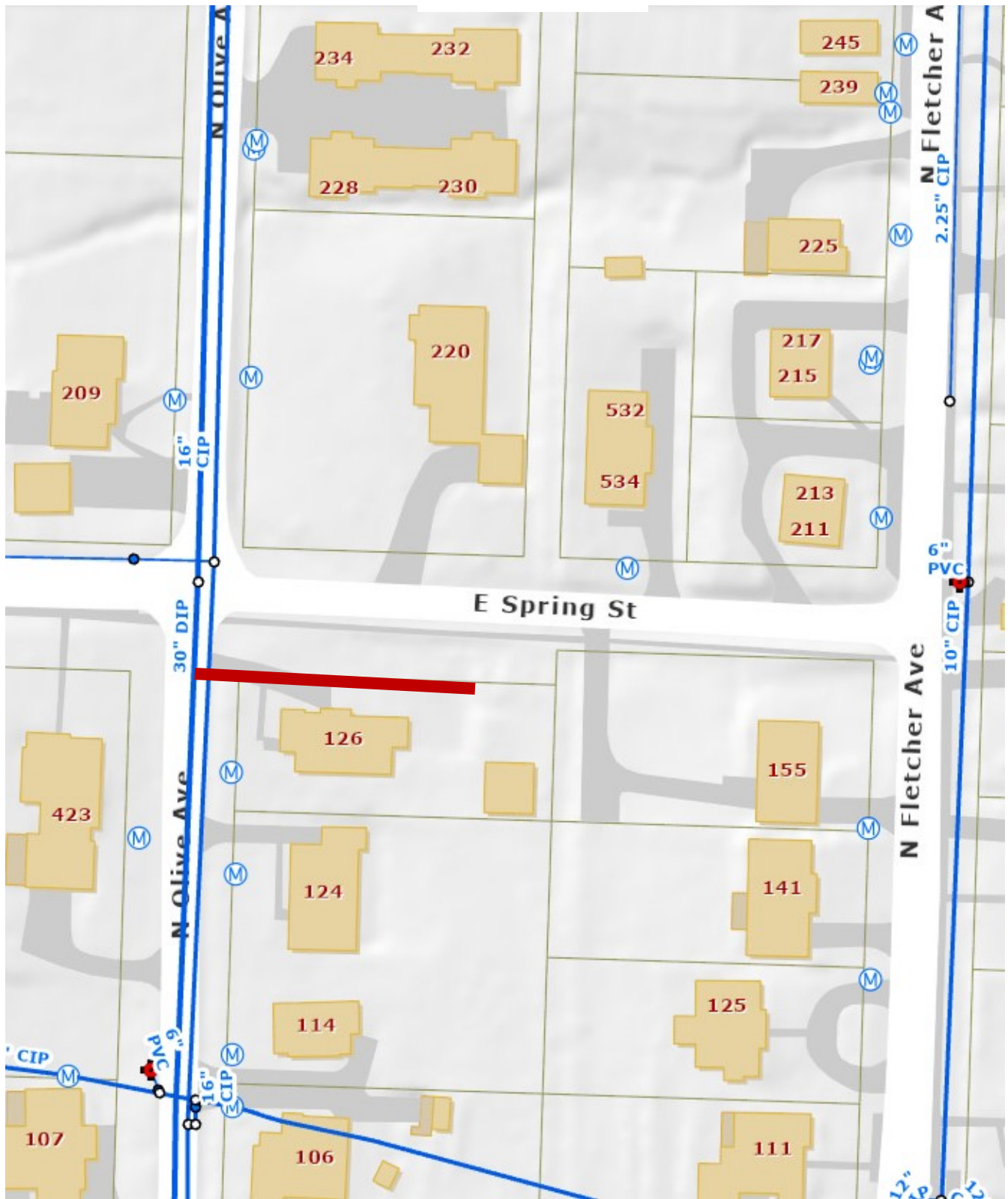
CITY OF FAYETTEVILLE, ARKANSAS

By: _____
LIONELD JORDAN, Mayor

ATTEST:

By: _____
KARA PAXTON, City Clerk

EXHIBIT A



PROPOSED WATER LINE EXTENSION
(Approximately 236 linear feet)

EXHIBIT B

Community By Design
100 West Center Street, Suite 300
Fayetteville, Arkansas 72701
Phone: (479) - 790 - 6775

11th Street Cottages - Water improvements Cost Share Bid Summary 3.24.23

Schedule 1
11th Street Water Main - Per Plans Dated 11/18/22
Public Infrastructure Cost Estimate - Draft
1/6/2023

	Quantity	Unit	Unit Cost	Total Cost
1 Tap Water Main - Tap Sleeve, Valve, Pavement Repair	1	Each	\$11,900.00	\$11,900.00
2 8 inch - PVC Water Main	236	L.F.	\$105.00	\$24,780.00
3 8 inch - Gate Valve	1	Each	\$3,528.00	\$3,528.00
4 2 inch - Gate Valve	1	Each	\$1,722.00	\$1,722.00
7 Fittings	1	Each	\$3,563.00	\$3,563.00
5 Pavement Repair - - Cut and T-patch	236	L.F.	\$49.00	\$11,564.00
6 Mill and Overlay Pavement	1	Each	\$21,000.00	\$21,000.00
8 Testing	1	Each	\$2,100.00	\$2,100.00
9 Engineering	1	Each	\$8,485.40	\$8,485.40
Total				\$88,642.40

BID QUOTES (REFERENCE ATTACHED) - PURSUANT TO APPROVED PERMIT PLANS (11/18/22) SCOPE OF WORK HIGHLIGHTED ABOVE:

GROUND ZERO - BID \$98,848 (add engineering \$8,485) = \$107,333

S & G PLUMBING - BID \$108,494 (add engineering \$8,485) = \$116,988

PAVECON - BID - BID \$87,183 (add engineering \$8,485) = \$95,668 (low bid)



Sewer & Water

Item #		Quantity	Unit	Unit Price	Bid Amount
1	Sewer System				\$ 50,700.00
1	8" Sanitary Sewer line (SDR-26 PVC) w/ full depth gravel backfill under the paved areas	115	LF	\$ 93.00	\$ 10,695.00
2	4" Sewer Services	9	EA	\$ 3,200.00	\$ 28,800.00
3	Connection to Existing Manhole	2	EA	\$ 3,400.00	\$ 6,800.00
4	Sanitary Sewer Manholes (6'-10' Depth)	2	EA	\$ 5,710.00	\$ 11,420.00
5	Testing of Sanitary Sewer System	115	LF	\$ 10.00	\$ 1,150.00
6	Sewer Maintenance Bond 25% for 2 Years	1	LS	\$ 835.00	\$ 835.00

2	Water System				\$ 72,675.20
1	8"C900 DR-18 PVC Water Main (0 - 6') Including gravel bedding & backfill	240	LF	\$ 107.00	\$ 25,680.00
2	Water Meter Array **Service lines beyond meter sets by others.**	9	EA	\$ 3,300.00	\$ 29,700.00
3	Waterline Connection - 6 x 6 Tapping Assemblies	1	EA	\$ 6,100.00	\$ 6,100.00
4	8" Gate Valve	1	EA	\$ 2,800.00	\$ 2,800.00
5	Fittings & Thrust Blocking	1	LS	\$ 5,500.00	\$ 5,500.00
6	Chlorination & Testing of Water System	240	LF	\$ 8.00	\$ 1,920.00
7	Water Maintenance Bond 25% for 2 Years	1	LS	\$ 975.20	\$ 975.20

\$42,975.20

8	Landscaping				\$ 98,579.00
1	Retaining Wall	1	LS	\$ 72,904.00	\$ 72,904.00
2	4" Topsoil / Seed & Straw	1	LS	\$ 7,500.00	\$ 7,500.00
3	Installation of Trees	11	EA	\$ 825.00	\$ 9,075.00
4	Irrigation - Automatic Lawn System	1	EA	\$ 9,100.00	\$ 9,100.00

Pavecon Budget Total =

4	Site Concrete				\$ 44,208.00
1	Mill and Overlay 11th Street	2,900	SF	\$ 13.52	\$ 39,208.00
2	Street T-Patch	1,000	SF	\$ 5.00	\$ 5,000.00

Lawrence Finn

From: herb.harrisjr@cox.net
Sent: Wednesday, December 14, 2022 9:57 AM
To: 'Lawrence Finn'
Cc: groundzrod@cox.net
Subject: 11th St Cottages

Lawrence

Breakout for water is \$98,848.69

Labor: \$50,116.29

Materials: \$48,732.40

Let me know if you need anything else.

Herb Harris Jr.

Project Manager/Lead Estimator

Ground Zero Construction, Inc.

Phone: 918-422-5354 Mobile: 479-957-2966

P.O. Box 830, Siloam Springs, AR 72761

Web: www.groundzeroconstruction.org

Email: herb.harrisjr@cox.net

**GROUND
ZERO
CONSTRUCTION, INC**

From: Sandra Clegg <clegg0209@yahoo.com>
Sent: Sunday, February 5, 2023 3:23 PM
To: Lawrence Finn
Subject: Re: 11th Street Cottages - South Fayetteville (WATER & SEWER)

PROPOSAL:

FROM: S & G PLUMBING

P.O. BOX 8457

FAYETTEVILLE , ARKANSAS 72703

ATTN: LAWRENCE FINN

RE: UTILITY WORK 11 ST. COTTAGES - SOUTH FAYETTEVILLE , AR

NOTE:

WATER MAIN EXTENSION

WATER METER BANK (AS PER CITY OF FAYETTEVILLE)

WATER SERVICE TO NINE PROPOSED COTTAGES

WATER BANK WILL BE SET UP FOR TWELVE

SEWER MAIN EXTENSION AS PER PLANS AND SPEC

TIE INTO EXISTING MAN HOLE AS PER CITY OF FAYETTEVILLE

BUILD TWO MAN HOLE AS PER CITY OF FAYETTEVILLE

SEWER SERVICE TO NINE COTTAGES WITH 6" PVC SCH 40

CLEAN OUTS AS PER CITY OF FAYETTEVILLE

INCLUDED:

ALL HAUL OFF

STREET CUT

BACK FILL STREET WITH COMPACTED SB-2

PATCH CITY STREET WITH T PATCH DETAIL (ASPHALT PATCH BY OTHER)

ALL CURB STOPS

ALL SHUT OFF TO EACH COTTAGE WITH BOX (PRESSURE REGULATOR BY OTHER)

EXCLUDED:

ANY ROCK REMOVAL

ANY IMPACT OR DEVELOPMENT FEE'S

ANY ENGINEERING

ANY ENGINEERING INSPECTION

ANY COMPACTION TESTING

~~TOTAL THIS PROPOSAL. \$ 203,157.41~~

SCHULE OF VALUES

~~WATER SERVICES. \$ 14,860.00~~

CONCRETE T PATCH. \$ 11,265.20

WATER MAIN. \$ 82,669.88

~~WATER METERS. \$ 15,158.79~~

~~SEWER \$ 51,940.00~~

=====

~~TOTAL. \$ 175,893.87~~

5% O.H. 8,794.69

=====

~~TOTAL. \$ 184,688.56~~

10 %. PROFIT. 18,468.85

\$93,934 water service

\$4,696 5% O.H

\$9,863 10% Fee

\$ 108,494 TOTAL

January 28, 2023

Zara Niederman
11th St Cottages, LLC
632 Bella Vista Rd.
Bentonville, AR 72712

Mr. Tim Nyander
Water and Sewer Department
City of Fayetteville
CC: Mr. Corey Granderson

Dear Mr Nyander,

I am writing to submit a request for consideration of a Cost Share for a water line on 11th St just east of S Washington Ave, and on the southern entrance to the Willow Bend subdivision. The site is approximately 2/3 of an acre, and is zoned RIU. We are looking at building 9 cottages in a cluster housing development. In order to service these houses, we will need to install a water line from Washington Ave to our the corner of our property, approximately 174', and then extend it in along the frontage of our property to the middle of the property, an additional approximately 62', for a total of 236'.

This service will benefit our development, but it will also have the potential to benefit our neighbor to the west, , who may be able to use this to build more units on his vacant lot. In addition, it may provide a future benefit to our neighbor across the street, 1090 S Washington, as well as all of the lots to the north of that lot, which are bordered on both sides by alley right-of-ways, but with no current utility services. It is possible that the waterline may in the future be able to be connected to the Willow Bend waterline to make a full service loop for better connectivity, service and flow.

This waterline and development, while not directly in the boundaries of the original 1910 city limits, I believe meets the general philosophy of infill development, in line with City Plan 2040. This neighborhood Berl Dodd (aka Burl Dodd) appears to have been platted in 1926, so just shy of 100 years ago, and is 4 blocks to the south of the southern 1910 border. It is surrounded by development to the East, West, South, Northeast and Northwest. This location is within the Walker Park Neighborhood Master Plan area, adopted in 2008, and we believe the development plan is consistent with that plan. In addition, we believe it is in line with Fayetteville Vision 2025, one of those items from that vision being "Revitalized South Fayetteville".

Below is our Engineer's Estimate of Probable Costs. We are requesting a 50% cost share. My understanding is that once submitted, it will go to the Water and Sewer Board with your recommendations for whether or not to support this. If it is supported by the Board, we will then provide detailed bids in order to be presented to the City Council. If you need any additional information or documentation in the meantime, please reach out to me or our engineer, Brian Teague at Community By Design.

Thank you for your consideration,

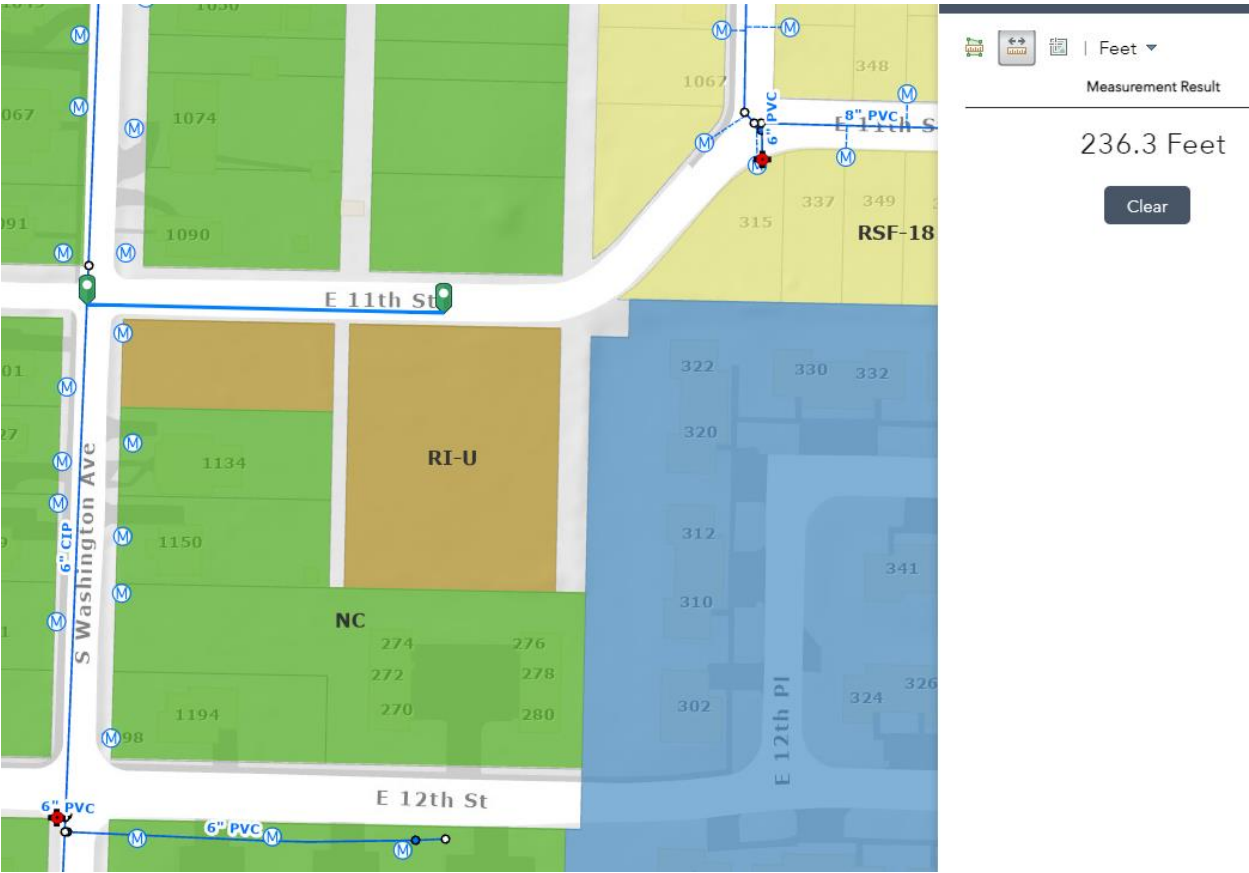
Zara Niederman

Zara Niederman

Community By Design
100 West Center Street, Suite 300
Fayetteville, Arkansas 72701
Phone: (479) - 790 - 6775

Schedule 1
11th Street Water Main - Per Plans Dated 11/18/22
Public Infrastructure Cost Estimate - Draft
1/6/2023

	Quantity	Unit	Unit Cost	Total Cost
1 Tap Water Main - Tap Sleeve, Valve, Pavement Repair	1	Each	\$11,900.00	\$11,900.00
2 8 inch - PVC Water Main	236	L.F.	\$105.00	\$24,780.00
3 8 inch - Gate Valve	1	Each	\$3,528.00	\$3,528.00
4 2 inch - Gate Valve	1	Each	\$1,722.00	\$1,722.00
7 Fittings	1	Each	\$3,563.00	\$3,563.00
5 Pavement Repair - Cut and T-patch	236	L.F.	\$49.00	\$11,564.00
6 Mill and Overlay Pavement	1	Each	\$21,000.00	\$21,000.00
8 Testing	1	Each	\$2,100.00	\$2,100.00
9 Engineering	1	Each	\$8,485.40	\$8,485.40
Total				\$88,642.40



Community By Design
100 West Center Street, Suite 300
Fayetteville, Arkansas 72701
Phone: (479) - 790 - 6775

Schedule 1
11th Street Water Main - Per Plans Dated 11/18/22
Engineer Fee Estimate
4/7/2023

		Quantity	Unit	Unit Cost	Total Cost
1	Design and Permitting	1	Each	\$6,364.05	\$6,364.05
2	Bid Review	1	Each	\$424.27	\$424.27
3	Construction Administration and Observation	1	Each	\$1,697.08	\$1,697.08
Total					\$8,485.40



MEETING OF MAY 16, 2023

TO: Mayor Jordan and City Council
THRU: Susan Norton, Chief of Staff
FROM: Tim Nyander, Utilities Director
DATE:
SUBJECT: **Kent B. Detmer Condemnation of Easement for West Water Transmission Main Project**

RECOMMENDATION:

Staff recommends City Council approval of a Resolution authorizing the City Attorney to seek condemnation and an order of possession of certain land owned by Kent B. Detmer necessary for the West Transmission Water Main project.

BACKGROUND:

The City's wholesale water supplier, Beaver Water District, intends to build a western water distribution point near HWY-112 and the newly constructed Springdale Northern Bypass, HWY-612. This facility will supply a western water transmission feed to all four customer cities, helping with hydraulics, critical redundancy, and overall utility resiliency. Fayetteville's 11-mile connection to the proposed BWD facility has been identified in water master plans for many years. The project is currently being designed, with construction planned to begin in late 2024. For this 48-inch diameter waterline, a 50-foot width easement is necessary along the entire route to construct and maintain the line throughout its lifetime. The route chosen is specifically designed to be as unobtrusive as possible to impacted properties, staying close to property lines whenever possible.

DISCUSSION:

The necessary easement consists of approximately 1.48-acres of easement area. Since 2019, staff has sent many letters, spoken with realtors, and appraised the property over the course of several years without any meaningful negotiations with the ownership. For this reason, Staff recommends that the City Attorney file for order of possession of this easement, paying the value of the property as documented in the appraisal, recently updated.

BUDGET/STAFF IMPACT:

The payment for land acquisition will be made from the W/S Improvements Defined by Study account within the Water & Sewer fund. The agenda item staff review form indicates \$97,750.00 as the cost of this request. It should be noted that this is an estimate, based on the appraised value of the property, and that the final cost is subject to negotiation with the property owners or by court order. The appraised value will be deposited into the Registry of the Circuit Court as just compensation when the condemnation complaint is filed for the property.

ATTACHMENTS: SRF Detmer Condemnation for West Water Transmission Line Easement, Appraisals, Offer Letters, Easement Documents, Case History, Condemnation Brochure 2022 (revised 10-25-22)

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2023-716

Kent B. Detmer Condemnation of Easement for West Water Transmission Main Project

A RESOLUTION TO AUTHORIZE THE CITY ATTORNEY TO SEEK CONDEMNATION AND POSSESSION OF CERTAIN LANDS OWNED BY KENT B. DETMER NEEDED FOR THE WEST WATER TRANSMISSION MAIN PROJECT

WHEREAS, the City of Fayetteville and Kent B. Detmer have been unable to agree upon a fair price for approximately 1.48 acres of permanent easement and the removal of a pole barn and four trees needed to complete the West Water Transmission Main Project; and

WHEREAS, the City of Fayetteville needs to gain possession of this needed property promptly to begin work on this public improvement and to not delay construction of the project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby authorizes the City Attorney to file suit to seek court-ordered possession of property located on or near the West Water Transmission Main Project and owned by Kent B. Detmer, that is needed as permanent easements for the Project, and to pay into the registry of the Circuit Court just compensation in the amount of \$97,750.00.

City of Fayetteville Staff Review Form

2023-716

Item ID

5/16/2023

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Tim Nyander

4/27/2023

WATER SEWER (720)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends City Council approval of a Resolution authorizing the City Attorney to seek condemnation and an order of possession of certain land owned by Kent B. Detmer necessary for the West Water Transmission Main project.

Budget Impact:

5400.720.5600-5810.00

Water and Sewer

Account Number

Fund

10007.1

W/S Improvements Defined by Study

Project Number

Project Title

Budgeted Item? Yes

Total Amended Budget

\$ 1,333,022.00

Expenses (Actual+Encum)

\$ 110,605.87

Available Budget

\$ 1,222,416.13

Does item have a direct cost? Yes

Item Cost

\$ 97,750.00

Is a Budget Adjustment attached? No

Budget Adjustment

\$ -

Remaining Budget

\$ 1,124,666.13

V20221130

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:

APPRAISAL REPORT

ON

THE KENT BIRD DETMER PROPERTY;
11.85± ACRES LOCATED AT THE NORTHEAST CORNER
OF ELM SPRINGS ROAD AND GRIGG LANE,
ELM SPRINGS, ARKANSAS; WASHINGTON COUNTY
WEST TRANSMISSION MAIN ROUTE PROJECT
TRACT: 64

FOR

MCCLELLAND CONSULTING ENGINEERS
FAYETTEVILLE, ARKANSAS 72703

BY

REED & ASSOCIATES, INC.
3739 N. STEELE BLVD., SUITE 322
FAYETTEVILLE, ARKANSAS 72703

FILE NO. 5590-64

AS OF

JANUARY 23, 2023

Reed & Associates, Inc.

Real Estate Appraisers – Consultants

3739 N. Steele Blvd., Suite 322, Fayetteville, AR 72703 * 479-521-6313 * Fax: 479-521-6315 * www.reedappraisal.biz

Tom Reed, MAI • Katie Hampton • Shannon Mueller

January 30, 2023

Nick Batker
McClelland Consulting Engineers
1580 E. Stearns Street
Fayetteville, AR 72703

RE: The Kent Bird Detmer Property; 11.85± acres located at the northeast corner of Elm Springs Road and Grigg Lane, Elm Springs, AR; Washington County

Dear Mr. Batker:

In compliance with your request and for the purpose of estimating the market value of the above captioned property, I hereby certify that we have examined the subject property and made a survey of the matters pertinent to the estimation of its value.

I further certify that I have no interest, present or contemplated, in the property appraised, and that my fee was not contingent upon the value estimate reported.

The following real property appraisal report contains data gathered in my investigation, information from my files, and shows the method of appraisal in detail. This report is presented under the Appraisal Report Option.

This report addresses: the market value of the Whole Property (land/affected improvements) prior to the City of Fayetteville acquiring 1.48± acres in permanent easement (PE) as of January 23, 2023, and, the market value of the Remainder Property (land only) after the acquisition of 1.48± acres in PE is in place, also as of January 23, 2023.

Based on an analysis of relevant data, and contingent on the Assumptions and Limiting Conditions which follow and appear in the Addenda Section of this report, it is my opinion the market value of the subject property, as of January 23, 2023, was as follows:

Whole Property (Land/Affected Improvements)	=	\$582,800
Remainder Property (Land Only)	=	<u>\$485,050</u>
Damage To Market Value	=	\$ 97,750

The preceding values reflect terms equivalent to cash to the owners and represent those for real property only.

The following Extraordinary Assumptions are utilized in this report:

- 1. Subject land sizes, Whole Property and Remainder Property, are approximately as indicated;**
- 2. The area of acquisition is approximately as indicated;**
- 3. The City of Fayetteville, at their expense, will put the land area and fencing located within the permanent easement acquisition area back to as near original condition as possible;**

If any, or all, of these Extraordinary Assumptions prove to be untrue, one or both of the preceding value estimates could be influenced.

The reader is referred to additional Assumption and Limiting Conditions presented in the Addenda Section of this report.

A Hypothetical Condition of this appraisal is that the West Transmission Main Route Project is complete and in place as of the effective date of this report in estimating the market value of the Remainder Property. In reality, the project was not complete and in place as of January 23, 2023. If this Hypothetical Condition is not considered, the estimated market value of the Remainder Property could be influenced.

USPAP states the following under Sections Rule 1-4 (f): “When analyzing anticipated public or private improvements, located on or off the site, an appraiser must analyze the effect on value, if any, of such anticipated improvements to the extent they are reflected in market actions.” This appraisal is prepared in conformity to the provisions of the “Uniform Act” and its implementing regulation 49 CFR Part 24. The 49 CFR Part 24 regulation requires appraisers to disregard any decrease or increase in the market value of the property that has been caused directly by the project in the “Before Acquisition Value” appraisal. This is considered a Jurisdictional Exception. In addition, General Benefits as a result of the project have not been considered in the valuation of the Remainder Property based on 49 CFR Part 24. Considering USPAP Standards Rule 1-4 (f), this is also considered a Jurisdictional Exception.

Sincerely,



Katie Reed Hampton, CG3642
REED & ASSOCIATES, INC.



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- Definitions
- Area Map
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- Aerial Photograph
- Subject Photographs
- Flood Zone Map
- Assessment Records
- Deed Records
- Permanent Easement Legal Description/Exhibit
- Comparable Land Sales Map
- Comparable Land Sales
- Assumptions and Limiting Conditions
- Qualifications of the Appraiser

CERTIFICATE

- The statements of fact contained in the report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions, limiting conditions, and legal instructions, and are the personal, unbiased professional analysis, opinions, and conclusions of the appraiser.
- The appraiser has no present or prospective interest in the property appraised and no personal interest or bias with respect to the parties involved.
- The compensation received by the appraiser for the appraisal is not contingent on the analyses, opinions, or conclusions reached or reported.
- The appraisal was made, and the appraisal report prepared in conformity with the *Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs; Final Rule*.
- The appraisal was made, and the appraisal report prepared in conformity with the Appraisal Foundation's *Uniform Standards of Professional Appraisal Practice*.
- I, Katie Hampton, have made a personal inspection of the property that is the subject of this report.
- A representative of the property owner was given the opportunity to accompany the appraiser on a previous inspection of the property. The property owner did not accompany the appraiser on the most recent inspection.
- No one provided significant professional assistance to the appraisers.
- I certify that, to the best of my knowledge and belief, the reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, I, Katie Hampton, have completed the Standards and Ethics Education Requirement for Candidates of the Appraisal Institute.
- I have performed services, as an appraiser, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment. The effective date of the previous report was February 14, 2022.

Based upon analysis of relevant data and contingent upon the Assumptions and Limiting Conditions which follow and appear in the Addenda Section of this report, it is my opinion the market value of the fee simple interest in the subject property, as of **January 23, 2023**, was:

Whole Property (Land/Affected Improvements)	=	\$582,800
Remainder Property (Land Only)	=	<u>\$485,050</u>
Damage To Market Value	=	\$ 97,750

The preceding values reflect terms equivalent to cash to the owner and represent those for real property only.

The following Extraordinary Assumptions are utilized in this report:

- 1. Subject land sizes, Whole Property and Remainder Property, are approximately as indicated;**
- 2. The area of acquisition is approximately as indicated;**
- 3. The City of Fayetteville, at their expense, will put the land area and fencing located within the permanent easement acquisition area back to as near original condition as possible.**

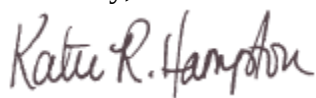
If any, or all, of these Extraordinary Assumptions prove to be untrue, one or both of the preceding value estimates could be influenced.

The reader is referred to additional Assumption and Limiting Conditions presented in the Addenda Section of this report.

A Hypothetical Condition of this appraisal is that the West Transmission Main Route Project is complete and in place as of the effective date of this report in estimating the market value of the Remainder Property. In reality, the project was not complete and in place as of January 23, 2023. If this Hypothetical Condition is not considered, the estimated market value of the Remainder Property could be influenced.

USPAP states the following under Sections Rule 1-4 (f): “When analyzing anticipated public or private improvements, located on or off the site, an appraiser must analyze the effect on value, if any, of such anticipated improvements to the extent they are reflected in market actions.” This appraisal is prepared in conformity to the provisions of the “Uniform Act” and its implementing regulation 49 CFR Part 24. The 49 CFR Part 24 regulation requires appraisers to disregard any decrease or increase in the market value of the property that has been caused directly by the project in the “Before Acquisition Value” appraisal. This is considered a Jurisdictional Exception. In addition, General Benefits as a result of the project have not been considered in the valuation of the Remainder Property based on 49 CFR Part 24. Considering USPAP Standards Rule 1-4 (f), this is also considered a Jurisdictional Exception.

Sincerely,



Katie Reed Hampton, CG3642
REED & ASSOCIATES, INC.



SUMMARY OF SALIENT FACTS AND CONCLUSIONS

Location: 618 Elm Springs Road
Client: McClelland Consulting Engineers
Fee Owner: Kent Bird Detmer
Mailing Address: 1713 W. Huntsville Avenue, Springdale, AR 72762

Area Of The Whole:	11.85± ACS	Permanent Easement	1.48± ACS
Area Of Remainder:	11.85± ACS	Temporary Construction Easement	NA
Area Of Acquisition:	NA		

HIGHEST AND BEST USE:

Whole Property	Interim Residential/Agricultural until demand dictates development of the site
Remainder Property	Interim Residential/Agricultural until demand dictates development of the site

ACQUISITION COMPENSATION:

Before

Land: 11.85± ACS	\$	568,800	
Improvements: Pole Shed/Barn & 4 Trees	\$	14,000	
Total:		\$	582,800

After

Land: 11.85± ACS	\$	485,050	
Improvements: Not Appraised	\$		
Total		\$	485,050

Total Compensation as of: January 23, 2023		\$	97,750
---	--	----	--------

ALLOCATION OF COMPENSATION

Land: N/A	\$	0
Permanent Easement: 1.48± ACS	\$	60,250
Temporary Construction Easement: N/A	\$	0
Improvements: Pole Shed/Barn & 4 Trees	\$	14,000
Damages: Land	\$	23,500
Cost to Cure Items: Not Applicable	\$	0
Total Compensation:	\$	97,750

Katie R. Hampton

Katie Reed Hampton, CG3642
REED & ASSOCIATES, INC.



Date of Report: January 30, 2023

SCOPE OF WORK

The "Valuation Process" was utilized in estimating the market value of the subject property. This report is submitted under the Appraisal Report Option. The subject property was inspected by Katie Hampton on January 23, 2023. Photographs of the subject property were taken on the January 30th inspection by Katie Hampton.

Pertinent locational and physical data were obtained on the property inspection. The whole property legal description was obtained from deed records. The land size is based on Assessment Records. The acquisition land size was based on the permanent easement exhibit provided by the client (a copy of which appears in the Addenda Section of this report). The history and property tax data were obtained through Assessment Records.

The highest and best use of the property was projected based upon zoning, location, physical characteristics, past, current, and potential usage, etc.

Each of three accepted valuation methods has been addressed in this report. In arriving at the market value of subject Whole Property Land Only and Remainder Property Land Only, the Sales Comparison Approach was utilized. Subject is improved with residential/agricultural improvements; however, the improvements are not considered to be adversely affected by the acquisition, with the exception of a barn and four trees. The Cost Approach is only utilized to estimate the contributory value of the barn and trees. Considering land rentals aren't typically the basis on which properties of the subject nature are being purchased/sold in the market area, the Income Capitalization Approach is not utilized. Application of the Income Capitalization Approach is not considered necessary to produce credible appraisal results.

In the Sales Comparison Approach, comparable land sales were presented and analyzed for comparison purposes to the subject site. The unit of comparison is price per acre of land area. The sales were compared to the subject site, and adjustments made for differences. The per acre value of subject was estimated from within the adjusted range of the comparables, and was multiplied by the subject size to arrive at the indicated market value of the subject property by the Sales Comparison Approach.

The value indication by the Sales Comparison Approach was relied upon in determining the final value conclusion for subject. The estimated Total Compensation (Damage To Market Value) as a result of the acquisition was determined by subtracting the market value of the Remainder Property from the market value of the Whole Property.

GENERAL DATA

MARKET VALUE CONCEPT

Market Value is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of value, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property.”¹

¹Interagency Land Acquisition Conference, *Uniform Appraisal Standards For Federal Land Acquisitions* (Chicago: Appraisal Institute, 2016) P. 11.

PURPOSE OF APPRAISAL

The purpose of this appraisal is to estimate the Market Value of the described property including all damages and/or benefits, if any, to the extent that benefits are allowed under State Law, to the remaining property as just compensation for the property taken, as of the effective date.

INTENDED USE OF APPRAISAL

The intended use of the Appraisal Report is as a basis for determining total damage to the market value of the subject property as a result of the acquisition of 1.48± acres in PE.

INTENDED USERS OF APPRAISAL REPORT

The intended users of this Appraisal Report are the McClelland Consulting Engineers, City of Fayetteville, and Mr. Kent Detmer.

PREMISE AND LIMITING CONDITIONS

This appraisal is predicated on the premise that:

1. The acquisition exhibits and/or tract descriptions furnished the appraisers by the client are correct.
2. Information, data, estimates and opinions contained in this report were obtained from sources considered reliable; however, no liability for them can be assumed or guaranteed by these appraisers.

Additional Assumptions and Limiting Conditions are presented in the Addendum Section of this report. Also, please see the Extraordinary Assumptions and Hypothetical Condition.

SUMMARY OF APPRAISAL PROBLEM

The appraisal problem in this valuation assignment is to: estimate the market value of the Whole Property (land/affected improvements) prior to the acquisition of 1.48± acre in PE by the City of Fayetteville, and, to estimate the market value of the Remainder Property (land only) after the acquisition of 1.48± acre in PE. The effective date of value in both scenarios is January 23, 2023. This represents the date of the site inspection.

The permanent easement exhibit is located in the Addenda Section of this report. The reason for the easement is to construct, lay, remove, relay, inspect, enlarge and/or operate a water and/or sanitary sewer pipe line or lines, manholes, and appurtenances thereto, on, over, across, and under a portion of the subject property. This is in connection with the West Transmission Main Route project. The PE acquisition is located in the east part of the site. The PE acquisition encompasses land area, fencing, barn, and four trees. Please see the exhibits located in the Addenda.

Comparable sales are presented in the Addenda Section of this report.

The following Extraordinary Assumptions are utilized in this report:

- 1. Subject land sizes, Whole Property and Remainder Property, are approximately as indicated;**
- 2. The area of acquisition is approximately as indicated;**
- 3. The City of Fayetteville, at their expense, will put the land area and fencing located within the permanent easement acquisition area back to as near original condition as possible.**

If any, or all, of these Extraordinary Assumptions prove to be untrue, one or both of the preceding value estimates could be influenced.

The reader is referred to additional Assumption and Limiting Conditions presented in the Addenda Section of this report.

A Hypothetical Condition of this appraisal is that the West Transmission Main Route Project is complete and in place as of the effective date of this report in estimating the market value of the Remainder Property. In reality, the project was not complete and in place as of January 23, 2023. If this Hypothetical Condition is not considered, the estimated market value of the Remainder Property could be influenced.

USPAP states the following under Sections Rule 1-4 (f): “When analyzing anticipated public or private improvements, located on or off the site, an appraiser must analyze the effect on value, if any, of such anticipated improvements to the extent they are reflected in market actions.” This appraisal is prepared in conformity to the provisions of the “Uniform Act” and its implementing regulation 49 CFR Part 24. The 49 CFR Part 24 regulation requires appraisers to disregard any decrease or increase in the market value of the property that has been caused directly by the project in the “Before Acquisition Value” appraisal. This is considered a Jurisdictional Exception. In addition, General Benefits as a result of the project have not been considered in the valuation of

the Remainder Property based on 49 CFR Part 24. Considering USPAP Standards Rule 1-4 (f), this is also considered a Jurisdictional Exception.

NEIGHBORHOOD ANALYSIS

The neighborhood is located in southern Benton County and northern Washington County. This location is primarily in parts of Springdale, Elm Springs, Cave Springs, and Lowell. The area appears to lie near State Highway 112 on the west, State Highway 264 on the north, I-49 on the east, and Elm Springs Road on the south.

The project area consists of primarily residential uses; however, there are some commercial and special-purpose uses scattered throughout the neighborhood.

Utilities available in the neighborhood include electricity, telephone service, natural gas, cable T.V., public water and sewer.

The area appears to be in the growth stage of its life cycle. The overall outlook for the Market Area is considered to be positive.

ZONING REGULATIONS AND RESTRICTIONS

The subject site is located within the city limits of Elm Springs. Based on the City of Elm Springs Zoning Map, the subject property is zoned RSF-1, Residential Single-Family 1 Unit Per Acre. The purpose of the RSF-1 District is “a district having single-family detached residences on lots with a minimum size of one unit per acre. The district is designed to permit and encourage the development of very low density detached dwellings in suitable environments, as well as to protect existing development of these types.” Permitted uses within the RSF-1 District include city-wide uses and single-family dwellings. The setback requirements in the RSF-1 District are: 50’ front, 25’ rear, and 10’ side.

LEGAL DESCRIPTION

The legal description for subject Whole Property is below.

The fractional NW $\frac{1}{4}$ of the fractional NW $\frac{1}{4}$ of Section 30 in Township 18 North of Range 30 West, and a part of the NE $\frac{1}{4}$ of Section 25 in Township 18 North of Range 31 West, described as beginning at the Northeast corner of said fractional NW $\frac{1}{4}$ of the fractional NW $\frac{1}{4}$ of said Section 30, and running thence South along the East quarter section line to the center of the Elm Springs – Springdale Road; thence West with the center of said Road 753 feet; thence North $87^{\circ} 07'$ West with the center of said Road 210.2 feet; thence North to and continuing along the East line of a lane or road running from the Elm Springs – Springdale Road North to the Howard Grigg Lands, a distance of 698.5 feet, more or less, to a point due West of the Southwest corner of Lot 1 in Block 1, Peter Gharst Addition to the Town of Elm Springs, Arkansas; thence East to and continuing along the South line of Lots 1, 2 and 3 in Block 1 of said Addition to the center of the abandoned right-of-way of the Kansas City & Memphis Railway Company; thence Northeasterly with the center of said right-of-way to a point which is 12 feet due South of the North line of said fractional quarter section; thence in a direct line Easterly to a point where the East line of said right-of-way intersects the North line of said fractional quarter section; thence East to the point of beginning, subject to an easement along the Southerly part thereof for the Elm Springs – Springdale Road

The legal description of the PE acquisition area is located in the Addenda of this report.

NARRATIVE DESCRIPTION

Whole Property

Subject property is located along the north side of Elm Springs Road, the west side of King Arthur Drive, and the east side of Grigg Lane, in Elm Springs, Arkansas; Washington County. The physical address of the subject property is 618 Elm Springs Road.

The subject is a residentially developed, irregular shaped, 11.85± acre tract positioned along the north side of Elm Springs Road. The site has an estimated 530'± of frontage along the north side of Elm Springs Road, approximately 710'± along the east side of Grigg Lane, and approximately 515'± along the west side of King Arthur Drive.

The topography of the subject site is gently rolling. The site, overall, is near to slightly above grade to Elm Springs Road and King Arthur Drive. Elm Springs Road is two-lane, asphalt paved. King Arthur Drive is a paved public street providing access through a residential subdivision. Grigg Lane frontage is near grade to slightly below grade. Grigg Lane is a gravel road. The site is mainly cleared with a few scattered trees. The site is not indicated to be located within Flood Zone area. Please see the Flood Zone Map presented in the Addenda of this report. Overall soil conditions are assumed to be adequate. One pond is located on the subject site.

Approximately 25% of the site (north part of site) is considered very irregular in shape with somewhat limited utility.

Access is developed to the subject from Elm Springs Road, along the south boundary of the site.

Utilities and services available include telephone, electricity, public water, gas, cable T.V., and trash pickup, as well as police and fire protection.

Based on Assessment Records, the site is improved with a one-level, Class "D" 1,696± SF single-family dwelling constructed in 1985. There is also a 576± SF attached garage. The exterior of the dwelling is brick veneer. The foundation is closed piers; roof cover is fiberglass shingles; and, floor structure is wood with subfloor. An interior inspection of the dwelling was not made; however, the exterior of the dwelling appeared to be in average condition. The dwelling is considered to have remaining life. Additional improvements include gravel driveway, landscaping, pipe fencing, agricultural fencing, 1,152± SF pole shed/barn, 1,296± SF barn, outbuilding, 1,271± SF pole shed, well house, etc.

Acquisition

The permanent easement is indicated to contain 1.48± acres. The easement is located along the east boundary of the site and runs from the south boundary to the north boundary of the site. The easement is 50' in width.

The acquisition encompasses land area, fencing, a 1,152± SF pole shed/barn, and four trees. An extraordinary assumption of this report is that the City of Fayetteville, at their expense, will put the land and fencing located within the permanent easement acquisition back to as near original condition as possible.

Remainder Property

Subject property is located along the north side of Elm Springs Road, the west side of King Arthur Drive, and the east side of Grigg Lane, in Elm Springs, Arkansas; Washington County. The physical address of the subject property is 618 Elm Springs Road.

The subject is a residentially developed, irregular shaped, 11.85± acre tract positioned along the north side of Elm Springs Road. The site has an estimated 530'± of frontage along the north side of Elm Springs Road, approximately 710'± along the east side of Grigg Lane, and approximately 515'± along the west side of King Arthur Drive.

The topography of the subject site is gently rolling. The site, overall, is near to slightly above grade to Elm Springs Road and King Arthur Drive. Elm Springs Road is two-lane, asphalt paved. King Arthur Drive is a paved public street providing access through a residential subdivision. Grigg Lane frontage is near grade to slightly below grade. Grigg Lane is a gravel road. The site is mainly cleared with a few scattered trees. The site is not indicated to be located within Flood Zone area. Please see the Flood Zone Map presented in the Addenda of this report. Overall soil conditions are assumed to be adequate. One pond is located on the subject site.

Approximately 25% of the site (north part of site) is considered very irregular in shape with somewhat limited utility.

Access is developed to the subject from Elm Springs Road, along the south boundary of the site.

Utilities and services available include telephone, electricity, public water, gas, cable T.V., and trash pickup, as well as police and fire protection. A 1.48± acre PE is located along the east boundary of the site. The PE is 50'± in width and is estimated to comprise approximately 12% of the overall site. The side setback in the RSF-1 district is 10'. Forty feet of the easement is located outside setback requirement. Again, approximately 25% of the site (north part) is very irregular in shape. The north boundary of the site is 112'± wide. The shape of the north part of the site does create limited utility in this area; however, the location of the easement in the north part of the site, in my opinion, does create additional limited utility in this area.

Based on Assessment Records, the site is improved with a one-level, Class "D" 1,696± SF single-family dwelling constructed in 1985. There is also a 576± SF attached garage. The exterior of the dwelling is brick veneer. The foundation is closed piers; roof cover is fiberglass shingles; and, floor structure is wood with subfloor. An interior inspection of the dwelling was not made; however, the exterior of the dwelling appeared to be in average condition. The dwelling is considered to have remaining life. Additional improvements include gravel driveway, landscaping, pipe fencing, agricultural fencing, 1,296± SF barn, outbuilding, 1,271± SF pole shed, well house, etc.

ASSESSMENT AND TAX DATA

A copy of the Tax Assessment Records pertaining to the subject property is presented in the Addenda Section of this report. The taxes, due by October 15, 2023, are estimated to be \$990.91. This does not include the \$375 Homestead Tax Credit. The property was appraised for tax purposes at \$195,450. The preceding appraised value is for land and improvements. It should be noted that taxable value is lower than assessed value on Parcel 750-00579-000. Subject is located in the Springdale School District.

HIGHEST AND BEST USE

Highest and Best Use is defined as:

“The highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future.”²

The theoretical focus of highest and best use analysis is on the potential uses of the land as though vacant. In practice, however, the contributory value of the existing improvements and any possible alteration of those improvements are also important in determining highest and best use and, by extension, in developing an opinion of the market value of the property.

In the analysis of highest and best use of land as though vacant, the appraiser seeks the answers to several questions:

- Should the land be developed or left vacant?
- If left vacant, when would future development be financially feasible?
- If developed, what kind of improvement should be built?

In the analysis of the highest and best use of the property as improved, additional questions must be answered:

- Should the existing improvements on the property be maintained in their current state, should they be altered in some manner to make them more valuable, or should they be demolished to create a vacant site for a different use?
- If renovation or redevelopment is warranted, when should the new improvements be built?

In general, if the value of a property as improved is greater than the value of the land as though vacant, the highest and best use is the use of the property as improved. However, a property's existing use may represent an interim use, which begins with the land value for the new highest and best use and adds the contributory value of the current improvements until the new highest and best use can be achieved. In practice, a property owner who is redeveloping a parcel of land may remove an improvement even when the value of the property as improved exceeds the value of the vacant land. The costs of demolition and any remaining improvement value are taken into consideration in the test of financial feasibility for redevelopment of the land. Likewise, if an

²Interagency Land Acquisition Conference, *Uniform Appraisal Standards For Federal Land Acquisitions* – (Chicago: Appraisal Institute, 2016) P.22

improved property has value but may have greater value if modified in some way, the cost of modifying the improvements and the value gained in that modification are accounted for in the determination of highest and best use.

The Four Tests

As market/marketability analysis progresses to highest and best use analysis, appraisers first consider the reasonably probable uses of a site that can be legally undertaken. In the analysis of pertinent data, four steps are implicit and are applied in the following order to develop adequate support for the appraiser's highest and best use opinion:

1. Legally permissible
2. Physically possible
3. Financially feasible
4. Maximally productive

These criteria are generally considered sequentially. The tests of physical possible and legal permissibility can be applied in either order, but they both must be applied before the tests of financial feasibility and maximum productivity. A use may be financially feasible, but this is irrelevant if it is legally prohibited or physically impossible. (The Appraisal Institute)³

Whole Property

As Vacant – Subject property is located along the north side of Elm Springs Road, the west side of King Arthur Drive, and the east side of Grigg Lane, in Elm Springs, Arkansas; Washington County. The physical address of the subject property is 618 Elm Springs Road.

The subject is a residentially developed, irregular shaped, 11.85± acre tract positioned along the north side of Elm Springs Road. The site has an estimated 530'± of frontage along the north side of Elm Springs Road, approximately 710'± along the east side of Grigg Lane, and approximately 515'± along the west side of King Arthur Drive.

The topography of the subject site is gently rolling. The site, overall, is near to slightly above grade to Elm Springs Road and King Arthur Drive. Elm Springs Road is two-lane, asphalt paved. King Arthur Drive is a paved public street providing access through a residential subdivision. Grigg Lane frontage is near grade to slightly below grade. Grigg Lane is a gravel road. The site is mainly cleared with a few scattered trees. The site is not indicated to be located within Flood Zone area. Please see the Flood Zone Map presented in the Addenda of this report. Overall soil conditions are assumed to be adequate. One pond is located on the subject site.

Approximately 25% of the site (north part of site) is considered very irregular in shape with somewhat limited utility.

Access is developed to the subject from Elm Springs Road, along the south boundary of the site.

³ The Appraisal Institute, The Appraisal of Real Estate, 13th Edition 2008, pages 277/279.

Utilities and services available include telephone, electricity, public water, gas, cable T.V., and trash pickup, as well as police and fire protection.

Physically possible uses of the subject site include those within size/shape limitations.

Based on the City of Elm Springs Zoning Map, the subject property is zoned RSF-1, Residential Single-Family 1 Unit Per Acre. Permitted uses within the RSF-1 District include city-wide uses and single-family dwellings. The setback requirements in the RSF-1 District are: 50' front, 25' rear, and 10' side.

No private Deed Restrictions were found.

The physically possible and legally permissible uses of the subject site are those within size/shape limitations, and that comply with Zoning Regulations.

Properties in close proximity to subject are residential in nature.

The immediate neighborhood is considered to be in the growth stage of its life cycle.

The physically possible and legally permissible use of the subject site, that is also considered to be financially feasible is residential development.

In my opinion, the highest and best use of the subject as vacant is residential development, within size/shape limitations, and in conformity to Zoning Regulations. The north part of the site is very irregular in shape. Consideration could be given to plotting this land with adjacent lands to the east or west.

As Improved – Based on Assessment Records, the site is improved with a one-level, Class “D” 1,696± SF single-family dwelling constructed in 1985. There is also a 576± SF attached garage. The exterior of the dwelling is brick veneer. The foundation is closed piers; roof cover is fiberglass shingles; and, floor structure is wood with subfloor. An interior inspection of the dwelling was not made; however, the exterior of the dwelling appeared to be in average condition. The dwelling is considered to have remaining life. Additional improvements include gravel driveway, landscaping, pipe fencing, agricultural fencing, 1,152± SF pole shed/barn, 1,296± SF barn, outbuilding, 1,271± SF pole shed, well house, etc.

In my opinion, the highest and best use of the subject as improved is continued residential/agricultural use in the interim until demand dictates removal of the improvements and redevelopment of the site for residential use (multiple lots/tracts).

Remainder Property

Subject property is located along the north side of Elm Springs Road, the west side of King Arthur Drive, and the east side of Grigg Lane, in Elm Springs, Arkansas; Washington County. The physical address of the subject property is 618 Elm Springs Road.

The subject is a residentially developed, irregular shaped, 11.85± acre tract positioned along the north side of Elm Springs Road. The site has an estimated 530'± of frontage along the north side of Elm Springs Road, approximately 710'± along the east side of Grigg Lane, and approximately 515'± along the west side of King Arthur Drive.

The topography of the subject site is gently rolling. The site, overall, is near to slightly above grade to Elm Springs Road and King Arthur Drive. Elm Springs Road is two-lane, asphalt paved. King Arthur Drive is a paved public street providing access through a residential subdivision. Grigg Lane frontage is near grade to slightly below grade. Grigg Lane is a gravel road. The site is mainly cleared with a few scattered trees. The site is not indicated to be located within Flood Zone area. Please see the Flood Zone Map presented in the Addenda of this report. Overall soil conditions are assumed to be adequate. One pond is located on the subject site.

Approximately 25% of the site (north part of site) is considered very irregular in shape with somewhat limited utility.

Access is developed to the subject from Elm Springs Road, along the south boundary of the site.

Utilities and services available include telephone, electricity, public water, gas, cable T.V., and trash pickup, as well as police and fire protection.

Physically possible uses of the subject site include those within size/shape limitations.

Based on the City of Elm Springs Zoning Map, the subject property is zoned RSF-1, Residential Single-Family 1 Unit Per Acre. Permitted uses within the RSF-1 District include city-wide uses and single-family dwellings. The setback requirements in the RSF-1 District are: 50' front, 25' rear, and 10' side. A 1.48± acre PE is located along the east boundary of the site. The PE is 50'± in width and is estimated to comprise approximately 12% of the overall site. The side setback in the RSF-1 district is 10'. Forty feet of the easement is located outside setback requirement. Again, approximately 25% of the site (north part) is very irregular in shape. The north boundary of the site is 112'± wide. The shape of the north part of the site does create limited utility in this area; however, the location of the easement in the north part of the site, in my opinion, does create additional limited utility in this area.

No private Deed Restrictions were found.

The physically possible and legally permissible uses of the subject site are those within size/shape/easement limitations, and that comply with Zoning Regulations.

Properties in close proximity to subject are residential in nature.

The immediate neighborhood is considered to be in the growth stage of its life cycle.

The physically possible and legally permissible use of the subject site, that is also considered to be financially feasible is residential development.

In my opinion, the highest and best use of the subject as vacant is residential development, within size/shape/easement limitations, and in conformity to Zoning Regulations. The north part of the site is very irregular in shape. Consideration could be given to plotting this land with adjacent lands to the east or west.

As Improved – Based on Assessment Records, the site is improved with a one-level, Class “D” 1,696± SF single-family dwelling constructed in 1985. There is also a 576± SF attached garage. The exterior of the dwelling is brick veneer. The foundation is closed piers; roof cover is fiberglass shingles; and, floor structure is wood with subfloor. An interior inspection of the dwelling was not made; however, the exterior of the dwelling appeared to be in average condition. The dwelling is considered to have remaining life. Additional improvements include gravel driveway, landscaping, pipe fencing, agricultural fencing, 1,296± SF barn, outbuilding, 1,271± SF pole shed, well house, etc.

In my opinion, the highest and best use of the subject as improved is continued residential/agricultural use in the interim until demand dictates removal of the improvements and redevelopment of the site for residential use (multiple lots/tracts).

APPRAISAL PROCESS

When preparing a detailed appraisal for a given property, it is customary appraisal practice to assemble as much information from the market as seems prudent and to utilize this information in three different approaches to the value: the Cost Approach, Sales Comparison (Market) Approach, and the Income Capitalization Approach.

If an appraisal problem is such that it can be adequately and reliably addressed without resorting to a traditional three approach appraisal, then in the interest of economy, only the reliable and relevant valuation technique(s) should be used. Often the appraisal problem can be fully addressed with the Sales Comparison Approach.

In the Cost Approach, an estimate of the site value is first derived by a comparison of other similar sites which have sold to the subject site by the Sales Comparison Approach. An estimate is then made of the cost of reproducing or replacing the subject improvements at today's costs. From this is deducted the estimated loss of value as a result of Accrued Depreciation, including physical deterioration, functional obsolescence, and external obsolescence. All such estimates of loss of value through Accrued Depreciation are taken from market evidence. The indicated value from this approach is the sum of the site value plus the Depreciated Replacement or Reproduction Cost New of the improvements.

The Sales Comparison Approach utilizes the sales of similar properties as the basis for an indication of value for the subject. Direct comparisons are made between the sale properties and the subject on an item-by-item basis in such areas as property rights, financing, conditions of sale, expenditures made immediately after purchase, market conditions, location, physical characteristics, economic characteristics, legal characteristics, and non-realty components of value. Adjustments are made to the sales price of the comparative property to arrive at an indication of what that property would have sold for had it been essentially similar to the subject property. These adjusted sale prices are correlated into an indication of value by this approach.

In the Income Capitalization Approach, an estimate is made of the market rent which the subject property might command based on the rental of competitive space. Estimates are also made of the appropriate vacancy/credit loss and expense ratios for the subject based on information developed from similar properties in the market. Thus, an indication of the Net Operating Income which the subject property is capable of producing is developed. An applicable capitalization method and appropriate capitalization rate are developed for use in computations that lead to an indication of value by the Income Capitalization Approach.

To arrive at a final value estimate, the three approaches are correlated into a single conclusion of value, based on the approach which has the highest quantity and/or quality of data available, and the one in which the market participant typically has the greatest confidence.

EXPLANATION OF APPROACHES: In arriving at the market value of the Whole Property Land/Affected Improvements and the market value of the Remainder Property Land Only, the Sales Comparison Approach to value has been applied. The subject improvements are not considered to be adversely affected by the acquisitions, with the exception of a barn and four trees.

The Cost Approach was only utilized to estimate the contributory value of the affected site improvements. Land rentals are not typically the basis on which properties of the subject nature are sold in the market area; therefore, the Income Capitalization Approach is not utilized. Application of the Income Capitalization Approach to Value is not considered necessary to produce credible appraisal results for the subject property.

ESTATE APPRAISED: Fee Simple Estate; Permanent Easement.

HISTORY: The subject property has not sold or transferred within the five-year period preceding the effective date of this report.

The subject is not listed for sale, or under contract to sell, as of the effective date, to my knowledge.

CHANGES IN PROPERTY SINCE DATE OF PURCHASE: Not available to the appraiser.

PERSONAL PROPERTY: None considered.

REAL ESTATE: Subject land, barn, and trees are valued in this report.

COMMENTS: The subject property was inspected by the appraiser on January 23, 2023. The property owner was not present at the time of inspection.

**SALES COMPARISON APPROACH
(Whole Property – Land Only)**

COMPARISON WITH SUBJECT PROPERTY

Sale narratives appear in the Addenda Section of this report.

SALE	1	2	3	4	5	6
Date of Sale	07/12/2018	02/26/2019	01/19/2021	07/16/2021	03/26/2021	01/27/2023
Sales Price	\$875,000	\$630,000	\$350,000	\$526,250	\$750,000	\$845,535
Size ± ACS	20.13	15	10	14.27	20	18.48
Unit Price/AC	\$43,467	\$42,000	\$35,000	\$36,878	\$37,500	\$45,754

ADJUSTMENT FACTORS

Property Rights	-0-	-0-	-0-	-0-	-0-	-0-
Financing	-0-	-0-	-0-	-0-	-0-	-0-
Conditions of Sale	-0-	-0-	-0-	-0-	-0-	-0-
Expenditures Made After Sale	-0-	-0-	-0-	-0-	-0-	-0-
Improvements	-0-	-0-	-0-	-0-	-0-	-0-
Market Conditions	13,040	12,600	4,200	2,213	3,375	-0-
ADJUSTED SALES PRICE	\$56,507	\$54,600	\$39,200	\$39,091	\$40,875	\$45,754
Location/Appeal	0	0	0	5,864	6,131	0
Physical Characteristics						
Size	2,825	-0-	-0-	-0-	2,044	2,288
Shape	-5,651	-5,460	-3,920	-1,955	-4,088	-0-
Legal Characteristics						
Zoning	-0-	-0-	392	391	-0-	-0-
INDICATED UNIT VALUE	\$53,681	\$49,140	\$35,280	\$43,391	\$44,962	\$48,042

EXPLANATION OF ADJUSTMENTS:

The unit of comparison is price per acre of land area. The necessary categories of adjustment are for market conditions, location/appeal, physical characteristics (size, shape), and legal characteristics (zoning). Each of the sales is considered reasonably similar to subject with respect to property rights, financing, conditions of sale, and utilities. Each of Sales One, Two, and Six included residential/agricultural improvements at the time of sale that were razed subsequent to the sale. The estimated cost to demolish the improvements was not known. An adjustment is not made for Expenditures Made After the Sale; however, this will be considered in the reconciliation.

Market Conditions: The respective sale dates of the comparable sales appear in the table above; the sales occurred between July 2018 and January 2023. Sale Six is considered similar to subject with respect to market conditions. Each of Sales One and Two is considered much inferior to

subject, while each of Sales Three, Four, and Five is considered inferior in market conditions. Sales Analysis supports 5% annual appreciation for 2019 and 2020. A 12% increase is indicated for 2020 and 2021. No adjustments can be supported for 2022 to the effective date of this report. Therefore, each of **Sales One and Two is adjusted upward 30%, while Sale Three is adjusted upward 12%, Sale Four 6%, and Sale Five 9%. No adjustment is warranted to Sale Six.**

Location/Appeal: Subject is located along the north side of Elm Springs Road, east of State Highway 112 in Elm Springs. Sale One is located along the west side of Ball Road, just north of Elm Springs Road in Springdale. Sale One is located across from Shaw Park. Sale Two is located at the northwest corner of Ball Road and Elm Springs Road in Elm Springs. Sale Two is located in close proximity to Shaw Park. Sale Three is located at the northwest corner of County Line Road and Pinkley Road in Springdale. This location is in close proximity to Shaw Park. Sale Four is located along the east side of 56th Street, south of County Line Road in Springdale. Sale Five is located along the west side of 56th Street, south of County Line Road in Springdale. Sale Six is located just southeast of subject, along the south side of Elm Springs Road. Overall, each of Sales One, Two, Three, and Six is considered reasonably similar to subject. These sales are located along or near Elm Springs Road and within very close proximity to Shaw Park. Each of Sales Four and Five is considered inferior to subject with respect to location/appeal. Paired Sales Analysis utilizing Sale Two with Sale Five indicates, after adjusting for other differences, that Sale Five is approximately 15% inferior to Sale Two. Again, Sale Two is considered reasonably similar to subject in location/appeal; therefore, in comparison to subject, **Sale Five is adjusted upward 15% for inferior location. Sale Four is also adjusted upward 15% for inferior location. No adjustment is necessary to Sales One, Two, Three, or Six.**

Physical Characteristics: With respect to physical characteristics, the necessary categories of adjustment is for land size and shape.

- **Land Size:** The subject is smaller than each of Sales One, Five, and Six. Overall, subject is relatively similar to Sales Two, Three, and Four. The tendency in the market is that as land area increases, price per unit decreases, and vice versa; this is for otherwise-similar properties. Sales Analysis supports that as a property's land area approximates doubling, its price/unit decreases about 10%±. Based on this premise, **each of Sales One, Five and Six is adjusted upward 5%.**
- **Shape:** Subject has an irregular shape in the north part of the site. This area comprises approximately 25% of the overall site. The width of the north boundary of the site is approximately 112'. Due to the shape of the north part of the site, development in the north part is limited. Sale Six has an irregular shape. Sale Six is considered reasonably similar to subject with respect to shape. Overall, each of Sales One, Two, Three, and Five has an adequate shape for development. Sale Four is "L" shaped with approximately 270' of width at the narrowest part. **Sale Four is considered approximately 5% superior to subject with respect to shape.** Paired Sales Analysis, utilizing Sale Five with Sale Four indicates, after adjusting for other differences, that Sale Four is approximately 5% inferior to Sale Five. **Therefore, Sale Five is considered approximately 10% superior to subject with respect to shape. Each of Sales One, Two, Three, and Five is adjusted downward 10% for superior shape.**

Legal Characteristics: With respect to legal characteristics, the necessary category of adjustment is for zoning.

- **Zoning:** Subject is zoned RSF-1. Sale One was zoned SF-2 at the time of Sale, Sale Two a mixture of RSF-1/A-1, Sale Five SF-2, and Sale Six a mixture of RSF-1/A-1. Each of Sales Three and Four was zoned A-1 at the time of sale. Overall, each of Sales One, Two, Five, and Six is considered reasonably similar to subject, while each of Sales Three and Four is considered inferior. It is likely that Sales Three and Four could obtain a residential zoning; however, there would be costs involved to rezone. The property owner would have to petition the respective Planning Commission/ City Council for rezoning of the site to a single-family residential zoning district. **Each of Sales Three and Four is adjusted upward 1% for inferior zoning.**

CORRELATION OF INDICATED VALUES: The range of adjusted per acre values is \$35,280 to \$53,681; the mean of the sales is indicated to be \$45,749/AC, while the median is \$46,502/AC. Each of the sales is given consideration; however, Sale Six is located very close to subject and is a 2023 sale. Sale Six is given the most weight.

ESTIMATED LAND VALUE: Based on the preceding analysis, the indicated per acre value of subject Whole Property, in my opinion, is **\$48,000**. Therefore:

WHOLE PROPERTY LAND ONLY: 11.85± ACS @ \$48,000	=	\$568,800
PLUS: Contributory Value of Pole Shed/Barn*	=	\$ 10,000
Contributory Value of Trees*	=	<u>\$ 4,000</u>
WHOLE PROPERTY LAND ONLY/ AFFECTED IMPROVEMENTS	=	\$582,800

*The contributory value of the pole shed/barn and four trees affected by the acquisition was based on Marshall Valuation Service.

Please see the Extraordinary Assumptions previously presented.

SUMMARY OF ACQUISITION:

PE	1.18± Acres (Outside Side Setback)	@ \$48,000	=	\$ 56,650
PE	0.30± Acre (Inside Side Setback)	@ \$12,000	=	\$ 3,600
Pole Shed/Barn			=	\$ 10,000
4 Trees			=	<u>\$ 4,000</u>
Total			=	\$ 74,250

**SALES COMPARISON APPROACH
(Remainder Property – Land Only)**

COMPARISON WITH SUBJECT PROPERTY

Sale narratives appear in the Addenda Section of this report.

SALE	1	2	3	4	5	6
Date of Sale	07/12/2018	02/26/2019	01/19/2021	07/16/2021	03/26/2021	01/27/2023
Sales Price	\$875,000	\$630,000	\$350,000	\$526,250	\$750,000	\$845,535
Size ± ACS	20.13	15	10	14.27	20	18.48
Unit Price/AC	\$43,467	\$42,000	\$35,000	\$36,878	\$37,500	\$45,754

ADJUSTMENT FACTORS

Property Rights	-0-	-0-	-0-	-0-	-0-	-0-
Financing	-0-	-0-	-0-	-0-	-0-	-0-
Conditions of Sale	-0-	-0-	-0-	-0-	-0-	-0-
Expenditures Made After Sale	-0-	-0-	-0-	-0-	-0-	-0-
Improvements	-0-	-0-	-0-	-0-	-0-	-0-
Market Conditions	13,040	12,600	4,200	2,213	3,375	-0-
ADJUSTED SALES PRICE	\$56,507	\$54,600	\$39,200	\$39,091	\$40,875	\$45,754
Location/Appeal	0	0	0	5,864	6,131	0
Physical Characteristics						
Size	2,825	-0-	-0-	-0-	2,044	2,288
Shape	-5,651	-5,460	-3,920	-1,955	-4,088	-0-
Legal Characteristics						
Zoning	-0-	-0-	392	391	-0-	-0-
Easement	-5,084	-5,084	-5,084	-5,084	-5,084	-5,084
Damages	-1,983	-1,983	-1,983	-1,983	-1,983	-1,983
INDICATED UNIT VALUE	\$46,614	\$42,073	\$28,605	\$36,324	\$37,895	\$40,975

EXPLANATION OF ADJUSTMENTS:

Adjustments for Market Conditions, Location/Appeal, Size, Shape, and Zoning have previously been explained in the Whole Property analysis. The only additional necessary categories of adjustment is for Easement and Damages.

- **Easement:** The subject property is encumbered with a 1.48± acre permanent easement located along the east boundary of the site. The easement is 50' in width. The damages to the land due to the imposition of an easement can range from 0% to 100% of the easement area's fee value. The full impact of an easement acquisition cannot be estimated until the appraiser determines: 1) the loss of present utility; 2) the loss of future utility; 3) the

accessory rights to be acquired; and, 4) the obligations of the parties. The side setback requirement for the subject property is 10'. Approximately 20% of the PE is located within side setback requirement, while approximately 80% of the PE is located outside side setback requirement. Structures cannot be built on the land within the permanent easement area. In my opinion, the property owner's bundle of rights of ownership will be lost with respect to the land within the permanent easement area that is located outside side setback requirement. This area is valued at 100% of full fee value. In my opinion, a portion of the property owner's bundle of rights of ownership will be lost with respect to the land within the permanent easement area that is located inside side setback requirement. This area is valued at 75% of full fee value. Therefore, $1.18\pm \text{ acres} @ \$48,000/\text{acre} \times 100\% = \$56,640$ and $0.30\pm \text{ acre} @ \$48,000/\text{acre} \times 25\% = \$3,600$; total acquisition = $\$56,640 + \$3,600 = \$60,240$, say **\$60,250** or $\$5,084/\text{acre}$ ($\$60,250/11.85 \text{ acres}$). **Each sale is adjusted downward \$5,084.**

- **Damages:** Again, subject's northern portion of the site (approximately 25% of the entire site) is irregular in shape. The northern boundary of the site is approximately $112'\pm$ in width. The shape of the northern portion makes development limited in this area. An adjustment for subject's shape has already been discussed in this analysis; however, the location and size of the permanent easement creates additional issues with the utility of the northern portion of the site. Overall, it is my opinion, that the northwestern portion located outside the permanent easement, or approximately $2.45\pm \text{ acres}$ is damaged approximately 20% by the PE acquisition. Therefore: $2.45\pm \text{ acres} @ \$48,000 \times 20\% = \$23,520$, say **\$23,500**. **Each sale is adjusted downward \$1,983** ($\$23,500/11.85 \text{ acres}$).

CORRELATION OF INDICATED VALUES: The range of adjusted per acre values is \$28,605 to \$46,614; the mean of the sales is indicated to be \$38,748/AC, while the median is \$39,435/AC. Each of the sales is given consideration; however, Sale Six is located very close to subject and is a 2023 sale. Sale Six is given the most weight.

ESTIMATED LAND VALUE: Based on the preceding analysis, the indicated per acre value of subject Remainder Property, in my opinion, is **\$40,933**. Therefore:

REMAINDER PROPERTY

LAND ONLY:	11.85± ACS @ \$40,933	=	\$485,056
		Say	\$485,050

Please see the Extraordinary Assumptions and Hypothetical Condition previously presented.

RECONCILIATION OF APPROACHES

Estimated Value of Whole Tract Before Taking:

Cost Approach.....	Not Utilized
Sales Comparison Approach	\$582,800 (Land/Affected Improvements)
Income Capitalization Approach.....	Not Utilized
Estimated Value.....	\$582,800

EXPLANATION: The Sales Comparison Approach was relied upon in arriving at the final value conclusion for the Whole Property. The quantity and quality of data available is considered good.

Estimated Value of Remainder Tract After Taking:

Cost Approach.....	Not Utilized
Sales Comparison Approach.....	\$485,050
Income Capitalization Approach.....	Not Utilized
Estimated Value.....	\$485,050

EXPLANATION: The value of the Remainder Property is based on the Sales Comparison Approach. The quantity and quality of data available or use in the Sales Comparison Approach was considered good.

ESTIMATED VALUE OF PART SOUGHT INCLUDING ALL DAMAGES OR BENEFITS:

Whole Property (Land/Affected Improvements)	=	\$582,800
Remainder Property (Land Only)	=	<u>\$485,050</u>
Total Compensation	=	\$ 97,750
Less: Contributory Value of Affected		
Improvements & PE Acquisition	=	<u>\$ 74,250</u>
Damages	=	\$ 23,500

Please see the Extraordinary Assumptions and Hypothetical Condition previously presented.

EXPOSURE TIME

Exposure time is the length of time the subject property would have been exposed for sale in the market had it sold at the market value concluded in this analysis as of the date of this valuation.

The exposure time of Sales Two, Five, and Six utilized in the Sales Comparison Approach was not known. The exposure time of Sales One, Three, and Four was indicated to be 129± days, 110± days, and 0± days, respectively. Based on Multiple Listing Service Data, the average days on market for development potential land sales 2-20 acres in size located in Benton and Washington Counties occurring within the twelve months immediately preceding the effective date of this report was indicated to be 279 days, while the median was indicated to be 119 days. This was based on 127 transactions.

The land and residential sectors are considered strong at the present time with good activity levels and significant new construction. The outlook for subject's market area is considered good. The near term outlook for the Northwest Arkansas real estate market is considered positive; however, the country and area are experiencing severe pressure on the economy as a result of the virus, and the overall impact on real estate values is yet to be determined.

Overall, in my opinion, an exposure time of one year or less is considered realistic for the subject property.

ADDENDA

1. Definitions
2. Area Map
3. Area Data
4. Aerial Photograph
5. Subject Photographs
6. Flood Zone Map
7. Assessment Records
8. Deed Records
9. Permanent Easement Legal Description/Exhibits
10. Comparable Land Sales Map
11. Comparable Land Sales
12. Assumptions and Limiting Conditions
13. Qualifications of the Appraiser

DEFINITIONS

RETROSPECTIVE VALUE OPINION:

“A value opinion effective as of a specified historical date. The term retrospective does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiation, deficiency judgements, estate tax, and condemnation. Inclusion of the type of value with this term is appropriate, e.g., “retrospective market value opinion.”¹

FEE SIMPLE ESTATE:

“Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.”²

LEASED FEE ESTATE:

“The ownership interest held by the lessor, which includes the right to receive the contract rent specified in the lease plus the revisionary right when the lease expires.”³

LEASEHOLD ESTATE:

“The right held by the lessee to use and occupy real estate for a stated term and under the conditions specified in the lease.”⁴

EASEMENT:

“The right to use another’s land for a stated purpose.”⁵

PERPETUAL EASEMENT:

“An easement that lasts forever.”⁶

TEMPORARY CONSTRUCTION EASEMENT:

“An easement granted for a specific purpose and applicable for a specific time period. A construction easement, for example, is terminated after the construction of the improvement and the unencumbered fee interest in the land reverts to the owner.”⁷

¹ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 201.

² Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 90.

³ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 128.

⁴ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 128.

⁵ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 71

⁶ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 170.

⁷ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 231.

MARKET AREA:

“The geographic region from which a majority of demand comes and in which the majority of competition is located. Depending on the market, a market area may be further subdivided into components such as primary, secondary, and tertiary market areas, or the competitive market area may be distinguished from the general market area.”⁸

NEIGHBORHOOD:

*“1. A group of complementary land uses; a congruous grouping of inhabitants, buildings, or business enterprises.
2. A developed residential super pad within a master planned community usually having a distinguished name and entrance.”⁹*

HIGHEST AND BEST USE:

“The highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future.”¹⁰

SEVERANCE DAMAGES:

“In condemnation, the loss in value to the remainder in a partial taking of property. Generally, the difference between the value of the whole property before the taking and the value of the remainder after the taking is the measure of the value of the part taken and the damages to the remainder. Note that different regions of the country and different courts may use terms such as consequential damages and severance damages differently.”¹¹

JUST COMPENSATION:

“In condemnation, the amount of loss for which a property owner is compensated when his or her property is taken. Just compensation should put the owner in as good a position pecuniarily as he or she would have been if the property had not been taken.”¹²

COST APPROACH:

“A set of procedures through which a value indication is derived for the fee simple estate by estimating the current cost to construct a reproduction of (or replacement for) the existing structure, including an entrepreneurial incentive or profit; deducting depreciation from the total cost; and adding the estimated land value. Adjustments may then be made to the indicated value of the fee simple estate in the subject property to reflect the value of the property interest being appraised.”¹³

⁸ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 139.

⁹ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 156.

¹⁰ Interagency Land Acquisition Conference, *Uniform Appraisal Standards for Federal Land Acquisitions* – (Chicago: Appraisal Institute, 2016) P. 22.

¹¹ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 59.

¹² Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 123.

¹³ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 54.

SALES COMPARISON APPROACH:

“The process of deriving a value indication for the subject property by comparing sales of similar properties to the property being appraised, identifying appropriate units of comparison, and making adjustments to the sale prices (or unit prices, as appropriate) of the comparable properties based on relevant, market-derived elements of comparison. The sales comparison approach may be used to value improved properties, vacant land, or land being considered as though vacant when an adequate supply of comparable sales is available.”¹⁴

INCOME CAPITALIZATION APPROACH:

“Specific appraisal techniques applied to develop a value indication for a property based on its earning capability and calculated by the capitalization of property income.”¹⁵

RECONCILIATION:

“A phase of a valuation assignment in which two or more value indications are processed into a value opinion, which may be a range of value, a single point estimate, or a reference to a benchmark value.”¹⁶

MARKET VALUE:

Market Value is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of value, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property.”¹⁷

EXTRAORDINARY ASSUMPTION:

“An assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser’s opinion or conclusions.”¹⁸

HYPOTHETICAL CONDITION:

- “1. A condition that is presumed to be true when it is known to be false. (SVP)*
- 2. A condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis.”¹⁹*

¹⁴ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 207.

¹⁵ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 115.

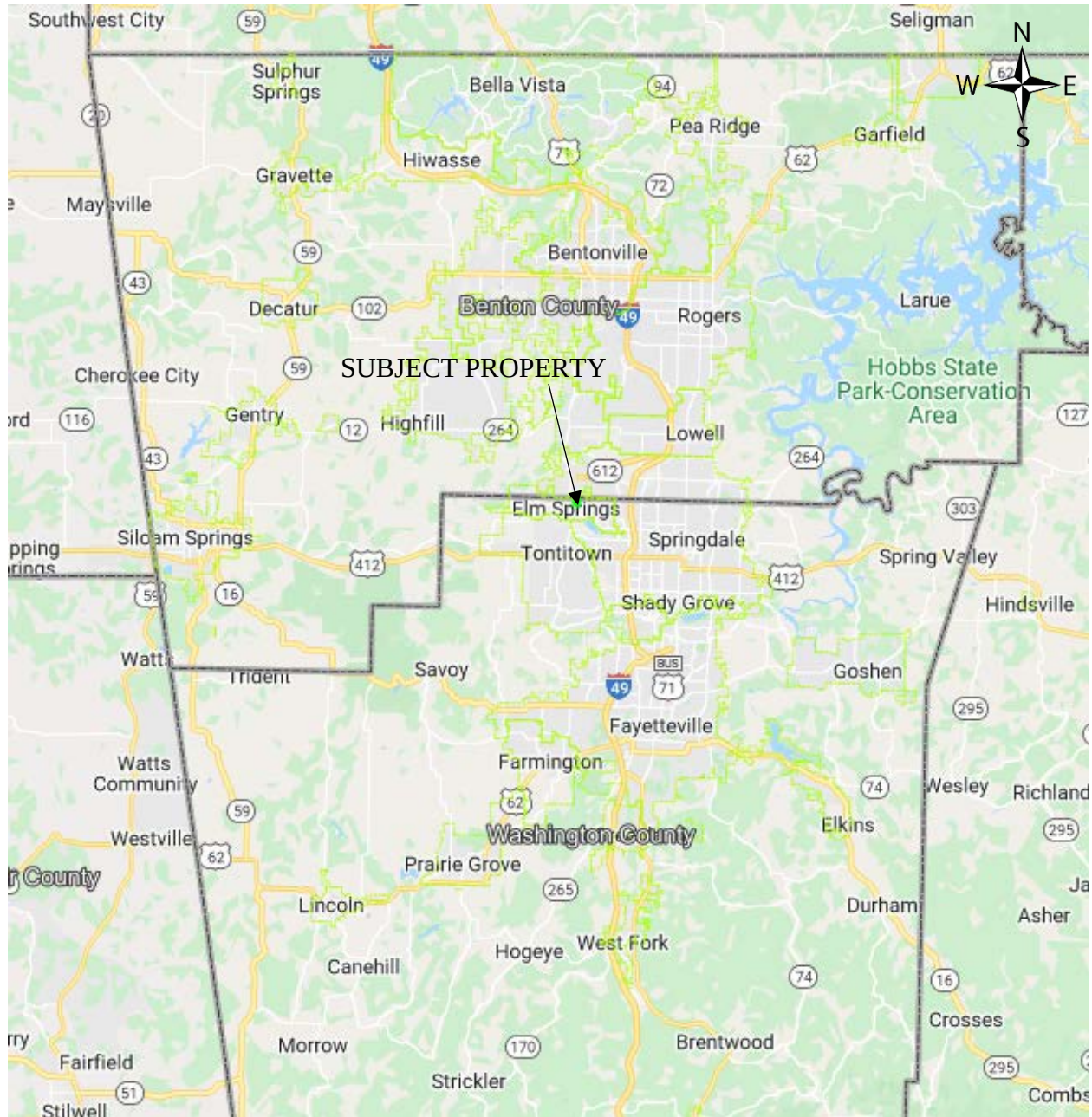
¹⁶ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 190.

¹⁷ Interagency Land Acquisition Conference, *Uniform Appraisal Standards For Federal Land Acquisitions* (Chicago: Appraisal Institute, 2016) P. 93.

¹⁸ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 83-84.

¹⁹ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 113.

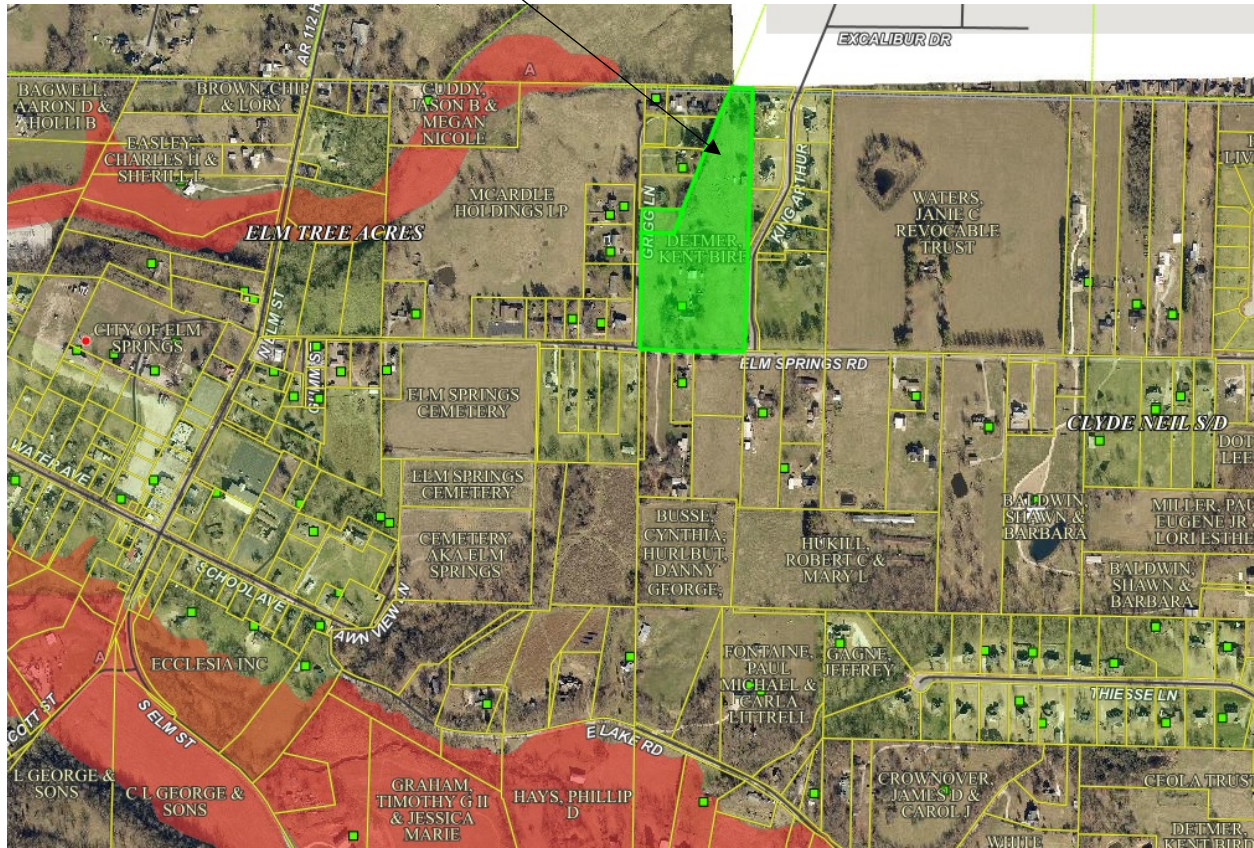
AREA MAP



AERIAL PHOTOGRAPH



SUBJECT PROPERTY



SUBJECT PHOTOGRAPHS

SUBJECT PHOTOGRAPHS TAKEN BY KATIE HAMPTON ON JANUARY 23, 2023



FRONTAGE ALONG ELM SPRINGS ROAD – LOOKING WESTERLY



FRONTAGE ALONG KING ARTHUR DRIVE – LOOKING SOUTHERLY & SHOWING PROPOSED PERMANENT EASEMENT ACQUISITION AREA



SUBJECT PROPERTY – LOOKING NORTHERLY



SUBJECT PROPERTY – LOOKING WESTERLY



SUBJECT PROPERTY – LOOKING NORTHWESTERLY &
SHOWING PROPOSED PERMANENT EASEMENT ACQUISITION AREA

SUBJECT PHOTOGRAPHS TAKEN BY KATIE HAMPTON ON FEBRUARY 14, 2022



FRONTAGE ALONG ELM SPRINGS ROAD – LOOKING EASTERLY



SUBJECT PROPERTY – LOOKING NORTHEASTERLY



SUBJECT PROPERTY – LOOKING EASTERLY



SUBJECT PROPERTY – LOOKING NORTHWESTERLY



SUBJECT PROPERTY – LOOKING SOUTHERLY & SHOWING
PORTION OF PROPOSED PERMANENT EASEMENT ACQUISITION AREA



SUBJECT PROPERTY – LOOKING NORTHERLY &
SHOWING PROPOSED PERMANENT EASEMENT ACQUISITION AREA



SUBJECT PROPERTY – LOOKING SOUTHERLY &
SHOWING PROPOSED PERMANENT EASEMENT ACQUISITION AREA



SUBJECT PROPERTY – LOOKING SOUTHERLY &
SHOWING PROPOSED PERMANENT EASEMENT ACQUISITION AREA

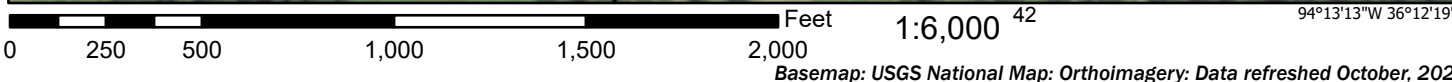
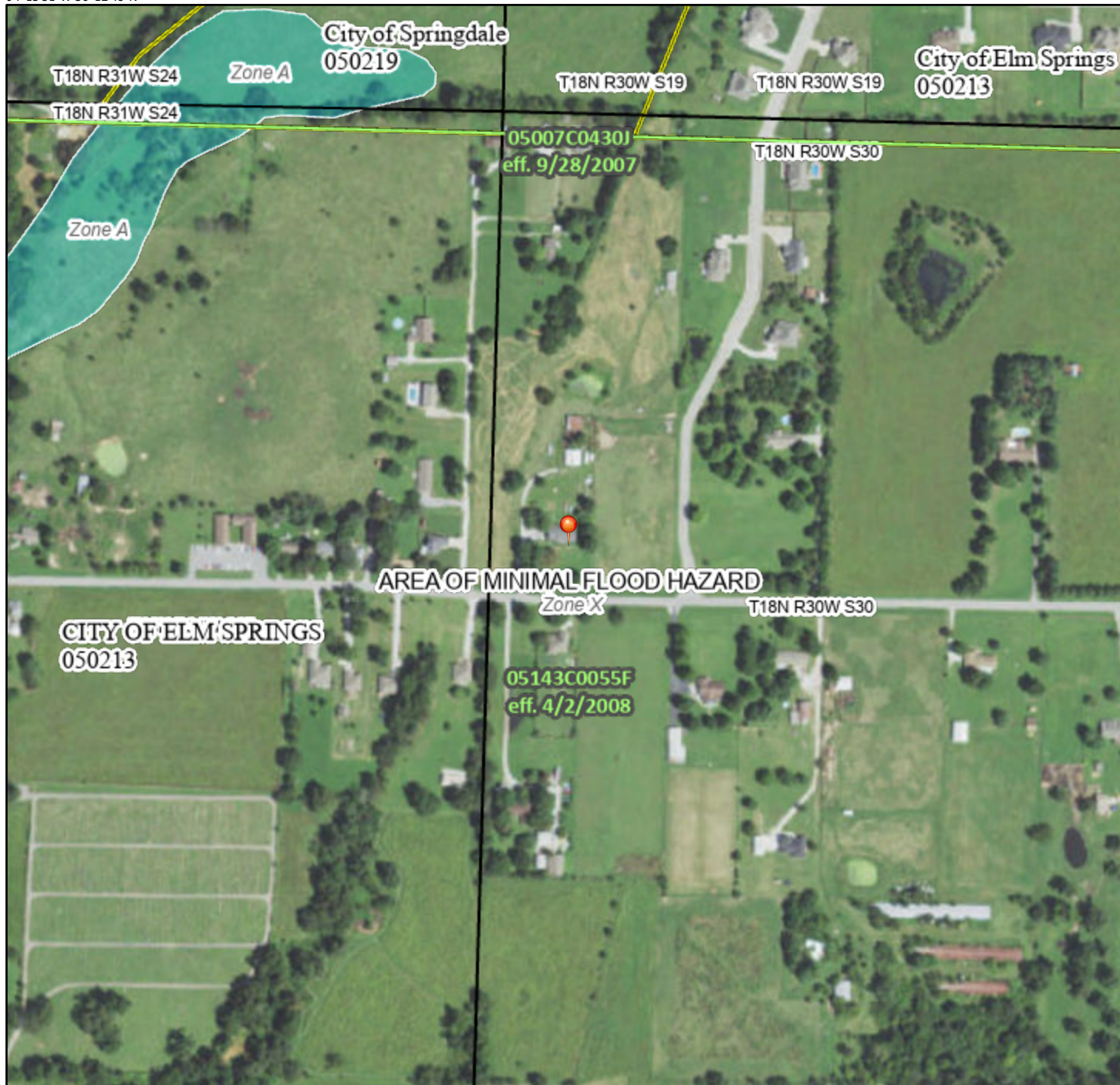


SUBJECT PROPERTY – LOOKING NORTHERLY &
SHOWING PROPOSED PERMANENT EASEMENT ACQUISITION AREA

National Flood Hazard Layer FIRMette



94°13'51"W 36°12'48"N



Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS		Without Base Flood Elevation (BFE) Zone A, V, A99
		With BFE or Depth Zone AE, AO, AH, VE, AR
		Regulatory Floodway
OTHER AREAS OF FLOOD HAZARD		0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
		Future Conditions 1% Annual Chance Flood Hazard Zone X
		Area with Reduced Flood Risk due to Levee. See Notes. Zone X
		Area with Flood Risk due to Levee Zone D
OTHER AREAS		NO SCREEN Area of Minimal Flood Hazard Zone X
		Effective LOMRs
GENERAL STRUCTURES		Area of Undetermined Flood Hazard Zone D
		Channel, Culvert, or Storm Sewer
		Levee, Dike, or Floodwall
OTHER FEATURES		20.2 Cross Sections with 1% Annual Chance Water Surface Elevation
		17.5 Cross Sections with 1% Annual Chance Water Surface Elevation
		Coastal Transect
		Base Flood Elevation Line (BFE)
		Limit of Study
		Jurisdiction Boundary
MAP PANELS		Coastal Transect Baseline
		Profile Baseline
		Hydrographic Feature
		Digital Data Available
		No Digital Data Available
		Unmapped



The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on **3/21/2022 at 2:37 PM** and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.

Property Owner

Name: DETMER, KENT BIRD

Property Information

Physical Address: 618 ELM SPRINGS RD

Mailing Address: 1713 W HUNTSVILLE AVE
SPRINGDALE, AR 72762

Subdivision: 30-18-30 ELM SPRINGS OUTLOTS

Block / Lot: N/A / N/A

Type: (AI) Agri Improved

S-T-R: 30-18-30

Tax Dist: (502) SPRINGDALE SCH, ELM SP

Size (Acres): 11.370

Millage Rate: 52.00

Extended Legal: PT FRL NW NW 11.37 A, ALSO ADJ RR/RW FURTHER DESCRIBED FROM 2014-8411 AS: Part of the Fractional Northwest Quarter (Fri. NW 1/4) of the Fractional Northwest Quarter (Fri. NW 1/4) of Section Thirty (30), Township Eighteen (18) North, Range Thirty (30) West, and part of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of Section Twenty-Five (25), Township Eighteen (18) North, Range Thirty-one (31) West, more particularly described as follows, to-wit: Beginning at the Northeast corner of the Fractional Northwest Quarter (Fri. NW 1/4) of the Fractional Northwest Quarter (Fri. NW 1/4) of Section Thirty (30), thence South 89°57'50" West 405.00 feet to the Point of Beginning, thence South 89°57'50" West 111.62 feet, thence South 20°14'14" West 651.09 feet, thence South 89°50'08" West 216.32 feet, thence South 00°02'37" East 703.95 feet to the centerline of Elm Springs Road, thence along said centerline South 87°58'54" East 250.26 feet, thence North 88°53'04" East 306.27 feet, thence leaving centerline of Elm Springs Road North 00°09'36" West 1,318.40 feet to the point of beginning.

Market and Assessed Values

Taxes

	Estimated Market Value	Full Assessed (20% Mkt Value)	Taxable Value	Estimated Taxes:	\$616
Land:	\$46,850	\$9,370	\$4,570	Homestead Credit:	\$375
Building:	148550	29710	14486	Note: Tax amounts are estimates only. Contact the county/parish tax collector for exact amounts.	
Total:	\$195,400	\$39,080	\$19,056		

Land

Land Use	Size	Units
HL 1.15 AC		
Homesite	1.000	Acres
Pasture(06)	6.830	Acres
Pasture(13)	1.490	Acres
Pasture(12)	1.300	Acres
Pasture(11)	0.750	Acres
Total	11.370	

Parcel: 750-00579-000
 Prev. Parcel: 121240-000-00
 As of: 1/31/2023

Washington County Report

ID: 33557

Deed Transfers

Deed Date	File Date	Book	Page	Deed Type	Stamps	Est. Sale	Grantee	Code	Type
5/19/2011		2011	14181	Trust Deed			DETMER, KENT BIRD	Unval.	N/A
2/16/1995		95	12449	Warr. Deed	0.00	\$0	DETMER, VIRGINIA V REVOCABLE TRUST	Inc. Additiona l Prop.	N/A
2/18/1993				DeathCer	0.00	\$0	DETMER, VIRGINIA VON BORA	N/A	N/A
1/17/1978		957	28	Warr. Deed	0.00	\$0	DETMER, HERBERT F & VIRGINIA VON BORA	N/A	Improve d
5/9/1977		0DR1	225	Survey			DETMER, HERBERT F & VIRGINIA VON BORA	N/A	Improve d
1/25/1973		843	136	Quit Claim			DETMER,VIR GINIA VON BORA; JACKSON, BARBARA JEAN	N/A	Improve d
11/17/1962	12/3/1962	584	260	Warr. Deed	11.55	\$10,500	BIRD, WALTER	Unval.	Improve d
7/8/1943		335	513	Warr. Deed			DELOZIER, HAROLD & LENA	N/A	Improve d
5/21/1934		291	358	Warr. Deed			DELOZIER, W S & AUDRA	N/A	Improve d
11/9/1914		5	11	Survey			DELOZIER, W S & AUDRA	N/A	Improve d
11/9/1914		4	83	Survey			DELOZIER, W S & AUDRA	N/A	Improve d

Reappraisal Value History

Tax Year	Total Value	Total Assessed
2015	\$142,350.00	\$18,556.00
2016	\$142,350.00	\$18,615.00
2017	\$142,350.00	\$18,674.00
2018	\$142,350.00	\$18,733.00
2019	\$142,350.00	\$18,792.00
2020	\$195,400.00	\$18,880.00
2021	\$195,400.00	\$18,968.00
2022	\$195,400.00	\$19,056.00

Details for Residential Card 1

Occupancy	Story	Construction	Total Liv	Grade	Year Built	Age	Condition	Beds
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Not a Legal Document.
 Subject to terms and conditions.
www.actDataScout.com

Parcel: 750-00579-000
 Prev. Parcel: 121240-000-00
 As of: 1/31/2023

Washington County Report

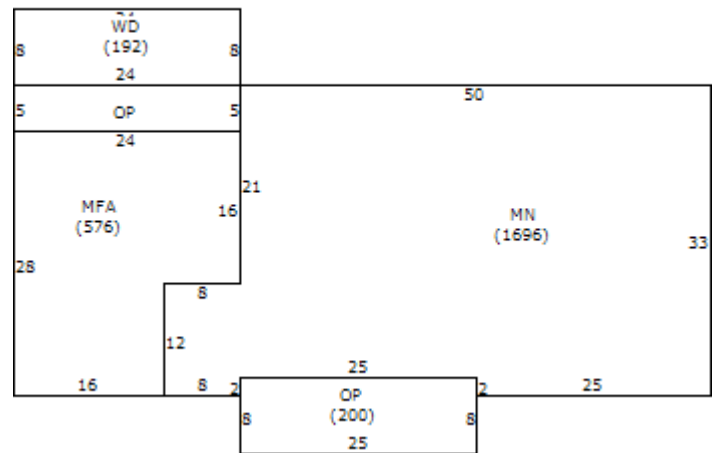
ID: 33557

Single Family ONE Masonry Veneer 1,696 4 1985 35 Average

Exterior Wall: BV
Foundation: Closed Piers
Floor Struct: Wood with subfloor
Floor Cover: Carpet & Tile
Insulation: Ceilings Walls
Roof Cover: Fiberglass Shingle
Roof Type: Gable

Plumbing: Full: 1 Half: 1
Fireplace: N/A
Heat / Cool: Central
Basement: N/A
Basement Area:
Year Remodeled:
Style:

DataScout, LLC



Base Structure

Item	Label	Description	Area
A	MN	Main Living Area	1696
B	MFA	Garage - masonry finished, att	576
C	WD	Wood deck	192
D	OP	Porch, open	120
E	OP	Porch, open	200

Outbuildings and Yard Improvements

Item	Type	Size/Dim	Unit Multi.	Quality	Age
Pole Shed		48x24	1		
General Purpose Barn		36x36	1	L	
Driveway, concrete		23x23	1		
Outbuilding, frame		6x10	1		
Pole Shed		41x31	1		
Well House		10x12			

Not a Legal Document.
 Subject to terms and conditions.
www.actDataScout.com

Parcel: 750-00579-000
Prev. Parcel: 121240-000-00
As of: 1/31/2023

Washington County Report

ID: 33557

Other Adjustments

Code	Type	Quantity
FRPL	1SA	1

Map



EXEMPT

TRUSTEE'S DEED

KNOW ALL MEN BY THESE PRESENTS:

That I, **VIRGINIA V. DETMER**, Trustee of **THE VIRGINIA V. DETMER REVOCABLE TRUST**, u/t/d **February 16, 1995**, hereinafter called Grantor, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration to me in hand paid by **KENT BIRD DETMER**, a single man, hereinafter called Grantee, do hereby grant, bargain and sell unto the said Grantee and Grantee's successors and assigns, the following described land situate in Washington County, State of Arkansas, to-wit:

The fractional NW $\frac{1}{4}$ of the fractional NW $\frac{1}{4}$ of Section 30 in Township 18 North of Range 30 West, and a part of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 25 in Township 18 North of Range 31 West, described as beginning at the Northeast corner of said fractional NW $\frac{1}{4}$ of the fractional NW $\frac{1}{4}$ of said Section 30, and running thence South along the East quarter section line to the center of the Elm Springs – Springdale Road; thence West with the center of said Road 753 feet; thence North 87° 07' West with the center of said Road 210.2 feet; thence North to and continuing along the East line of a lane or road running from the Elm Springs – Springdale Road North to the Howard Grigg Lands, a distance of 698.5 feet, more or less, to a point due West of the Southwest corner of Lot 1 in Block 1, Peter Gharst Addition to the Town of Elm Springs, Arkansas; thence East to and continuing along the South line of Lots 1, 2 and 3 in Block 1 of said Addition to the center of the abandoned right-of-way of the Kansas City & Memphis Railway Company; thence Northeasterly with the center of said right-of-way to a point which is 12 feet due South of the North line of said fractional quarter section; thence in a direct line Easterly to a point where the East line of said right-of-way intersects the North line of said fractional quarter section; thence East to the point of beginning, subject to an easement along the Southerly part thereof for the Elm Springs – Springdale Road

TO HAVE AND TO HOLD the said lands and appurtenances thereunto belonging unto the said Grantee and Grantee's heirs, successors and assigns, forever. And I, the said Grantor, hereby covenant that I am lawfully seized of said land and premises, that the same is unencumbered, and that I will forever warrant and defend the title to the said lands against all claims whatever.

WITNESS my hand and seal on this 19th day of May, 2011.

Virginia V. Detmer Trustee
**VIRGINIA V. DETMER, Trustee of the
VIRGINIA V. DETMER REVOCABLE TRUST,
u/t/d February 16, 1995**

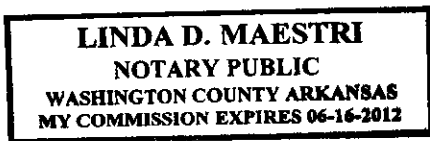
ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

On this the 19th day of May, 2011, before me, a Notary Public, personally appeared **VIRGINIA V. DETMER, Trustee of the VIRGINIA V. DETMER REVOCABLE TRUST, u/t/d February 16, 1995**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument and acknowledged that she had executed the same for the purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:



Linda D. Maestri
Notary Public

I certify under penalty of false swearing that at least the legally correct amount of documentary stamps have been placed on this instrument.

Kent Bird Detmer
Kent Bird Detmer

Mail Tax Statement to: **KENT BIRD DETMER**
 1713 West Huntsville Street
 Springdale, AR 72762

Prepared by: HARRINGTON, MILLER, KIEKLAK, EICHMANN & BROWN, P.A., P.O. Box 687, Springdale, Arkansas 72765-0687.

WATER/SEWER EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT **Kent Bird Detmer, a single person**, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby GRANT, SELL and CONVEY unto the **City of Fayetteville, Arkansas, a municipal corporation**, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement and a temporary construction and grading easement to construct, lay, remove, relay, inspect, enlarge and/or operate a water and/or sanitary sewer pipe line or lines, manholes, and appurtenances thereto, on, over, across, and under the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION: (Deed Ref: 2011-14181)

The fractional NW $\frac{1}{4}$ of the fractional NW $\frac{1}{4}$ of Section 30 in Township 18 North of Range 30 West, and a part of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 25 in Township 18 North of Range 31 West, described as beginning at the Northeast corner of said fractional NW $\frac{1}{4}$ of the fractional NW $\frac{1}{4}$ of said Section 30, and running thence South along the East quarter section line to the center of the Elm Springs – Springdale Road; thence West with the center of said Road 753 feet; thence North 87°07' West with the center of said Road 210.2 feet; thence North to and continuing along the East line of a lane or road running from the Elm Springs – Springdale Road North to the Howard Grigg Lands, a distance of 698.5 feet, more or less to a point due West of the Southwest corner of Lot 1 in Block 1, Peter Gharst Addition to the Town of Elm Springs, Arkansas; thence East to and continuing along the South line of Lots 1, 2 and 3 in Block 1 of said Addition to the center of the abandoned right of way of the Kansas City & Memphis Railway Company; thence Northeasterly with the center of said right of way to a point which is 12 feet due South of the North line of said fractional quarter section; thence in a direct line Easterly to a point where the East line of said right of way intersects the North line of said fractional quarter section; thence East to the point of beginning, subject to an easement along the Southerly part thereof for the Elm Springs – Springdale Road.

PERMANENT EASEMENT DESCRIPTION:

Part of the Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4) of Section 30, Township 18 North, Range 30 West, Washington County, Arkansas, being more particularly described as follows: Commencing at the Northeast corner of the NW 1/4 of the NW 1/4 of said Section 30; thence along the North line of said NW 1/4 of the NW 1/4 North 87°50'26" West, 402.39 feet to the POINT OF BEGINNING (P.O.B.); thence leaving said North line and along the West line of Camelot Subdivision, as shown in Plat Book 23, Page 00183 of the Washington County records South 02°46'29" West, 1287.84 feet to the North right-of-way line of Elm Springs Road (60' R/W); thence leaving the West line of Camelot Subdivision and along the North line of Elm Springs Road North 88°09'05" West, 50.01 feet; thence leaving said North right-of-way line of Elm Springs Road North 02°46'29" East, 1288.11 feet to the North line of said NW 1/4 of the NW 1/4; thence along said North line South 87°50'26" East, 50.00 feet to the POINT OF BEGINNING (P.O.B.), containing 64,398 square feet, 1.48 acres.

Together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, so long as such pipe line or lines, manholes and/or appurtenances thereto shall be maintained, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth.

The said Grantor is to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said Grantee, which hereby agrees to bury all pipes, where feasible, to a sufficient depth so as not to interfere with cultivation of soil, and that manholes will be constructed flush with the surface of the ground except in bottom lands where they shall be at a height above high water.

The Grantor agrees not to erect any buildings or structures in said easement. Driveways and parking lots will not be considered permanent structures.

The Grantee shall have the right to construct pipe lines and/or make repairs to lines within the above described easement at any time in the future and agrees to pay for or repair any damages as a result of such future construction and/or repairs as set out in this easement.

It is further understood that Grantee's easement shall be exclusive and that Grantor and/or Grantor's successors shall convey no parallel rights to any person, utility or corporation on, across or under said easement without the express written permission of Grantee.

The consideration first above recited as being paid to Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

It is hereby understood and agreed that the party securing this document in behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this the _____ day of _____, 2023.

Kent Bird Detmer

[spouse]

ACKNOWLEDGMENT

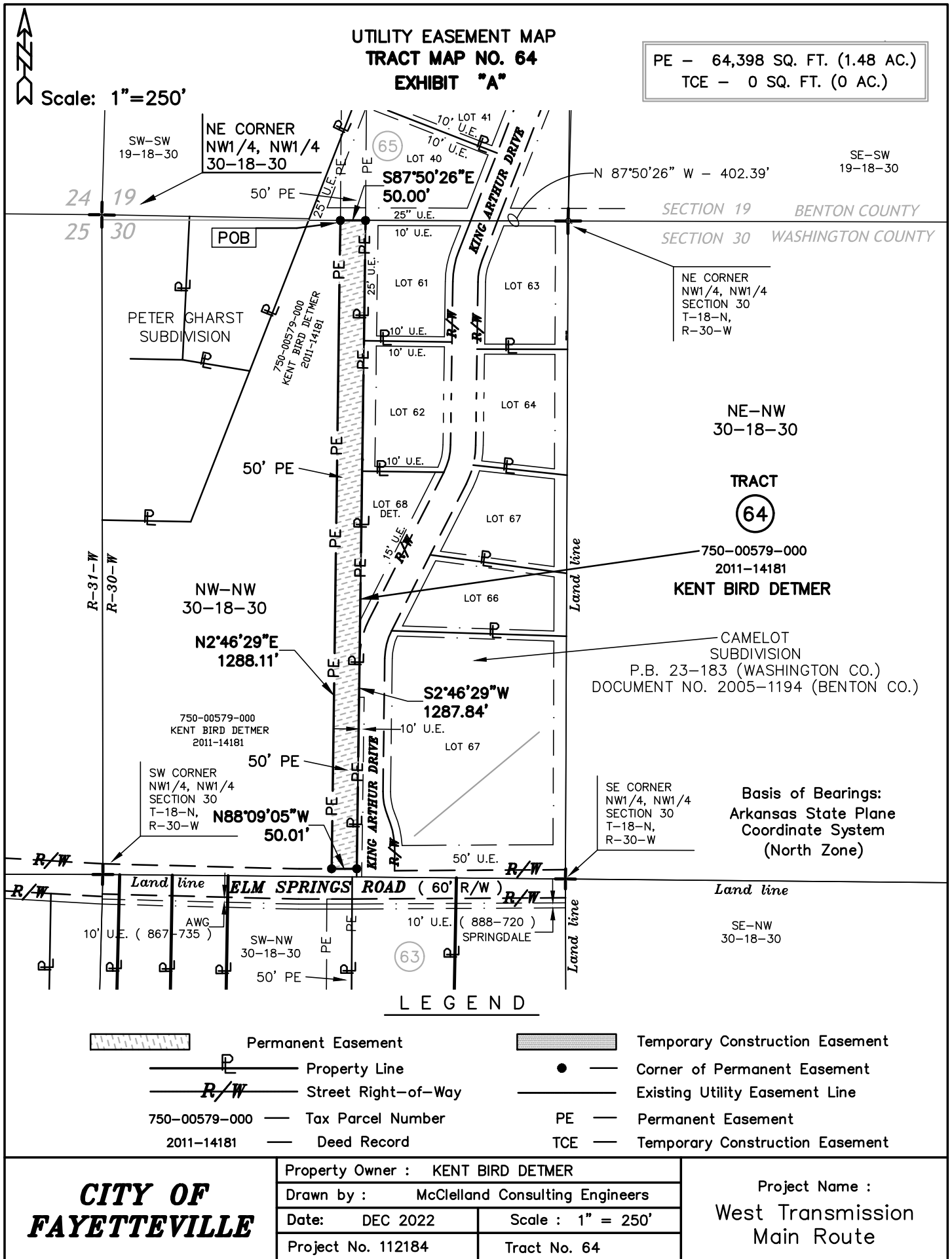
STATE OF ARKANSAS)
COUNTY OF _____) SS.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Kent Bird Detmer and _____**, **spouse**, if any to me well known as the person(s) who executed the foregoing document, and who stated and acknowledged that he/they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

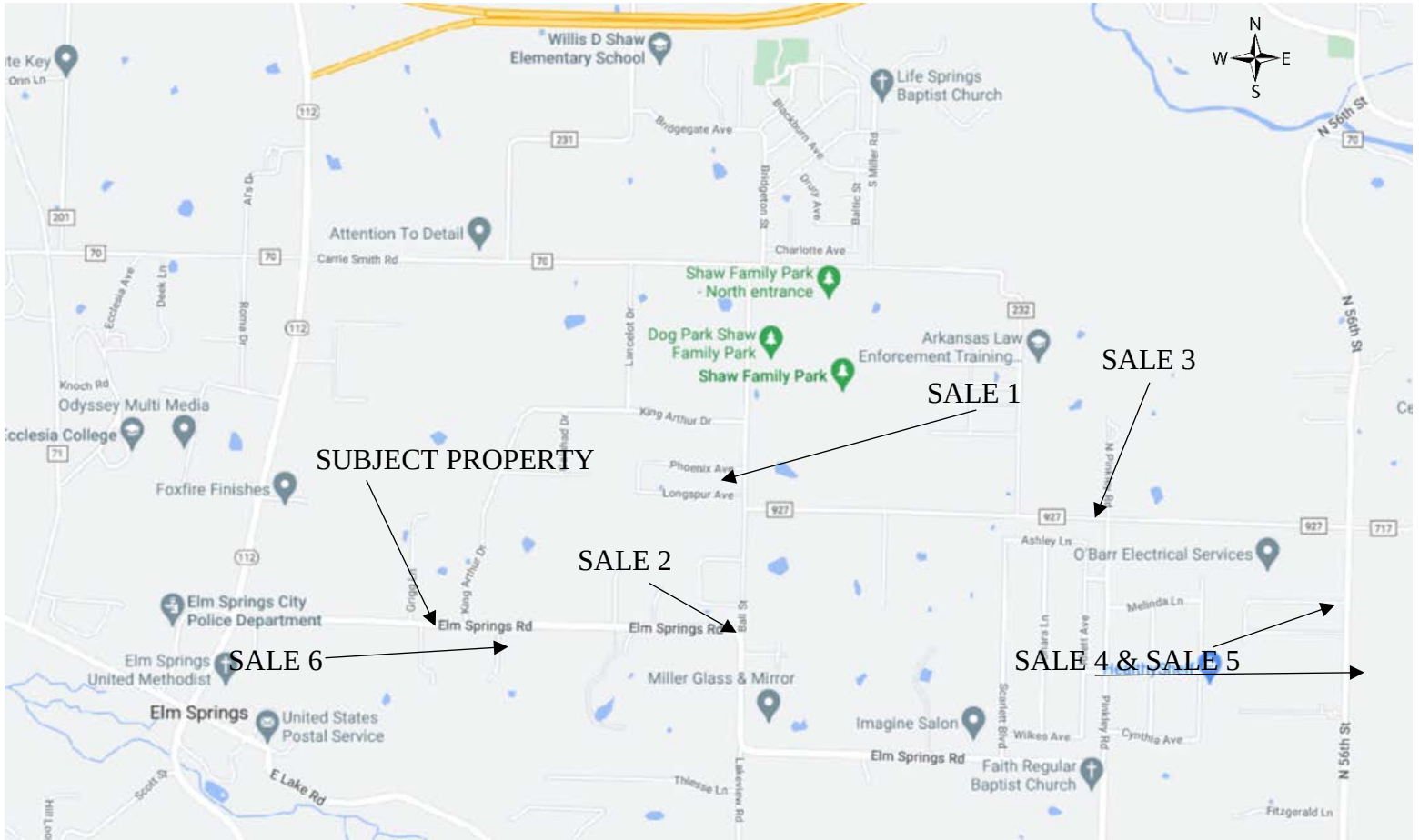
WITNESS my hand and seal on this _____ day of _____, 2023.

MY COMMISSION EXPIRES:

Notary Public



COMPARABLE LAND SALES MAP



LAND SALE 1



GENERAL INFORMATION

General/Specific Type: Residential

Location: Along the west side of Ball Road, 1,300'± north of Elm Springs Road.

City: Springdale

County: Benton

Record #: 2348

Book/Page: L2018/36207

Parcel(s): 21-00167-480

S-T-R: 19-18-30

Lot/Block: See Legal

Subdivision: None

Legal: THE SOUTH HALF (S 1/2) OF THE SOUTHWEST QUARTER (SW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION NINETEEN (19), TOWNSHIP EIGHTEEN (18) NORTH, RANGE THIRTY 30) WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF SPRINGDALE, BENTON COUNTY, ARKANSAS

SALE INFORMATION

Sale Date: July 12, 2018

Sale Price: \$875,000

Adjusted Sale Price: \$875,000

Grantor: Billy Fields

Grantee: Ball Street Real Estate LLC

Financing: Believed Market Terms

Conditions of Sale: Arm's-Length

Exposure Time: 129 DOM

Rights Conveyed: Fee Simple

Verification: MLS & Public Records

PROPERTY INFORMATION

Gross Land Size: 20.130± Acres, or 876,863± SF

Total Frontage: 650'±, Ball Road

Zoning: SF-2, Medium Density Single Family Residential

Topography: Gently rolling, clear, small ponds

Utilities: Typical city

Highest & Best Use: Residential

Indicators

Sale Price/Gross Acre: \$43,467±

Sale Price/Gross SF: \$1.00±

Adjusted Sale Price/Gross Acre: \$43,467±

Adjusted Sale Price/Gross SF: \$1.00±

Remarks: This represents the sale of 20.13± acres located along the west side of Ball Road, north of Elm Springs Road in Springdale. The property was improvement with some improvements at the time of sale; however, the improvements did not provide contributory value to the site. Shaw Park is located across Ball Road to the east. Reported consideration was \$875,000 or \$43,467/acre. Subsequent to the sale, the site was developed in to a single-family residential subdivision.

LAND SALE 2



GENERAL INFORMATION

General/Specific Type: Agricultural/Residential

Record #: 2699

Location: At the northwest corner of Elm Springs Road & Ball Street

Book/Page: 2019-22510

City: Elm Springs

County: Washington

State: AR

Parcel(s): 750-00553-000

S-T-R: 30-18-30

Lot/Block: See Legal

Subdivision: N/A

Legal: Extended Legal Description - see public records

SALE INFORMATION

Sale Date: February 26, 2019

Financing: Believed Market Terms

Sale Price: \$630,000

Conditions of Sale: Believed Arm's-Length

Adjusted Sale Price: \$630,000

Exposure Time: Unknown

Grantor: Jessie Leroy Stacy & Mona Estelle Stacy
Joint Trust

Rights Conveyed: Market Terms

Grantee: Douglas L. Sperber, D/B/A Sperber
Holdings, and Anderson Investments, LLC

Verification: Public Records

PROPERTY INFORMATION

Gross Land Size: 15.000± Acres, or 653,400± SF

Indicators

Total Frontage: 1,780'±, Elm Springs Road & Ball
Street

Sale Price/Gross Acre: \$42,000±

Zoning: RSF-1 & A-1

Sale Price/Gross SF: \$0.96±

Topography: Near Level/Mostly Cleared

Adjusted Sale Price/Gross Acre: \$42,000±

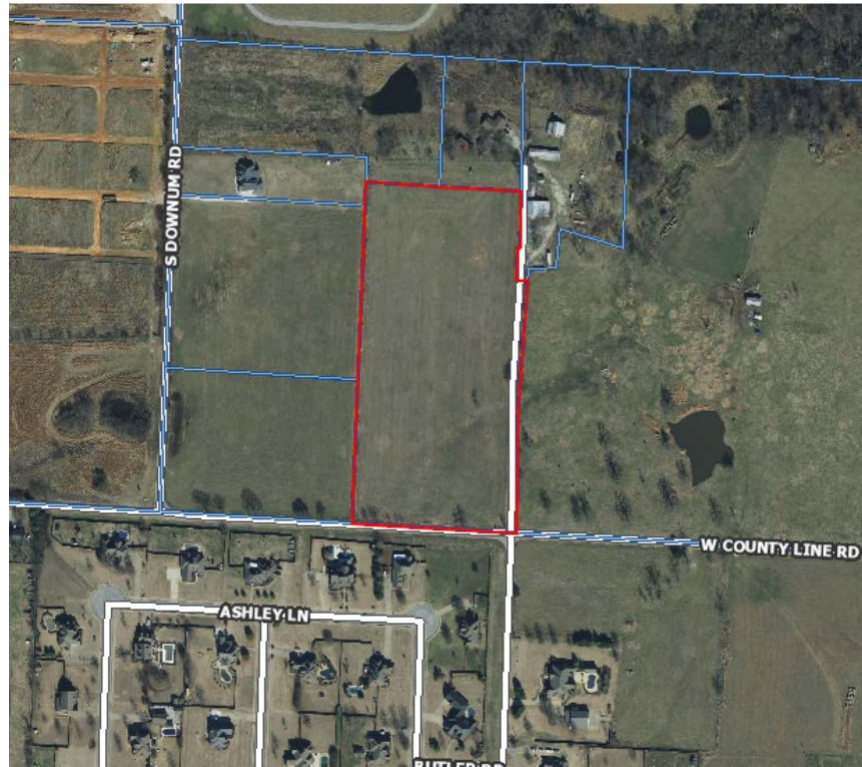
Utilities: Water, No Sewer

Adjusted Sale Price/Gross SF: \$0.96±

Highest & Best Use: Residential

Remarks: This represents the sale of 15± acres located at the northwest corner of Elm Springs Road and Ball Road in Elm Springs. The property has access to public water at the street, however, public sewer is not available. Agricultural improvements were located on the site at the time of sale; however, were not considered to provide contributory value to the site. Subsequent to the sale, the site was developed in to a single-family residential subdivision.

LAND SALE 3



GENERAL INFORMATION

General/Specific Type: Agricultural/Residential

Record #: 2909

Location: At the northwest corner of W. County Line Road & Pinkley Road

Book/Page: L2021-4335

City: Springdale

County: Benton

State: AR

Parcel(s): 21-00167-568

S-T-R: 20-18-30

Lot/Block: N/A

Subdivision: N/A

Legal: Extended Legal Description - see public records

SALE INFORMATION

Sale Date: January 19, 2021

Financing: Market Terms

Sale Price: \$350,000

Conditions of Sale: Arm's-Length

Adjusted Sale Price: \$350,000

Exposure Time: 110 Days On Market

Grantor: Pinkley Farms, Inc.

Rights Conveyed: Fee Simple

Grantee: Steven & Linda Geels

Verification: MLS & Public Records

PROPERTY INFORMATION

Gross Land Size: 10.000± Acres, or 435,600± SF

Indicators

Total Frontage: W. County Line Road & Pinkley Road

Sale Price/Gross Acre: \$35,000±

Zoning: A-1, Agricultural

Sale Price/Gross SF: \$0.80±

Topography: Gently Sloping

Adjusted Sale Price/Gross Acre: \$35,000±

Utilities: Water, No Sewer

Adjusted Sale Price/Gross SF: \$0.80±

Highest & Best Use: Residential

Remarks: This represents the sale of 10± acres located at the northwest corner of W. County Line Road and Pinkley Road in Springdale.

LAND SALE 4



GENERAL INFORMATION

General/Specific Type: Residential

Location: 56th Street See Remarks

City: Springdale

Parcel(s): 815-29789-292

S-T-R: 28-18-30

Legal: Extended legal – to follow

County: Washington

NWAMLS: #1192010

Lot/Block: N/A

Book/Page: 2021/27591

State: AR

Asking/Listing Price: \$525,000

Subdivision: N/A

SALE INFORMATION

Sale Date: July 16, 2021

Sale Price: \$526,250

Adjusted Sale Price: \$526,250

Grantor: Loy E. and Alma L. Boyd, Trustees of the Loy & Alma Boyd Revocable Trust, u/t/a, October 21, 2016

Grantee: Noah's Landing, LLC

Financing: Market Terms

Conditions of Sale: Arm's-Length

Exposure Time/DOM: 0 days

Rights Conveyed: Fee Simple

Verification: EPSIII W/listing agent Larry Marion/Bassett Mix and Associates.

PROPERTY INFORMATION

Gross Land Size: 14.27± Acres, or 621,601± SF

Frontage: 56th Street

Zoning: A-1 Agriculture

Topography: Near Level – Open/Wooded

Utilities: Natural Gas, Electric, Public Water & Sewer

Highest & Best Use: Residential Development

Indicators

Sale Price/Gross Acre: \$36,878±

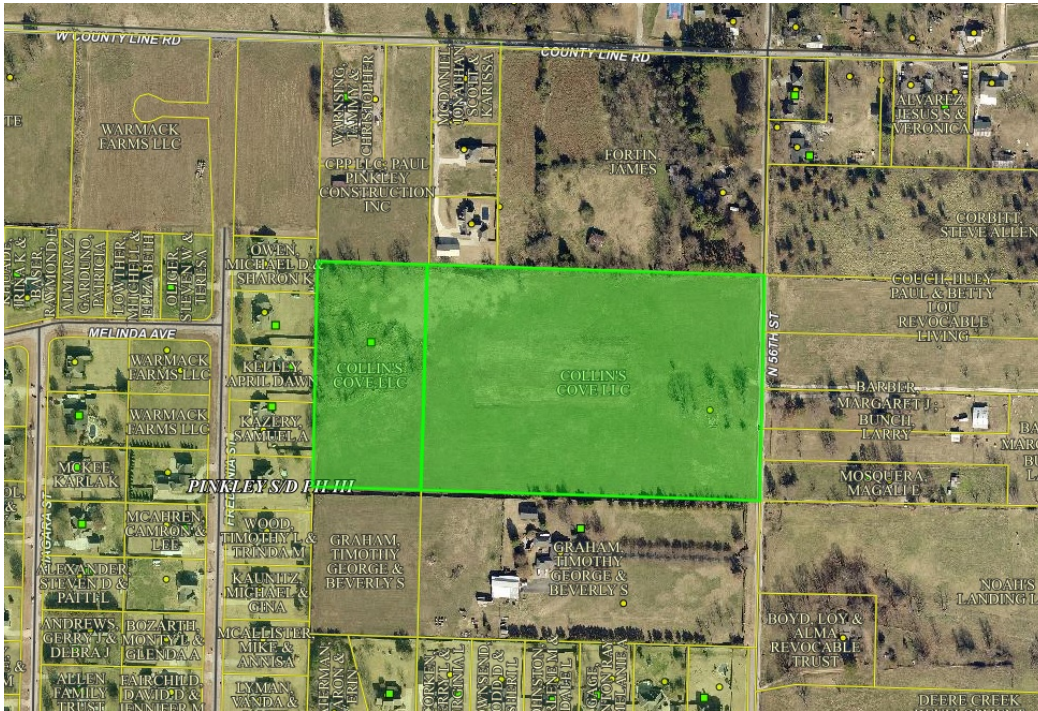
Sale Price/Gross SF: \$0.85±

Adjusted Sale Price/Gross Acre: \$36,878±

Adjusted Sale Price/Gross SF: \$0.85±

Remarks: This represents the sale of 14.27± acres located along the east side of 56th Street, south of County Line Road in Springdale. The site is being developed in to Noah's Landing subdivision.

LAND SALE 5



GENERAL INFORMATION

General/Specific Type: Single-Family Residential		Record #: 3174
Location: West side of 56th Street, south of County Line Road		Book/Page: 2021-11791
City: Springdale	County: Washington	State: AR
Parcel(s): 750-00807-000 and 815-30919-000		
S-T-R: 29-18-30	Lot/Block: NA	Subdivision: NA
Legal: The S/2 of the NE/4 of the NE/4 of Section 29, Township 18 North, Range 30 West, Washington County, Arkansas		

SALE INFORMATION

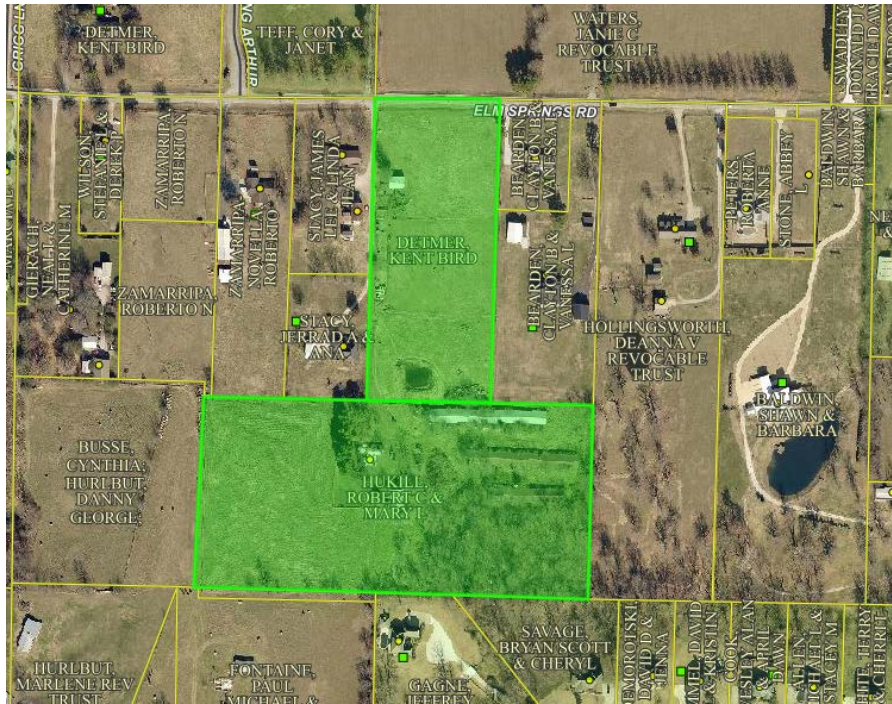
Sale Date: March 26, 2021	Financing: Believed to be Market Terms
Sale Price: \$750,000	Conditions of Sale: Arm's-Length
Adjusted Sale Price: \$750,000	Exposure Time: Unknown
Grantor: Legend Builders, Inc. and Kent Burnett Properties, Inc.	Rights Conveyed: Fee Simple
Grantee: Hylton Road Real Estate, LLC	Verification: Washington County Circuit Clerk/Assessor's Office

PROPERTY INFORMATION

Gross Land Size: 20.000± Acres, or 871,200± SF	Indicators
Total Frontage: 56th Street	Sale Price/Gross Acre: \$37,500±
Zoning: SF-1, Low Density Single Family	Sale Price/Gross SF: \$0.86±
Topography: Gently Sloping	Adjusted Sale Price/Gross Acre: \$37,500±
Utilities: Typical City; no sewer	Adjusted Sale Price/Gross SF: \$0.86±
Highest & Best Use: Residential Development	

Remarks: This represents the sale of 20± acres located along the west side of 56th Street, south of County Line Road in Springdale and Elm Springs. Approximately 5± acres of the site is located within Elm Springs. The site is being developed in to a 57 lot subdivision. Reported consideration \$750,000 or \$37,500/acre. The site is located in the Springdale School District.

LAND SALE 6



GENERAL INFORMATION

General/Specific Type: Single-Family Residential
Location: South side of Elm Springs Road, west of Ball Road
City: Elm Springs **County:** Washington **Book/Page:** Unknown
Parcel(s): 750-00581-000 and 750-00583-000 **State:** AR
S-T-R: 30-18-30 **Lot/Block:** NA **Subdivision:** NA
Legal: Part of the S/2 of the Fractional NW/4 of Section 30, Township 18 North, Range 30 West

SALE INFORMATION

Sale Date: January 27, 2023 **Financing:** Market Terms
Sale Price: \$845,535 **Conditions of Sale:** Arm's-Length
Adjusted Sale Price: \$845,535 **Exposure Time:** Unknown
Grantor: Robert & Mary Hukill and Kent Detmer **Rights Conveyed:** Fee Simple
Grantee: Unknown **Verification:** Listing/Selling Representative

PROPERTY INFORMATION

Gross Land Size: 18.48± Acres, or 804,989± SF **Indicators**
Total Frontage: Elm Springs Road **Sale Price/Gross Acre:** \$45,754±
Zoning: RSF-1/A-1 **Sale Price/Gross SF:** \$1.05±
Topography: Gently Sloping **Adjusted Sale Price/Gross Acre:** \$45,754±
Utilities: Typical City; no sewer **Adjusted Sale Price/Gross SF:** \$1.05±
Highest & Best Use: Residential Development

Remarks: This represents the sale of 18.48± acres located along the south side of Elm Springs Road, west of Ball Road in Elm Springs. The site was assembled in two transactions. Approximately 12.15± acres sold from Robert & Mary Hukill and approximately 6.33± acres sold from Kent Detmer. Residential development is planned for the site. The site is located in the Springdale School District.

ASSUMPTIONS AND LIMITING CONDITIONS

This Appraisal Report has been made with the following general assumptions:

1. No responsibility is assumed for the legal description or for matters including legal or title consideration. Title to the property is assumed to be good and merchantable unless otherwise stated.
2. The property is appraised free and clear of any or all liens or encumbrances unless otherwise stated.
3. Responsible ownership and competent property management are assumed.
4. The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy.
5. All engineering is assumed to be correct. The plot plans and illustrative material in this report are included only to assist the reader in visualizing the property.
6. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them.
7. It is assumed that there is full compliance with all applicable federal, state and local environmental regulations and laws unless noncompliance is stated, defined, and considered in the appraisal report.
8. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a nonconformity has been stated, defined, and considered in the appraisal report.
9. It is assumed that all required licenses, certificates of occupancy, consents, or other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
10. It is assumed that the utilization of the land and improvements is within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted in the report.
11. "Unless otherwise stated in this report, the existence of hazardous materials which may or may not be present on the property was not observed by the appraiser. No responsibility is assumed for any such conditions or any expertise or engineering knowledge required to discover them. The client is urged to retain an expert if desired."

This Appraisal Report has been made with the following general limiting conditions:

1. The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.
2. Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the appraiser, and in any event only with proper written qualification and only in its entirety.
3. The appraiser herein by reason of this appraisal is not required to give further consultation, testimony, or be in attendance in court with reference to the property in question unless arrangements have been previously made.
4. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser, or the firm with which the appraiser is connected) shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent and approval of the appraiser.
5. The Americans with Disabilities Act (ADA) became effective January 26, 1992. I (we) have not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property together with a detailed analysis of the requirements of the ADA could reveal that the property is not in compliance with one or more of the requirements of the act. If so, this fact could have a negative effect upon the value of the property. Since I (we) have no direct evidence relating to this issue, I (we) did not consider possible noncompliance with the requirements of ADA in estimating the value of the property.

QUALIFICATIONS OF KATIE REED HAMPTON

EDUCATION

B.S.B.A. in Finance/Real Estate, Minor in Marketing-University of Arkansas, December 2006

PROFESSIONAL EXPERIENCE

May 2008-May 2011 – Research Assistant for REED & ASSOCIATES, INC., Fayetteville, Arkansas

May 2011–Present – Certified General Appraiser for REED & ASSOCIATES, INC., Fayetteville, Arkansas

Colliers International Branch Office – Commercial Real Estate/Development, 3739 N. Steele Blvd., Suite 322, Fayetteville, Arkansas – Sales Associate/Property Manager

January 2007-May 2011 – Commercial Coordinator for Streetsmart NWA, LLC, Fayetteville, Arkansas

PROFESSIONAL AFFILIATIONS AND DESIGNATIONS

Real Estate Salespersons License-Arkansas

Certified General Appraiser – Arkansas – CG3642

Arkansas Chapter of the Appraisal Institute

Member of the Northwest Arkansas Appraisal Section

International Right Of Way Association – Secretary

Arkansas Appraisal Board Member

PROFESSIONAL COURSES COMPLETED

Real Estate Principles – UA – 2005

Real Estate Investment & Appraisal – UA – 2006

Real Estate Finance – UA – 2006

Appraisal Institute – Chicago Chapter – Course OL-401G – General Appraiser Sales Comparison Approach – December 2011

National Uniform Standards of Professional Appraisal Practice (USPAP) – 15 Hours – Russellville, AR

Appraisal Institute – Chicago Chapter – Business Practice & Ethics - 2012

Appraisal Institute – Chicago Chapter – Basic Appraisal Principles - 2013

Appraisal Institute – Chicago Chapter – General Appraiser Site Valuation & Cost Approach – 2013

Appraisal Institute – Chicago Chapter – General Appraiser Report Writing – 2013

Appraisal Institute – Chicago Chapter – General Appraiser Income Capitalization Approach I – 2013

Appraisal Institute – Chicago Chapter – General Appraiser Income Capitalization Approach II – 2014

16-Hour Uniform Appraisal Standards for Federal Land Acquisitions – Arkansas Chapter of the Appraisal Institute; Little Rock, Arkansas

Appraisal Institute – Chicago Chapter – General Appraiser Market Analysis & Highest & Best Use – 2015

Appraisal Institute – Chicago Chapter – Eminent Domain and Condemnation – 2016

National Uniform Standards of Professional Appraisal Practice (USPAP) – 7 Hour Update – 2016

Appraisal Institute – Green Country and Ozark Mountain Chapter – Advanced Income Capitalization Approach – 2017

National Uniform Standards of Professional Appraisal Practice (USPAP) – 7 Hour Update – 2018

The Cost Approach: Unnecessary or Vital to a Healthy Practice – 2020 - Appraisal Institute – Arkansas Chapter

National Uniform Standards of Professional Appraisal Practice (USPAP) – 7 Hour Update – 2020 - Appraisal Institute – Arkansas Chapter

Case Studies in Complex Valuation – 2020 – Appraisal Institute – Arkansas Chapter

Examining Property Rights & Implications in Valuation – 2020- Appraisal Institute – Arkansas Chapter

CLIENTELE

Arkansas State Highway and Transportation Department

O.R. Colan Associates

Universal Field Services

Cities of: Springdale, Fayetteville, Rogers, Lowell, Bentonville, Prairie Grove, Siloam Springs

Carroll Electric Cooperative Corporation

Various Water Authorities, Attorneys, Corporations, and Individuals

Financial Institutions – Arvest Bank, Legacy National Bank, First Security Bank, Centennial Bank, Bear State Bank, United Bank, First Western Bank, IberiaBank, Bancorp South, Signature Bank, Cornerstone Bank, and others.

RELEVANT COLLEGE COURSES

Microeconomics, Macroeconomics, Principles of Marketing, Business Statistics, Real Estate Principles, Real Estate Investment & Appraisal, Real Estate Finance, International Finance, Financial Markets & Institutions, Financial Analysis & Valuation, Business Strategy & Planning, International Marketing, Market Research

APPRAISAL REPORT

ON

THE KENT BIRD DETMER PROPERTY;
11.85± ACRES LOCATED AT THE NORTHEAST CORNER
OF ELM SPRINGS ROAD AND GRIGG LANE,
ELM SPRINGS, ARKANSAS; WASHINGTON COUNTY
WEST TRANSMISSION MAIN ROUTE PROJECT
TRACT: 64

FOR

MCCLELLAND CONSULTING ENGINEERS
FAYETTEVILLE, ARKANSAS 72703

BY

REED & ASSOCIATES, INC.
3739 N. STEELE BLVD., SUITE 322
FAYETTEVILLE, ARKANSAS 72703

FILE NO. 5590-64

AS OF

FEBRUARY 14, 2022

Reed & Associates, Inc.

Real Estate Appraisers – Consultants

3739 N. Steele Blvd., Suite 322, Fayetteville, AR 72703 * 479-521-6313 * Fax: 479-521-6315 * www.reedappraisal.biz

Tom Reed, MAI • Katie Hampton • Shannon Mueller

March 18, 2022

Nick Batker
McClelland Consulting Engineers
1580 E. Stearns Street
Fayetteville, AR 72703

RE: The Kent Bird Detmer Property; 11.85± acres located at the northeast corner of Elm Springs Road and Grigg Lane, Elm Springs, AR; Washington County

Dear Mr. Batker:

In compliance with your request and for the purpose of estimating the market value of the above captioned property, I hereby certify that we have examined the subject property and made a survey of the matters pertinent to the estimation of its value.

I further certify that I have no interest, present or contemplated, in the property appraised, and that my fee was not contingent upon the value estimate reported.

The following real property appraisal report contains data gathered in my investigation, information from my files, and shows the method of appraisal in detail. This report is presented under the Appraisal Report Option.

This report addresses: the market value of the Whole Property (land/affected improvements) prior to the City of Fayetteville acquiring 1.48± acres in permanent utility easement (PUE) as of February 14, 2022, and, the market value of the Remainder Property (land only) after the acquisition of 1.48± acres in PUE is in place, also as of February 14, 2022.

Based on an analysis of relevant data, and contingent on the Assumptions and Limiting Conditions which follow and appear in the Addenda Section of this report, it is my opinion the market value of the subject property, as of February 14, 2022, was as follows:

Whole Property (Land/Affected Improvements)	=	\$498,900
Remainder Property (Land Only)	=	<u>\$414,300</u>
Damage To Market Value	=	\$ 84,600

The preceding values reflect terms equivalent to cash to the owners and represent those for real property only.

The following Extraordinary Assumptions are utilized in this report:

- 1. Subject land sizes, Whole Property and Remainder Property, are approximately as indicated;**
- 2. The area of acquisition is approximately as indicated;**
- 3. The City of Fayetteville, at their expense, will put the land area and fencing located within the permanent utility easement acquisition area back to as near original condition as possible;**

If any, or all, of these Extraordinary Assumptions prove to be untrue, one or both of the preceding value estimates could be influenced.

The reader is referred to additional Assumption and Limiting Conditions presented in the Addenda Section of this report.

A Hypothetical Condition of this appraisal is that the West Transmission Main Route Project is complete and in place as of the effective date of this report in estimating the market value of the Remainder Property. In reality, the project was not complete and in place as of February 14, 2022. If this Hypothetical Condition is not considered, the estimated market value of the Remainder Property could be influenced.

USPAP states the following under Sections Rule 1-4 (f): “When analyzing anticipated public or private improvements, located on or off the site, an appraiser must analyze the effect on value, if any, of such anticipated improvements to the extent they are reflected in market actions.” This appraisal is prepared in conformity to the provisions of the “Uniform Act” and its implementing regulation 49 CFR Part 24. The 49 CFR Part 24 regulation requires appraisers to disregard any decrease or increase in the market value of the property that has been caused directly by the project in the “Before Acquisition Value” appraisal. This is considered a Jurisdictional Exception. In addition, General Benefits as a result of the project have not been considered in the valuation of the Remainder Property based on 49 CFR Part 24. Considering USPAP Standards Rule 1-4 (f), this is also considered a Jurisdictional Exception.

Sincerely,



Katie Reed Hampton, CG3642
REED & ASSOCIATES, INC.



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ADDENDA

- Definitions
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- Permanent Easement Legal Description/Exhibit
- Comparable Land Sales Map
- Comparable Land Sales
- Assumptions and Limiting Conditions
- Qualifications of the Appraiser

CERTIFICATE

- The statements of fact contained in the report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions, limiting conditions, and legal instructions, and are the personal, unbiased professional analysis, opinions, and conclusions of the appraiser.
- The appraiser has no present or prospective interest in the property appraised and no personal interest or bias with respect to the parties involved.
- The compensation received by the appraiser for the appraisal is not contingent on the analyses, opinions, or conclusions reached or reported.
- The appraisal was made, and the appraisal report prepared in conformity with the *Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs; Final Rule*.
- The appraisal was made, and the appraisal report prepared in conformity with the Appraisal Foundation's *Uniform Standards of Professional Appraisal Practice*.
- I, Katie Hampton, have made a personal inspection of the property that is the subject of this report.
- A representative of the property owner was given the opportunity to accompany the appraiser on the property inspection.
- No one provided significant professional assistance to the appraisers.
- I certify that, to the best of my knowledge and belief, the reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, I, Katie Hampton, have completed the Standards and Ethics Education Requirement for Candidates of the Appraisal Institute.
- I have performed no services, as an appraiser, or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.

Based upon analysis of relevant data and contingent upon the Assumptions and Limiting Conditions which follow and appear in the Addenda Section of this report, it is my opinion the market value of the fee simple interest in the subject property, as of **February 14, 2022**, was:

Whole Property (Land/Affected Improvements)	=	\$498,900
Remainder Property (Land Only)	=	<u>\$414,300</u>
Damage To Market Value	=	\$ 84,600

The preceding values reflect terms equivalent to cash to the owner and represent those for real property only.

The following Extraordinary Assumptions are utilized in this report:

- 1. Subject land sizes, Whole Property and Remainder Property, are approximately as indicated;**
- 2. The area of acquisition is approximately as indicated;**
- 3. The City of Fayetteville, at their expense, will put the land area and fencing located within the permanent utility easement acquisition area back to as near original condition as possible.**

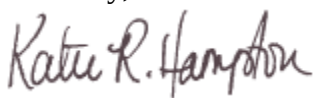
If any, or all, of these Extraordinary Assumptions prove to be untrue, one or both of the preceding value estimates could be influenced.

The reader is referred to additional Assumption and Limiting Conditions presented in the Addenda Section of this report.

A Hypothetical Condition of this appraisal is that the West Transmission Main Route Project is complete and in place as of the effective date of this report in estimating the market value of the Remainder Property. In reality, the project was not complete and in place as of February 14, 2022. If this Hypothetical Condition is not considered, the estimated market value of the Remainder Property could be influenced.

USPAP states the following under Sections Rule 1-4 (f): “When analyzing anticipated public or private improvements, located on or off the site, an appraiser must analyze the effect on value, if any, of such anticipated improvements to the extent they are reflected in market actions.” This appraisal is prepared in conformity to the provisions of the “Uniform Act” and its implementing regulation 49 CFR Part 24. The 49 CFR Part 24 regulation requires appraisers to disregard any decrease or increase in the market value of the property that has been caused directly by the project in the “Before Acquisition Value” appraisal. This is considered a Jurisdictional Exception. In addition, General Benefits as a result of the project have not been considered in the valuation of the Remainder Property based on 49 CFR Part 24. Considering USPAP Standards Rule 1-4 (f), this is also considered a Jurisdictional Exception.

Sincerely,



Katie Reed Hampton, CG3642
REED & ASSOCIATES, INC.



SUMMARY OF SALIENT FACTS AND CONCLUSIONS

Location: 618 Elm Springs Road
Client: McClelland Consulting Engineers
Fee Owner: Kent Bird Detmer
Mailing Address: 1713 W. Huntsville Avenue, Springdale, AR 72762

Area Of The Whole:	11.85± ACS	Permanent Utility Easement	1.48± ACS
Area Of Remainder:	11.85± ACS	Temporary Construction Easement	NA
Area Of Acquisition:	NA		

HIGHEST AND BEST USE:

Whole Property	Interim Residential/Agricultural until demand dictates development of the site
Remainder Property	Interim Residential/Agricultural until demand dictates development of the site

ACQUISITION COMPENSATION:

Before

Land: 11.85± ACS	\$	485,900	
Improvements: Pole Shed/Barn & 4 Trees	\$	13,000	
Total:		\$	498,900

After

Land: 11.85± ACS	\$	414,300	
Improvements: Not Appraised	\$		
Total		\$	414,300

Total Compensation as of: February 14, 2022	\$	84,600
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ALLOCATION OF COMPENSATION

Land: N/A	\$	0
Permanent Easement: 1.48± ACS	\$	51,500
Temporary Construction Easement: N/A	\$	0
Improvements: Pole Shed/Barn & 4 Trees	\$	13,000
Damages: Land	\$	20,100
Cost to Cure Items: Not Applicable	\$	0
Total Compensation:	\$	84,600

Katie R. Hampton

Katie Reed Hampton, CG3642
REED & ASSOCIATES, INC.



Date of Report: March 18, 2022

SCOPE OF WORK

The "Valuation Process" was utilized in estimating the market value of the subject property. This report is submitted under the Appraisal Report Option. The subject property was inspected by Katie Hampton on February 14, 2022. Photographs of the subject property were taken on the February 14th inspection by Katie Hampton.

Pertinent locational and physical data were obtained on the property inspection. The whole property legal description was obtained from deed records. The land size is based on Assessment Records. The acquisition land size was based on the permanent utility easement exhibit provided by the client (a copy of which appears in the Addenda Section of this report). The history and property tax data were obtained through Assessment Records.

The highest and best use of the property was projected based upon zoning, location, physical characteristics, past, current, and potential usage, etc.

Each of three accepted valuation methods has been addressed in this report. In arriving at the market value of subject Whole Property Land Only and Remainder Property Land Only, the Sales Comparison Approach was utilized. Subject is improved with residential/agricultural improvements; however, the improvements are not considered to be adversely affected by the acquisition, with the exception of a barn and four trees. The Cost Approach is only utilized to estimate the contributory value of the barn and trees. Considering land rentals aren't typically the basis on which properties of the subject nature are being purchased/sold in the market area, the Income Capitalization Approach is not utilized. Application of the Income Capitalization Approach is not considered necessary to produce credible appraisal results.

In the Sales Comparison Approach, comparable land sales were presented and analyzed for comparison purposes to the subject site. The unit of comparison is price per acre of land area. The sales were compared to the subject site, and adjustments made for differences. The per acre value of subject was estimated from within the adjusted range of the comparables, and was multiplied by the subject size to arrive at the indicated market value of the subject property by the Sales Comparison Approach.

The value indication by the Sales Comparison Approach was relied upon in determining the final value conclusion for subject. The estimated Total Compensation (Damage To Market Value) as a result of the acquisition was determined by subtracting the market value of the Remainder Property from the market value of the Whole Property.

GENERAL DATA

MARKET VALUE CONCEPT

Market Value is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of value, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property.”¹

¹Interagency Land Acquisition Conference, *Uniform Appraisal Standards For Federal Land Acquisitions* (Chicago: Appraisal Institute, 2016) P. 11.

PURPOSE OF APPRAISAL

The purpose of this appraisal is to estimate the Market Value of the described property including all damages and/or benefits, if any, to the extent that benefits are allowed under State Law, to the remaining property as just compensation for the property taken, as of the effective date.

INTENDED USE OF APPRAISAL

The intended use of the Appraisal Report is as a basis for determining total damage to the market value of the subject property as a result of the acquisition of 1.48± acres in PUE.

INTENDED USERS OF APPRAISAL REPORT

The intended users of this Appraisal Report are the McClelland Consulting Engineers, City of Fayetteville, and Mr. Kent Detmer.

PREMISE AND LIMITING CONDITIONS

This appraisal is predicated on the premise that:

1. The acquisition exhibits and/or tract descriptions furnished the appraisers by the client are correct.
2. Information, date, estimates and opinions contained in this report were obtained from sources considered reliable; however, no liability for them can be assumed or guaranteed by these appraisers.

Additional Assumptions and Limiting Conditions are presented in the Addendum Section of this report. Also, please see the Extraordinary Assumptions and Hypothetical Condition.

SUMMARY OF APPRAISAL PROBLEM

The appraisal problem in this valuation assignment is to: estimate the market value of the Whole Property (land/affected improvements) prior to the acquisition of 1.48± acre in PUE by the City of Fayetteville, and, to estimate the market value of the Remainder Property (land only) after the acquisition of 1.48± acre in PUE. The effective date of value in both scenarios is February 14, 2022. This represents the date of the site inspection.

The permanent utility easement exhibit is located in the Addenda Section of this report. The reason for the easement is to construct, lay, remove, relay, inspect, enlarge and/or operate a water and/or sanitary sewer pipe line or lines, manholes, and appurtenances thereto, on, over, across, and under a portion of the subject property. This is in connection with the West Transmission Main Route project. The PUE acquisition is located in the east part of the site. The PUE acquisition encompasses land area, fencing, barn, and four trees. Please see the exhibits located in the Addenda.

Comparable sales are presented in the Addenda Section of this report.

The following Extraordinary Assumptions are utilized in this report:

- 1. Subject land sizes, Whole Property and Remainder Property, are approximately as indicated;**
- 2. The area of acquisition is approximately as indicated;**
- 3. The City of Fayetteville, at their expense, will put the land area and fencing located within the permanent utility easement acquisition area back to as near original condition as possible.**

If any, or all, of these Extraordinary Assumptions prove to be untrue, one or both of the preceding value estimates could be influenced.

The reader is referred to additional Assumption and Limiting Conditions presented in the Addenda Section of this report.

A Hypothetical Condition of this appraisal is that the West Transmission Main Route Project is complete and in place as of the effective date of this report in estimating the market value of the Remainder Property. In reality, the project was not complete and in place as of February 14, 2022. If this Hypothetical Condition is not considered, the estimated market value of the Remainder Property could be influenced.

USPAP states the following under Sections Rule 1-4 (f): “When analyzing anticipated public or private improvements, located on or off the site, an appraiser must analyze the effect on value, if any, of such anticipated improvements to the extent they are reflected in market actions.” This appraisal is prepared in conformity to the provisions of the “Uniform Act” and its implementing regulation 49 CFR Part 24. The 49 CFR Part 24 regulation requires appraisers to disregard any decrease or increase in the market value of the property that has been caused directly by the project in the “Before Acquisition Value” appraisal. This is considered a Jurisdictional Exception. In addition, General Benefits as a result of the project have not been considered in the valuation of

the Remainder Property based on 49 CFR Part 24. Considering USPAP Standards Rule 1-4 (f), this is also considered a Jurisdictional Exception.

NEIGHBORHOOD ANALYSIS

The neighborhood is located in southern Benton County and northern Washington County. This location is primarily in parts of Springdale, Elm Springs, Cave Springs, and Lowell. The area appears to lie near State Highway 112 on the west, State Highway 264 on the north, I-49 on the east, and Elm Springs Road on the south.

The project area consists of primarily residential uses; however, there are some commercial and special-purpose uses scattered throughout the neighborhood.

Utilities available in the neighborhood include electricity, telephone service, natural gas, cable T.V., public water and sewer.

The area appears to be in the growth stage of its life cycle. The overall outlook for the Market Area is considered to be positive.

ZONING REGULATIONS AND RESTRICTIONS

The subject site is located within the city limits of Elm Springs. Based on the City of Elm Springs Zoning Map, the subject property is zoned RSF-1, Residential Single-Family 1 Unit Per Acre. The purpose of the RSF-1 District is “a district having single-family detached residences on lots with a minimum size of one unit per acre. The district is designed to permit and encourage the development of very low density detached dwellings in suitable environments, as well as to protect existing development of these types.” Permitted uses within the RSF-1 District include city-wide uses and single-family dwellings. The setback requirements in the RSF-1 District are: 50’ front, 25’ rear, and 10’ side.

LEGAL DESCRIPTION

The legal description for subject Whole Property is below.

The fractional NW $\frac{1}{4}$ of the fractional NW $\frac{1}{4}$ of Section 30 in Township 18 North of Range 30 West, and a part of the NE $\frac{1}{4}$ of Section 25 in Township 18 North of Range 31 West, described as beginning at the Northeast corner of said fractional NW $\frac{1}{4}$ of the fractional NW $\frac{1}{4}$ of said Section 30, and running thence South along the East quarter section line to the center of the Elm Springs – Springdale Road; thence West with the center of said Road 753 feet; thence North $87^{\circ} 07'$ West with the center of said Road 210.2 feet; thence North to and continuing along the East line of a lane or road running from the Elm Springs – Springdale Road North to the Howard Grigg Lands, a distance of 698.5 feet, more or less, to a point due West of the Southwest corner of Lot 1 in Block 1, Peter Gharst Addition to the Town of Elm Springs, Arkansas; thence East to and continuing along the South line of Lots 1, 2 and 3 in Block 1 of said Addition to the center of the abandoned right-of-way of the Kansas City & Memphis Railway Company; thence Northeasterly with the center of said right-of-way to a point which is 12 feet due South of the North line of said fractional quarter section; thence in a direct line Easterly to a point where the East line of said right-of-way intersects the North line of said fractional quarter section; thence East to the point of beginning, subject to an easement along the Southerly part thereof for the Elm Springs – Springdale Road

The legal description of the PUE acquisition area is located in the Addenda of this report.

NARRATIVE DESCRIPTION

Whole Property

Subject property is located along the north side of Elm Springs Road, the west side of King Arthur Drive, and the east side of Grigg Lane, in Elm Springs, Arkansas; Washington County. The physical address of the subject property is 618 Elm Springs Road.

The subject is a residentially developed, irregular shaped, 11.85± acre tract positioned along the north side of Elm Springs Road. The site has an estimated 530'± of frontage along the north side of Elm Springs Road, approximately 710'± along the east side of Grigg Lane, and approximately 515'± along the west side of King Arthur Drive.

The topography of the subject site is gently rolling. The site, overall, is near to slightly above grade to Elm Springs Road and King Arthur Drive. Elm Springs Road is two-lane, asphalt paved. King Arthur Drive is a paved public street providing access through a residential subdivision. Grigg Lane frontage is near grade to slightly below grade. Grigg Lane is a gravel road. The site is mainly cleared with a few scattered trees. The site is not indicated to be located within Flood Zone area. Please see the Flood Zone Map presented in the Addenda of this report. Overall soil conditions are assumed to be adequate. One pond is located on the subject site.

Approximately 25% of the site (north part of site) is considered very irregular in shape with somewhat limited utility.

Access is developed to the subject from Elm Springs Road, along the south boundary of the site.

Utilities and services available include telephone, electricity, public water, gas, cable T.V., and trash pickup, as well as police and fire protection.

Based on Assessment Records, the site is improved with a one-level, Class "D" 1,696± SF single-family dwelling constructed in 1985. There is also a 576± SF attached garage. The exterior of the dwelling is brick veneer. The foundation is closed piers; roof cover is fiberglass shingles; and, floor structure is wood with subfloor. An interior inspection of the dwelling was not made; however, the exterior of the dwelling appeared to be in average condition. The dwelling is considered to have remaining life. Additional improvements include gravel driveway, landscaping, pipe fencing, agricultural fencing, 1,152± SF pole shed/barn, 1,296± SF barn, outbuilding, 1,271± SF pole shed, well house, etc.

Acquisition

The permanent utility easement is indicated to contain 1.48± acres. The easement is located along the east boundary of the site and runs from the south boundary to the north boundary of the site. The easement is 50' in width.

The acquisition encompasses land area, fencing, a 1,152± SF pole shed/barn, and four trees. An extraordinary assumption of this report is that the City of Fayetteville, at their expense, will put the land and fencing located within the permanent utility easement acquisition back to as near original condition as possible.

Remainder Property

Subject property is located along the north side of Elm Springs Road, the west side of King Arthur Drive, and the east side of Grigg Lane, in Elm Springs, Arkansas; Washington County. The physical address of the subject property is 618 Elm Springs Road.

The subject is a residentially developed, irregular shaped, 11.85± acre tract positioned along the north side of Elm Springs Road. The site has an estimated 530'± of frontage along the north side of Elm Springs Road, approximately 710'± along the east side of Grigg Lane, and approximately 515'± along the west side of King Arthur Drive.

The topography of the subject site is gently rolling. The site, overall, is near to slightly above grade to Elm Springs Road and King Arthur Drive. Elm Springs Road is two-lane, asphalt paved. King Arthur Drive is a paved public street providing access through a residential subdivision. Grigg Lane frontage is near grade to slightly below grade. Grigg Lane is a gravel road. The site is mainly cleared with a few scattered trees. The site is not indicated to be located within Flood Zone area. Please see the Flood Zone Map presented in the Addenda of this report. Overall soil conditions are assumed to be adequate. One pond is located on the subject site.

Approximately 25% of the site (north part of site) is considered very irregular in shape with somewhat limited utility.

Access is developed to the subject from Elm Springs Road, along the south boundary of the site.

Utilities and services available include telephone, electricity, public water, gas, cable T.V., and trash pickup, as well as police and fire protection. A 1.48± acre PUE is located along the east boundary of the site. The PUE is 50'± in width and is estimated to comprise approximately 12% of the overall site. The side setback in the RSF-1 district is 10'. Forty feet of the easement is located outside setback requirement. Again, approximately 25% of the site (north part) is very irregular in shape. The north boundary of the site is 112'± wide. The shape of the north part of the site does create limited utility in this area; however, the location of the easement in the north part of the site, in my opinion, does create additional limited utility in this area.

Based on Assessment Records, the site is improved with a one-level, Class "D" 1,696± SF single-family dwelling constructed in 1985. There is also a 576± SF attached garage. The exterior of the dwelling is brick veneer. The foundation is closed piers; roof cover is fiberglass shingles; and, floor structure is wood with subfloor. An interior inspection of the dwelling was not made; however, the exterior of the dwelling appeared to be in average condition. The dwelling is considered to have remaining life. Additional improvements include gravel driveway, landscaping, pipe fencing, agricultural fencing, 1,152± SF pole shed/barn, 1,296± SF barn, outbuilding, 1,271± SF pole shed, well house, etc.

ASSESSMENT AND TAX DATA

A copy of the Tax Assessment Records pertaining to the subject property is presented in the Addenda Section of this report. The taxes, due by October 15, 2022, are estimated to be \$983.06. This does not include the \$375 Homestead Tax Credit. The property was appraised for tax purposes at \$195,450. The preceding appraised value is for land and improvements. It should be noted that taxable value is lower than assessed value on Parcel 750-00579-000. Subject is located in the Springdale School District.

HIGHEST AND BEST USE

Highest and Best Use is defined as:

“The highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future.”²

The theoretical focus of highest and best use analysis is on the potential uses of the land as though vacant. In practice, however, the contributory value of the existing improvements and any possible alteration of those improvements are also important in determining highest and best use and, by extension, in developing an opinion of the market value of the property.

In the analysis of highest and best use of land as though vacant, the appraiser seeks the answers to several questions:

- Should the land be developed or left vacant?
- If left vacant, when would future development be financially feasible?
- If developed, what kind of improvement should be built?

In the analysis of the highest and best use of the property as improved, additional questions must be answered:

- Should the existing improvements on the property be maintained in their current state, should they be altered in some manner to make them more valuable, or should they be demolished to create a vacant site for a different use?
- If renovation or redevelopment is warranted, when should the new improvements be built?

In general, if the value of a property as improved is greater than the value of the land as though vacant, the highest and best use is the use of the property as improved. However, a property's existing use may represent an interim use, which begins with the land value for the new highest and best use and adds the contributory value of the current improvements until the new highest and best use can be achieved. In practice, a property owner who is redeveloping a parcel of land may remove an improvement even when the value of the property as improved exceeds the value of the vacant land. The costs of demolition and any remaining improvement value are taken into consideration in the test of financial feasibility for redevelopment of the land. Likewise, if an

²Interagency Land Acquisition Conference, *Uniform Appraisal Standards For Federal Land Acquisitions* – (Chicago: Appraisal Institute, 2016) P.22

improved property has value but may have greater value if modified in some way, the cost of modifying the improvements and the value gained in that modification are accounted for in the determination of highest and best use.

The Four Tests

As market/marketability analysis progresses to highest and best use analysis, appraisers first consider the reasonably probable uses of a site that can be legally undertaken. In the analysis of pertinent data, four steps are implicit and are applied in the following order to develop adequate support for the appraiser's highest and best use opinion:

1. Legally permissible
2. Physically possible
3. Financially feasible
4. Maximally productive

These criteria are generally considered sequentially. The tests of physical possible and legal permissibility can be applied in either order, but they both must be applied before the tests of financial feasibility and maximum productivity. A use may be financially feasible, but this is irrelevant if it is legally prohibited or physically impossible. (The Appraisal Institute)³

Whole Property

As Vacant – Subject property is located along the north side of Elm Springs Road, the west side of King Arthur Drive, and the east side of Grigg Lane, in Elm Springs, Arkansas; Washington County. The physical address of the subject property is 618 Elm Springs Road.

The subject is a residentially developed, irregular shaped, 11.85± acre tract positioned along the north side of Elm Springs Road. The site has an estimated 530'± of frontage along the north side of Elm Springs Road, approximately 710'± along the east side of Grigg Lane, and approximately 515'± along the west side of King Arthur Drive.

The topography of the subject site is gently rolling. The site, overall, is near to slightly above grade to Elm Springs Road and King Arthur Drive. Elm Springs Road is two-lane, asphalt paved. King Arthur Drive is a paved public street providing access through a residential subdivision. Grigg Lane frontage is near grade to slightly below grade. Grigg Lane is a gravel road. The site is mainly cleared with a few scattered trees. The site is not indicated to be located within Flood Zone area. Please see the Flood Zone Map presented in the Addenda of this report. Overall soil conditions are assumed to be adequate. One pond is located on the subject site.

Approximately 25% of the site (north part of site) is considered very irregular in shape with somewhat limited utility.

Access is developed to the subject from Elm Springs Road, along the south boundary of the site.

³ The Appraisal Institute, The Appraisal of Real Estate, 13th Edition 2008, pages 277/279.

Utilities and services available include telephone, electricity, public water, gas, cable T.V., and trash pickup, as well as police and fire protection.

Physically possible uses of the subject site include those within size/shape limitations.

Based on the City of Elm Springs Zoning Map, the subject property is zoned RSF-1, Residential Single-Family 1 Unit Per Acre. Permitted uses within the RSF-1 District include city-wide uses and single-family dwellings. The setback requirements in the RSF-1 District are: 50' front, 25' rear, and 10' side.

No private Deed Restrictions were found.

The physically possible and legally permissible uses of the subject site are those within size/shape limitations, and that comply with Zoning Regulations.

Properties in close proximity to subject are residential in nature.

The immediate neighborhood is considered to be in the growth stage of its life cycle.

The physically possible and legally permissible use of the subject site, that is also considered to be financially feasible is residential development.

In my opinion, the highest and best use of the subject as vacant is residential development, within size/shape limitations, and in conformity to Zoning Regulations. The north part of the site is very irregular in shape. Consideration could be given to plotting this land with adjacent lands to the east or west.

As Improved – Based on Assessment Records, the site is improved with a one-level, Class “D” 1,696± SF single-family dwelling constructed in 1985. There is also a 576± SF attached garage. The exterior of the dwelling is brick veneer. The foundation is closed piers; roof cover is fiberglass shingles; and, floor structure is wood with subfloor. An interior inspection of the dwelling was not made; however, the exterior of the dwelling appeared to be in average condition. The dwelling is considered to have remaining life. Additional improvements include gravel driveway, landscaping, pipe fencing, agricultural fencing, 1,152± SF pole shed/barn, 1,296± SF barn, outbuilding, 1,271± SF pole shed, well house, etc.

In my opinion, the highest and best use of the subject as improved is continued residential/agricultural use in the interim until demand dictates removal of the improvements and redevelopment of the site for residential use (multiple lots/tracts).

Remainder Property

Subject property is located along the north side of Elm Springs Road, the west side of King Arthur Drive, and the east side of Grigg Lane, in Elm Springs, Arkansas; Washington County. The physical address of the subject property is 618 Elm Springs Road.

The subject is a residentially developed, irregular shaped, 11.85± acre tract positioned along the north side of Elm Springs Road. The site has an estimated 530'± of frontage along the north side of Elm Springs Road, approximately 710'± along the east side of Grigg Lane, and approximately 515'± along the west side of King Arthur Drive.

The topography of the subject site is gently rolling. The site, overall, is near to slightly above grade to Elm Springs Road and King Arthur Drive. Elm Springs Road is two-lane, asphalt paved. King Arthur Drive is a paved public street providing access through a residential subdivision. Grigg Lane frontage is near grade to slightly below grade. Grigg Lane is a gravel road. The site is mainly cleared with a few scattered trees. The site is not indicated to be located within Flood Zone area. Please see the Flood Zone Map presented in the Addenda of this report. Overall soil conditions are assumed to be adequate. One pond is located on the subject site.

Approximately 25% of the site (north part of site) is considered very irregular in shape with somewhat limited utility.

Access is developed to the subject from Elm Springs Road, along the south boundary of the site.

Utilities and services available include telephone, electricity, public water, gas, cable T.V., and trash pickup, as well as police and fire protection.

Physically possible uses of the subject site include those within size/shape limitations.

Based on the City of Elm Springs Zoning Map, the subject property is zoned RSF-1, Residential Single-Family 1 Unit Per Acre. Permitted uses within the RSF-1 District include city-wide uses and single-family dwellings. The setback requirements in the RSF-1 District are: 50' front, 25' rear, and 10' side. A 1.48± acre PUE is located along the east boundary of the site. The PUE is 50'± in width and is estimated to comprise approximately 12% of the overall site. The side setback in the RSF-1 district is 10'. Forty feet of the easement is located outside setback requirement. Again, approximately 25% of the site (north part) is very irregular in shape. The north boundary of the site is 112'± wide. The shape of the north part of the site does create limited utility in this area; however, the location of the easement in the north part of the site, in my opinion, does create additional limited utility in this area.

No private Deed Restrictions were found.

The physically possible and legally permissible uses of the subject site are those within size/shape/easement limitations, and that comply with Zoning Regulations.

Properties in close proximity to subject are residential in nature.

The immediate neighborhood is considered to be in the growth stage of its life cycle.

The physically possible and legally permissible use of the subject site, that is also considered to be financially feasible is residential development.

In my opinion, the highest and best use of the subject as vacant is residential development, within size/shape/easement limitations, and in conformity to Zoning Regulations. The north part of the site is very irregular in shape. Consideration could be given to plotting this land with adjacent lands to the east or west.

As Improved – Based on Assessment Records, the site is improved with a one-level, Class “D” 1,696± SF single-family dwelling constructed in 1985. There is also a 576± SF attached garage. The exterior of the dwelling is brick veneer. The foundation is closed piers; roof cover is fiberglass shingles; and, floor structure is wood with subfloor. An interior inspection of the dwelling was not made; however, the exterior of the dwelling appeared to be in average condition. The dwelling is considered to have remaining life. Additional improvements include gravel driveway, landscaping, pipe fencing, agricultural fencing, 1,152± SF pole shed/barn, 1,296± SF barn, outbuilding, 1,271± SF pole shed, well house, etc.

In my opinion, the highest and best use of the subject as improved is continued residential/agricultural use in the interim until demand dictates removal of the improvements and redevelopment of the site for residential use (multiple lots/tracts).

APPRAISAL PROCESS

When preparing a detailed appraisal for a given property, it is customary appraisal practice to assemble as much information from the market as seems prudent and to utilize this information in three different approaches to the value: the Cost Approach, Sales Comparison (Market) Approach, and the Income Capitalization Approach.

If an appraisal problem is such that it can be adequately and reliably addressed without resorting to a traditional three approach appraisal, then in the interest of economy, only the reliable and relevant valuation technique(s) should be used. Often the appraisal problem can be fully addressed with the Sales Comparison Approach.

In the Cost Approach, an estimate of the site value is first derived by a comparison of other similar sites which have sold to the subject site by the Sales Comparison Approach. An estimate is then made of the cost of reproducing or replacing the subject improvements at today's costs. From this is deducted the estimated loss of value as a result of Accrued Depreciation, including physical deterioration, functional obsolescence, and external obsolescence. All such estimates of loss of value through Accrued Depreciation are taken from market evidence. The indicated value from this approach is the sum of the site value plus the Depreciated Replacement or Reproduction Cost New of the improvements.

The Sales Comparison Approach utilizes the sales of similar properties as the basis for an indication of value for the subject. Direct comparisons are made between the sale properties and the subject on an item-by-item basis in such areas as property rights, financing, conditions of sale, expenditures made immediately after purchase, market conditions, location, physical characteristics, economic characteristics, legal characteristics, and non-realty components of value. Adjustments are made to the sales price of the comparative property to arrive at an indication of what that property would have sold for had it been essentially similar to the subject property. These adjusted sale prices are correlated into an indication of value by this approach.

In the Income Capitalization Approach, an estimate is made of the market rent which the subject property might command based on the rental of competitive space. Estimates are also made of the appropriate vacancy/credit loss and expense ratios for the subject based on information developed from similar properties in the market. Thus, an indication of the Net Operating Income which the subject property is capable of producing is developed. An applicable capitalization method and appropriate capitalization rate are developed for use in computations that lead to an indication of value by the Income Capitalization Approach.

To arrive at a final value estimate, the three approaches are correlated into a single conclusion of value, based on the approach which has the highest quantity and/or quality of data available, and the one in which the market participant typically has the greatest confidence.

EXPLANATION OF APPROACHES: In arriving at the market value of the Whole Property Land/Affected Improvements and the market value of the Remainder Property Land Only, the Sales Comparison Approach to value has been applied. The subject improvements are not considered to be adversely affected by the acquisitions, with the exception of a barn and four trees.

The Cost Approach was only utilized to estimate the contributory value of the affected site improvements. Land rentals are not typically the basis on which properties of the subject nature are sold in the market area; therefore, the Income Capitalization Approach is not utilized. Application of the Income Capitalization Approach to Value is not considered necessary to produce credible appraisal results for the subject property.

ESTATE APPRAISED: Fee Simple Estate; Permanent Utility Easement.

HISTORY: The subject property has not sold or transferred within the five-year period preceding the effective date of this report.

The subject is not listed for sale, or under contract to sell, as of the effective date, to my knowledge.

CHANGES IN PROPERTY SINCE DATE OF PURCHASE: Not available to the appraiser.

PERSONAL PROPERTY: None considered.

REAL ESTATE: Subject land, barn, and trees are valued in this report.

COMMENTS: The subject property was inspected by the appraiser on February 14, 2022. The property owner was present at the time of inspection.

**SALES COMPARISON APPROACH
(Whole Property – Land Only)**

COMPARISON WITH SUBJECT PROPERTY

Sale narratives appear in the Addenda Section of this report.

SALE	1	2	3	4	5
Date of Sale	07/12/2018	02/26/2019	01/19/2021	07/16/2021	03/26/2021
Sales Price	\$875,000	\$630,000	\$350,000	\$526,250	\$750,000
Size ± ACS	20.13	15	10	14.27	20
Unit Price/AC	\$43,467	\$42,000	\$35,000	\$36,878	\$37,500

ADJUSTMENT FACTORS

Property Rights	-0-	-0-	-0-	-0-	-0-
Financing	-0-	-0-	-0-	-0-	-0-
Conditions of Sale	-0-	-0-	-0-	-0-	-0-
Expenditures Made After Sale	-0-	-0-	-0-	-0-	-0-
Improvements	-0-	-0-	-0-	-0-	-0-
Market Conditions	\$5,433	\$4,200	-0-	-0-	-0-
ADJUSTED SALES PRICE	\$48,900	\$46,200	\$35,000	\$36,878	\$37,500
Location/Appeal	0	0	5,250	5,532	5,625
Physical Characteristics					
Size	2,445	-0-	-0-	-0-	1,875
Shape	-4,890	-4,620	-3,500	-1,844	-3,750
Legal Characteristics					
Zoning	-0-	-0-	350	369	-0-
INDICATED UNIT VALUE	\$46,455	\$41,580	\$37,100	\$40,935	\$35,625

EXPLANATION OF ADJUSTMENTS:

The unit of comparison is price per acre of land area. The necessary categories of adjustment are for market conditions, location/appeal, physical characteristics (size, shape), and legal characteristics (zoning). Each of the sales is considered reasonably similar to subject with respect to property rights, financing, conditions of sale, and utilities. Each of Sales One and Two included residential/agricultural improvements at the time of sale that were razed subsequent to the sale. The estimated cost to demolish the improvements was not known. An adjustment is not made for Expenditures Made After the Sale; however, this will be considered in the reconciliation.

Market Conditions: The respective sale dates of the comparable sales appear in the table above; the sales occurred between July 2018 and July 2021. Each of Sales Three, Four, and Five is considered similar in market conditions compared to those as of the effective date of this report.

Sale One occurred in 2018 and Sale Two in 2019. Overall, each of these sales is considered inferior to subject with respect to market conditions. Sales Analysis supports 5% annual appreciation from 2018 through 2020; therefore, Sale One is adjusted upward 12.5% and Sale Two upward 10%. No adjustment is necessary to Sales Three, Four, or Five.

Location/Appeal: Subject is located along the north side of Elm Springs Road, east of State Highway 112 in Elm Springs. Sale One is located along the west side of Ball Road, just north of Elm Springs Road in Springdale. Sale One is located across from Shaw Park. Sale Two is located at the northwest corner of Ball Road and Elm Springs Road in Elm Springs. Sale Two is located in close proximity to Shaw Park. Sale Three is located at the northwest corner of County Line Road and Pinkley Road in Springdale. This location is in close proximity to Shaw Park. Sale Four is located along the east side of 56th Street, south of County Line Road in Springdale. Sale Five is located along the west side of 56th Street, south of County Line Road in Springdale. Overall, each of Sales One and Two is considered reasonably similar to subject. These sales are located along or near Elm Springs Road and within very close proximity to Shaw Park. Each of Sales Three, Four, and Five is considered inferior to subject with respect to location/appeal. Paired Sales Analysis utilizing Sale Two with Sale Five indicates, after adjusting for other differences, that Sale Five is approximately 15% inferior to Sale Two. Again, Sale Two is considered reasonably similar to subject in location/appeal; therefore, in comparison to subject, Sale Five is adjusted upward 15% for inferior location. Each of Sales Three and Four is also adjusted upward 15% for inferior location. No adjustment is necessary to Sales One or Two.

Physical Characteristics: With respect to physical characteristics, the necessary categories of adjustment is for land size and shape.

- **Land Size:** The subject is smaller than each of Sales One and Five. Overall, subject is relatively similar to Sales Two, Three, and Four. The tendency in the market is that as land area increases, price per unit decreases, and vice versa; this is for otherwise-similar properties. Sales Analysis supports that as a property's land area approximates doubling, its price/unit decreases about 10%±. Based on this premise, each of Sales One and Five is adjusted upward 5%.
- **Shape:** Subject has an irregular shape in the north part of the site. This area comprises approximately 25% of the overall site. The width of the north boundary of the site is approximately 112'. Due to the shape of the north part of the site, development in the north part is limited. Overall, each of the sales has an adequate shape for development. Sale Four is "L" shaped with approximately 270' of width at the narrowest part. Sale Four is considered approximately 5% superior to subject with respect to shape. Paired Sales Analysis, utilizing Sale Five with Sale Four indicates, after adjusting for other differences, that Sale Four is approximately 5% inferior to Sale Five. Therefore, Sale Five is considered approximately 10% superior to subject with respect to shape. Each of Sales One, Two, Three, and Five is adjusted downward 10% for superior shape.

Legal Characteristics: With respect to legal characteristics, the necessary category of adjustment is for zoning.

- **Zoning:** Subject is zoned RSF-1. Sale One was zoned SF-2 at the time of Sale, Sale Two a mixture of RSF-1/A-1, and Sale Five SF-2. Each of Sales Three and Four was zoned A-1 at the time of sale. Overall, each of Sales One, Two, and Five is considered reasonably similar to subject, while each of Sales Three and Four is considered inferior. It is likely that Sales Three and Four could obtain a residential zoning; however, there would be costs involved to rezone. The property owner would have to petition the respective Planning Commission/ City Council for rezoning of the site to a single-family residential zoning district. Each of Sales Three and Four is adjusted upward 1% for inferior zoning.

CORRELATION OF INDICATED VALUES: The range of adjusted per acre values is \$35,625 to \$46,455; the mean of the sales is indicated to be \$40,339/AC, while the median is \$40,935/AC. Each of the sales is given consideration.

Also given consideration is the listing of 27.08± acres located just west of subject along Elm Springs Road. This 27.08± acre tract is listed for \$1,250,000 or \$46,160/acre. The property has been listed since May 18, 2021.

ESTIMATED LAND VALUE: Based on the preceding analysis, the indicated per acre value of subject Whole Property, in our opinion, is **\$41,000**. Therefore:

WHOLE PROPERTY LAND ONLY: 11.85± ACS @ \$41,000	=	\$485,850
	Say	\$485,900
PLUS: Contributory Value of Pole Shed/Barn*	=	\$ 9,000
Contributory Value of Trees*	=	<u>\$ 4,000</u>
WHOLE PROPERTY LAND ONLY/ AFFECTED IMPROVEMENTS	=	\$498,900

*The contributory value of the pole shed/barn and four trees affected by the acquisition was based on Marshall Valuation Service.

Please see the Extraordinary Assumptions previously presented.

**SALES COMPARISON APPROACH
(Remainder Property – Land Only)**

COMPARISON WITH SUBJECT PROPERTY

Sale narratives appear in the Addenda Section of this report.

SALE	1	2	3	4	5
Date of Sale	07/12/2018	02/26/2019	01/19/2021	07/16/2021	03/26/2021
Sales Price	\$875,000	\$630,000	\$350,000	\$526,250	\$750,000
Size ± ACS	20.13	15	10	14.27	20
Unit Price/AC	\$43,467	\$42,000	\$35,000	\$36,878	\$37,500

ADJUSTMENT FACTORS

Property Rights	-0-	-0-	-0-	-0-	-0-
Financing	-0-	-0-	-0-	-0-	-0-
Conditions of Sale	-0-	-0-	-0-	-0-	-0-
Expenditures Made After Sale	-0-	-0-	-0-	-0-	-0-
Improvements	-0-	-0-	-0-	-0-	-0-
Market Conditions	\$5,433	\$4,200	-0-	-0-	-0-
ADJUSTED SALES PRICE	\$48,900	\$46,200	\$35,000	\$36,878	\$37,500
Location/Appeal	0	0	5,250	5,532	5,625
Physical Characteristics					
Size	2,445	-0-	-0-	-0-	1,875
Shape	-4,890	-4,620	-3,500	-1,844	-3,750
Legal Characteristics					
Zoning	-0-	-0-	350	369	-0-
Easement	-4,346	-4,346	-4,346	-4,346	-4,346
Damages	-1,696	-1,696	-1,696	-1,696	-1,696
INDICATED UNIT VALUE	\$40,413	\$35,538	\$31,058	\$34,893	\$35,208

EXPLANATION OF ADJUSTMENTS:

The unit of comparison is price per acre of land area. The necessary categories of adjustment are for market conditions, location/appeal, physical characteristics (size, shape), and legal characteristics (zoning, easement, and damages). Each of the sales is considered reasonably similar to subject with respect to property rights, financing, conditions of sale, and utilities. Each of Sales One and Two included residential/agricultural improvements at the time of sale that were razed subsequent to the sale. The estimated cost to demolish the improvements was not known. An adjustment is not made for Expenditures Made After the Sale; however, this will be considered in the reconciliation.

Market Conditions: The respective sale dates of the comparable sales appear in the table above; the sales occurred between July 2018 and July 2021. Each of Sales Three, Four, and Five is considered similar in market conditions compared to those as of the effective date of this report. Sale One occurred in 2018 and Sale Two in 2019. Overall, each of these sales is considered inferior to subject with respect to market conditions. Sales Analysis supports 5% annual appreciation from 2018 through 2020; therefore, Sale One is adjusted upward 12.5% and Sale Two upward 10%. No adjustment is necessary to Sales Three, Four, or Five.

Location/Appeal: Subject is located along the north side of Elm Springs Road, east of State Highway 112 in Elm Springs. Sale One is located along the west side of Ball Road, just north of Elm Springs Road in Springdale. Sale One is located across from Shaw Park. Sale Two is located at the northwest corner of Ball Road and Elm Springs Road in Elm Springs. Sale Two is located in close proximity to Shaw Park. Sale Three is located at the northwest corner of County Line Road and Pinkley Road in Springdale. This location is in close proximity to Shaw Park. Sale Four is located along the east side of 56th Street, south of County Line Road in Springdale. Sale Five is located along the west side of 56th Street, south of County Line Road in Springdale. Overall, each of Sales One and Two is considered reasonably similar to subject. These sales are located along or near Elm Springs Road and within very close proximity to Shaw Park. Each of Sales Three, Four, and Five is considered inferior to subject with respect to location/appeal. Paired Sales Analysis utilizing Sale Two with Sale Five indicates, after adjusting for other differences, that Sale Five is approximately 15% inferior to Sale Two. Again, Sale Two is considered reasonably similar to subject in location/appeal; therefore, in comparison to subject, Sale Five is adjusted upward 15% for inferior location. Each of Sales Three and Four is also adjusted upward 15% for inferior location. No adjustment is necessary to Sales One or Two.

Physical Characteristics: With respect to physical characteristics, the necessary categories of adjustment is for land size and shape.

- **Land Size:** The subject is smaller than each of Sales One and Five. Overall, subject is relatively similar to Sales Two, Three, and Four. The tendency in the market is that as land area increases, price per unit decreases, and vice versa; this is for otherwise-similar properties. Sales Analysis supports that as a property's land area approximates doubling, its price/unit decreases about 10%±. Based on this premise, each of Sales One and Five is adjusted upward 5%.
- **Shape:** Subject has an irregular shape in the north part of the site. This area comprises approximately 25% of the overall site. The width of the north boundary of the site is approximately 112'. Due to the shape of the north part of the site, development in the north part is limited. Overall, each of the sales has an adequate shape for development. Sale Four is "L" shaped with approximately 270' of width at the narrowest part. Sale Four is considered approximately 5% superior to subject with respect to shape. Paired Sales Analysis, utilizing Sale Five with Sale Four indicates, after adjusting for other differences, that Sale Four is approximately 5% inferior to Sale Five. Therefore, Sale Five is considered approximately 10% superior to subject with respect to shape. Each of Sales One, Two, Three, and Five is adjusted downward 10% for superior shape.

Legal Characteristics: With respect to legal characteristics, the necessary category of adjustment is for zoning, easement, and damages.

- **Zoning:** Subject is zoned RSF-1. Sale One was zoned SF-2 at the time of Sale, Sale Two a mixture of RSF-1/A-1, and Sale Five SF-2. Each of Sales Three and Four was zoned A-1 at the time of sale. Overall, each of Sales One, Two, and Five is considered reasonably similar to subject, while each of Sales Three and Four is considered inferior. It is likely that Sales Three and Four could obtain a residential zoning; however, there would be costs involved to rezone. The property owner would have to petition the respective Planning Commission/ City Council for rezoning of the site to a single-family residential zoning district. Each of Sales Three and Four is adjusted upward 1% for inferior zoning.
- **Easement:** The subject property is encumbered with a 1.48± acre permanent utility easement located along the east boundary of the site. The easement is 50' in width. The damages to the land due to the imposition of an easement can range from 0% to 100% of the easement area's fee value. The full impact of an easement acquisition cannot be estimated until the appraiser determines: 1) the loss of present utility; 2) the loss of future utility; 3) the accessory rights to be acquired; and, 4) the obligations of the parties. The side setback requirement for the subject property is 10'. Approximately 20% of the PUE is located within side setback requirement, while approximately 80% of the PUE is located outside side setback requirement. Structures cannot be built on the land within the permanent utility easement area. In my opinion, the property owner's bundle of rights of ownership will be lost with respect to the land within the permanent utility easement area that is located outside side setback requirement. This area is valued at 100% of full fee value. In my opinion, a portion of the property owner's bundle of rights of ownership will be lost with respect to the land within the permanent utility easement area that is located inside side setback requirement. This area is valued at 75% of full fee value. Therefore, 1.18± acres @ \$41,000/acre x 100% = \$48,380 and 0.30± acre @ \$41,000/acre x 25% = \$3,075; total acquisition = \$48,380 + \$3,075 = \$51,455, say \$51,500 or \$4,346/acre (\$51,500/11.85 acres). Each sale is adjusted downward \$4,346.
- **Damages:** Again, subject's northern portion of the site (approximately 25% of the entire site) is irregular in shape. The northern boundary of the site is approximately 112'± in width. The shape of the northern portion makes development limited in this area. An adjustment for subject's shape has already been discussed in this analysis; however, the location and size of the permanent utility easement creates additional issues with the utility of the northern portion of the site. Overall, it is my opinion, that the northwestern portion located outside the permanent utility easement, or approximately 2.45± acres is damaged approximately 20% by the PUE acquisition. Therefore: 2.45± acres @ \$41,000 x 20% = \$20,090, say \$20,100. Each sale is adjusted downward \$1,696 (\$20,100/11.85 acres).

CORRELATION OF INDICATED VALUES: The range of adjusted per acre values is \$31,058 to \$40,413; the mean of the sales is indicated to be \$35,422/AC, while the median is \$35,208/AC. Each of the sales is given consideration.

Also given consideration is the listing of 27.08± acres located just west of subject along Elm Springs Road. This 27.08± acre tract is listed for \$1,250,000 or \$46,160/acre. The property has been listed since May 18, 2021.

ESTIMATED LAND VALUE: Based on the preceding analysis, the indicated per acre value of subject Remainder Property, in our opinion, is **\$34,958**. Therefore:

REMAINDER PROPERTY

LAND ONLY:	11.85± ACS @ \$34,958	=	\$414,252
		Say	\$414,300

Please see the Extraordinary Assumptions previously presented.

SUMMARY OF ACQUISITION:

PUE	1.18± Acres (Outside Side Setback)	@ \$41,000	=	\$ 48,400
PUE	0.30± Acre (Inside Side Setback)	@ \$10,250	=	\$ 3,100
Pole Shed/Barn			=	\$ 9,000
4 Trees			=	<u>\$ 4,000</u>
Total			=	\$ 64,500

Please see the Extraordinary Assumptions and Hypothetical Condition previously presented.

RECONCILIATION OF APPROACHES

Estimated Value of Whole Tract Before Taking:

Cost Approach.....	Not Utilized
Sales Comparison Approach	\$498,900 (Land/Affected Improvements)
Income Capitalization Approach.....	Not Utilized
Estimated Value.....	\$498,900

EXPLANATION: The Sales Comparison Approach was relied upon in arriving at the final value conclusion for the Whole Property. The quantity and quality of data available is considered good.

Estimated Value of Remainder Tract After Taking:

Cost Approach.....	Not Utilized
Sales Comparison Approach.....	\$414,300
Income Capitalization Approach.....	Not Utilized
Estimated Value.....	\$414,300

EXPLANATION: The value of the Remainder Property is based on the Sales Comparison Approach. The quantity and quality of data available or use in the Sales Comparison Approach was considered good.

ESTIMATED VALUE OF PART SOUGHT INCLUDING ALL DAMAGES OR BENEFITS:

Whole Property (Land/Affected Improvements)	=	\$498,900
Remainder Property (Land Only)	=	<u>\$414,300</u>
Total Compensation	=	\$ 84,600
Less: Contributory Value of Affected		
Improvements & PUE Acquisition	=	<u>\$ 64,500</u>
Damages	=	\$ 20,100

Please see the Extraordinary Assumptions and Hypothetical Condition previously presented.

EXPOSURE TIME

Exposure time is the length of time the subject property would have been exposed for sale in the market had it sold at the market value concluded in this analysis as of the date of this valuation.

The exposure time of Sales Two and Five utilized in the Sales Comparison Approach was not known. The exposure time of Sales One, Three, and Four was indicated to be 129± days, 110± days, and 0± days, respectively. Based on Multiple Listing Service Data, the average days on market for development potential land sales 2-20 acres in size located in Benton and Washington Counties occurring within the twelve months immediately preceding the effective date of this report was indicated to be 342 days, while the median was indicated to be 221 days. This was based on 162 transactions.

The land and residential sectors are considered strong at the present time with good activity levels and significant new construction. The outlook for subject's market area is considered good. The near term outlook for the Northwest Arkansas real estate market is considered positive; however, the country and area are experiencing severe pressure on the economy as a result of the virus, and the overall impact on real estate values is yet to be determined.

Overall, in my opinion, an exposure time of one year or less is considered realistic for the subject property.

ADDENDA

1. Definitions
2. Area Map
3. Area Data
4. Aerial Photograph
5. Subject Photographs
6. Flood Zone Map
7. Assessment Records
8. Deed Records
9. Permanent Easement Legal Description/Exhibits
10. Comparable Land Sales Map
11. Comparable Land Sales
12. Assumptions and Limiting Conditions
13. Qualifications of the Appraiser

DEFINITIONS

RETROSPECTIVE VALUE OPINION:

“A value opinion effective as of a specified historical date. The term retrospective does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiation, deficiency judgments, estate tax, and condemnation. Inclusion of the type of value with this term is appropriate, e.g., “retrospective market value opinion.”¹

FEE SIMPLE ESTATE:

“Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.”²

LEASED FEE ESTATE:

“The ownership interest held by the lessor, which includes the right to receive the contract rent specified in the lease plus the revisionary right when the lease expires.”³

LEASEHOLD ESTATE:

“The right held by the lessee to use and occupy real estate for a stated term and under the conditions specified in the lease.”⁴

EASEMENT:

“The right to use another’s land for a stated purpose.”⁵

PERPETUAL EASEMENT:

“An easement that lasts forever.”⁶

TEMPORARY CONSTRUCTION EASEMENT:

“An easement granted for a specific purpose and applicable for a specific time period. A construction easement, for example, is terminated after the construction of the improvement and the unencumbered fee interest in the land reverts to the owner.”⁷

¹ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 201.

² Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 90.

³ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 128.

⁴ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 128.

⁵ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 71

⁶ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 170.

⁷ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 231.

MARKET AREA:

“The geographic region from which a majority of demand comes and in which the majority of competition is located. Depending on the market, a market area may be further subdivided into components such as primary, secondary, and tertiary market areas, or the competitive market area may be distinguished from the general market area.”⁸

NEIGHBORHOOD:

*“1. A group of complementary land uses; a congruous grouping of inhabitants, buildings, or business enterprises.
2. A developed residential super pad within a master planned community usually having a distinguished name and entrance.”⁹*

HIGHEST AND BEST USE:

“The highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future.”¹⁰

SEVERANCE DAMAGES:

“In condemnation, the loss in value to the remainder in a partial taking of property. Generally, the difference between the value of the whole property before the taking and the value of the remainder after the taking is the measure of the value of the part taken and the damages to the remainder. Note that different regions of the country and different courts may use terms such as consequential damages and severance damages differently.”¹¹

JUST COMPENSATION:

“In condemnation, the amount of loss for which a property owner is compensated when his or her property is taken. Just compensation should put the owner in as good a position pecuniarily as he or she would have been if the property had not been taken.”¹²

COST APPROACH:

“A set of procedures through which a value indication is derived for the fee simple estate by estimating the current cost to construct a reproduction of (or replacement for) the existing structure, including an entrepreneurial incentive or profit; deducting depreciation from the total cost; and adding the estimated land value. Adjustments may then be made to the indicated value of the fee simple estate in the subject property to reflect the value of the property interest being appraised.”¹³

⁸ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 139.

⁹ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 156.

¹⁰ Interagency Land Acquisition Conference, *Uniform Appraisal Standards for Federal Land Acquisitions* – (Chicago: Appraisal Institute, 2016) P. 22.

¹¹ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 59

¹² Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 123.

¹³ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 54.

SALES COMPARISON APPROACH:

“The process of deriving a value indication for the subject property by comparing sales of similar properties to the property being appraised, identifying appropriate units of comparison, and making adjustments to the sale prices (or unit prices, as appropriate) of the comparable properties based on relevant, market-derived elements of comparison. The sales comparison approach may be used to value improved properties, vacant land, or land being considered as though vacant when an adequate supply of comparable sales is available.”¹⁴

INCOME CAPITALIZATION APPROACH:

“Specific appraisal techniques applied to develop a value indication for a property based on its earning capability and calculated by the capitalization of property income.”¹⁵

RECONCILIATION:

“A phase of a valuation assignment in which two or more value indications are processed into a value opinion, which may be a range of value, a single point estimate, or a reference to a benchmark value.”¹⁶

MARKET VALUE:

Market Value is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of value, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property.”¹⁷

EXTRAORDINARY ASSUMPTION:

“An assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser’s opinion or conclusions.”¹⁸

HYPOTHETICAL CONDITION:

- “1. A condition that is presumed to be true when it is known to be false. (SVP)*
- 2. A condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis.”¹⁹*

¹⁴ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 207.

¹⁵ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 115.

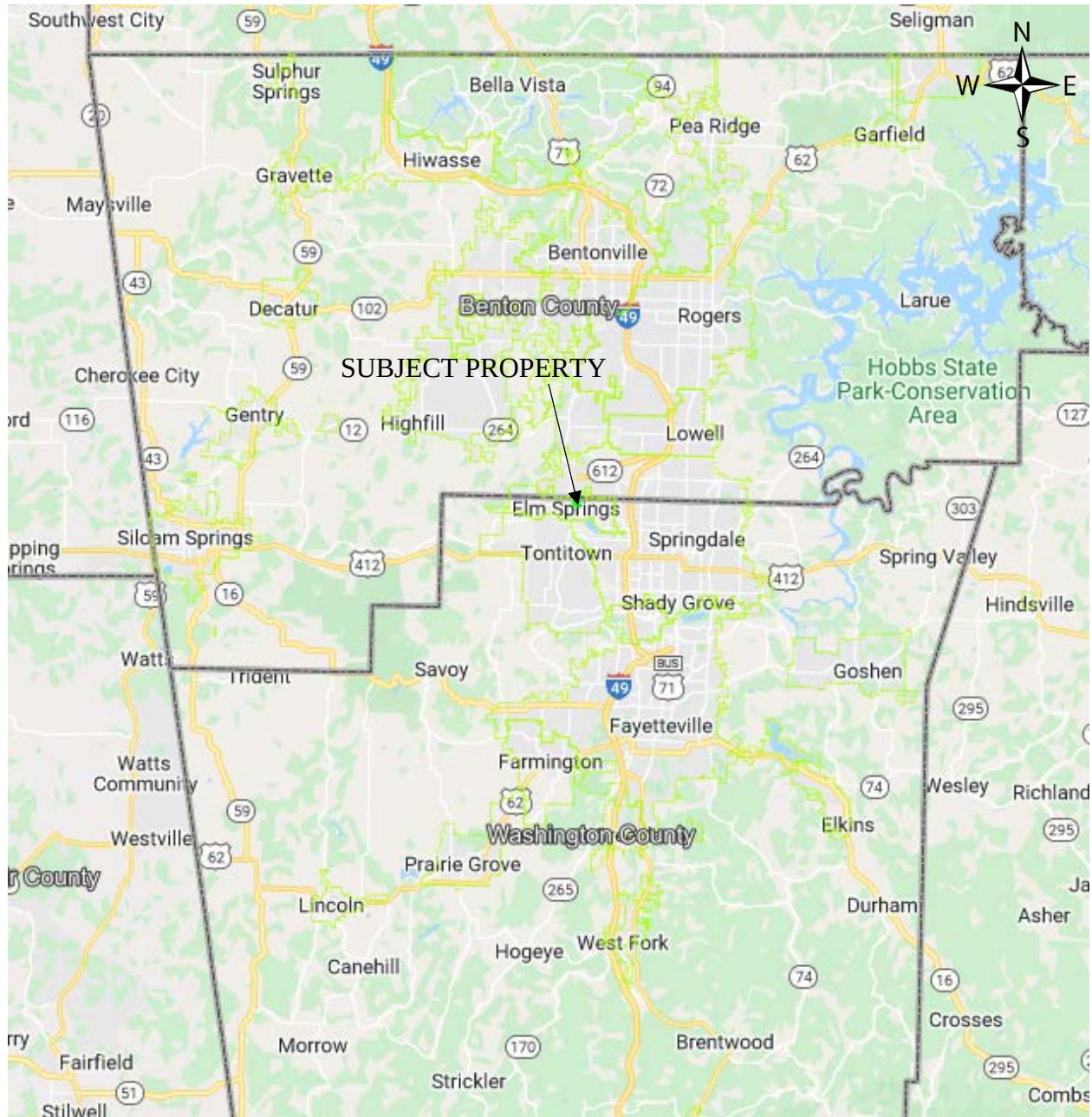
¹⁶ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 190.

¹⁷ Interagency Land Acquisition Conference, *Uniform Appraisal Standards For Federal Land Acquisitions* (Chicago: Appraisal Institute, 2016) P. 93.

¹⁸ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 83-84.

¹⁹ Appraisal Institute, *The Dictionary of Real Estate Appraisal* – Sixth Edition, (Chicago: Appraisal Institute, 2015), P. 113.

AREA MAP



AREA DATA

The Trade Area includes Washington, Benton, and Madison Counties in Arkansas. The three counties are located in the extreme northwestern part of Arkansas, and make up the Fayetteville-Springdale-Rogers, AR Metropolitan Statistical Area (MSA). This area is bordered by the Oklahoma State line on the west, the Missouri State line to the north, Carroll and Newton Counties in Arkansas to the east, and Crawford, Franklin and Johnson Counties on the south. The total land area of Benton County is indicated to be 1,088.56± square miles, Washington County 1,140.77± square miles, and Madison County 878.77± square miles. It should be noted that 97%± of the population of the MSA is located in Washington and Benton Counties. As a result, this Area Data analysis primarily pertains to Washington and Benton Counties in Arkansas.

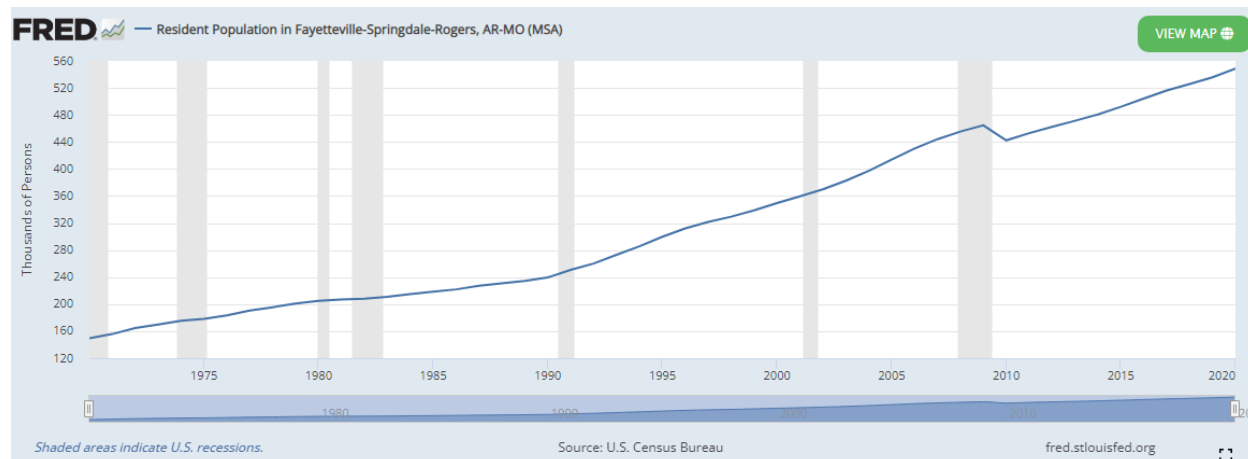
The value of real property reflects and is influenced by the interaction of basic forces that motivate human activity. These forces are divided into four major categories: Social trends; Economic circumstances; Governmental controls and regulations; and, Environmental conditions. These forces exert pressure on human activities and are also affected by these activities. The interaction of all the forces influences the value of every parcel of real estate in the market.

Social Forces: Social forces are exerted primarily through population characteristics. The demographic composition of the population reveals the potential, basic demand for real estate services.

Based on data released by the U.S. Census Bureau, the 2010 Census indicated populations for Benton and Washington Counties of 221,339 and 203,065, respectively; the total for the two counties was 424,404. The population of the two-county area as of 2020 was 530,204, with Benton County reflecting a total of 284,333 and Washington County a total of 245,871. The growth between 2010 and 2020 is indicated to be 24.9%±, or 2.49%± per year. The U.S. Census Bureau data reflected the population of the MSA as of 2010 to be 442,301. The indicated 2020 population of the MSA, based on State & County QuickFacts, was 546,725±; this reflects an estimated growth of 23.6%±, or 2.36%± per year, for the MSA between 2010 and 2020. The estimated 2019 population of the MSA was reported to be 534,904; this reflects a 2.21% growth in population between 2019 and 2020. According to the U.S. Census Bureau data, the Fayetteville-Springdale-Rogers MSA represented the 13th fastest growing metropolitan area in the United States between 2010 and 2020. The following is a summary of population data for Benton County, Washington County, and the Fayetteville-Springdale-Rogers MSA:

Location	2010	2020	2010-2020 % Increase
Benton County	221,339	284,333	28.5%
Washington County	203,065	245,871	21.1%
F-S-R MSA	442,301	546,725	23.6%

The following chart reflects the population trend in the Fayetteville-Springdale-Rogers MSA since 1990:



Source: U.S. Census

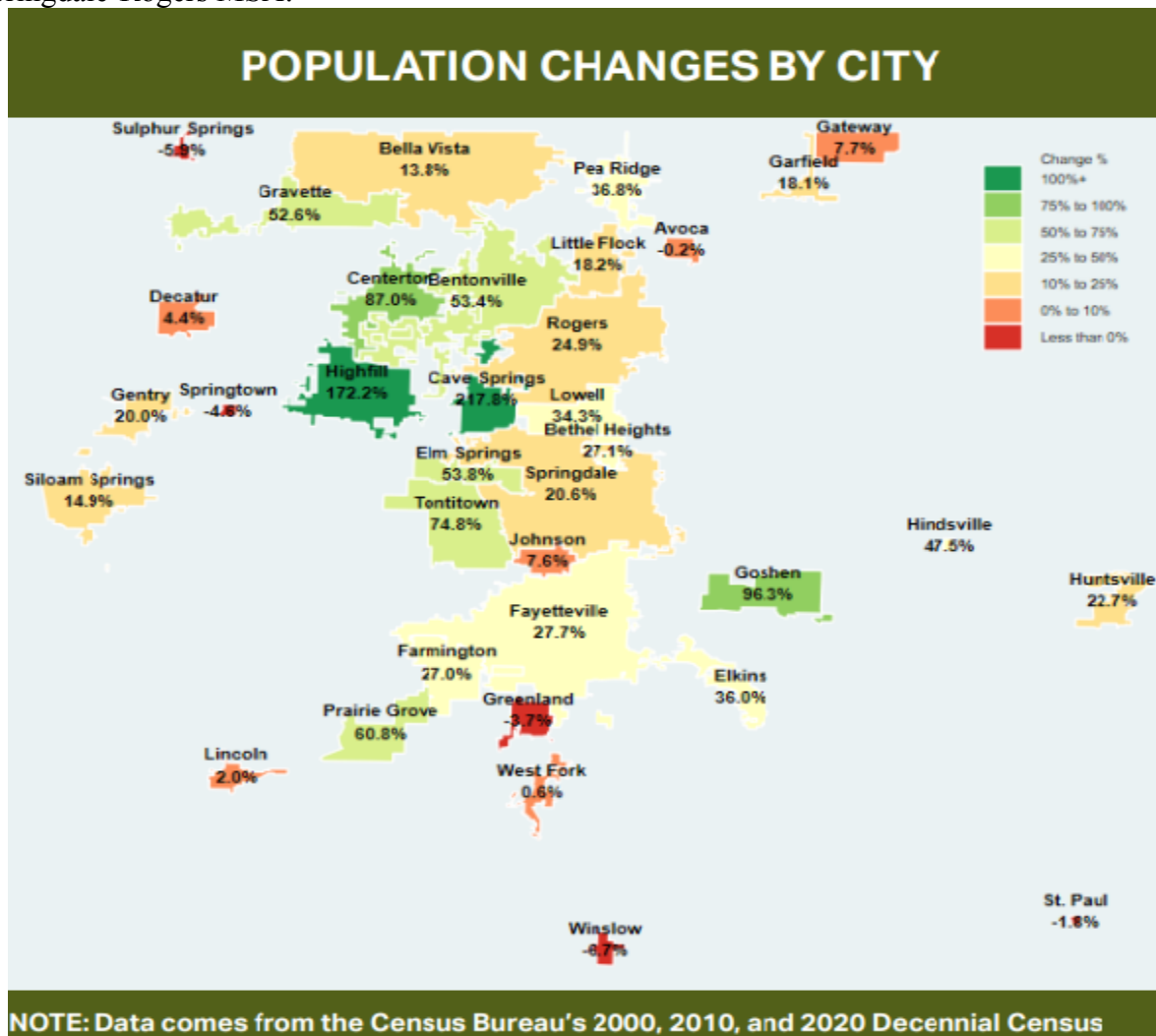
Within Benton County, there are a total of 18± incorporated towns and cities. Bentonville is the County Seat of Benton County. This city is located in the northern part of the county. Bentonville had a population of 35,301 in 2010, a 196%± increase since 1990. The 2020 population was indicated to be 54,164, a 53.4%± increase, or 5.34% per year from 2010. Rogers is the largest city in Benton County, and is located to the south and east of Bentonville. Its 2010 population of 55,964 reflects a 44.1%± increase since 1990. The 2020 population was indicated to be 69,908, a 24.9%± increase from 2010. Siloam Springs, located on the Oklahoma line in the southwestern part of the county, is the third major city in Benton County. It grew from a population of 15,039 in 2010 to 17,287 in 2020, a 14.95%± increase.

Some of the smaller cities and towns in Benton County include Gentry, Gravette, Pea Ridge, Lowell, Centerton, Decatur, Cave Springs, Bella Vista, etc. The City of Centerton is located west of Bentonville, and is considered a “bedroom” community. The 2010, and 2020 indicated populations of Centerton were reported to be 9,515, and 17,792, respectively. This would indicate population growth of 86.99%± between 2010 and 2020. The City of Lowell is located in the southern part of Benton County, just south of Rogers. The 2010, and 2020 populations of Lowell were reported to be 7,327, and 9,839, respectively. This would indicate population growth of 34.3%± between 2010 and 2020.

There are a total of 13± incorporated cities and towns within Washington County. Fayetteville is the County Seat of Washington County. This city is located in the north-central part of the county. Fayetteville had a population of 73,580 in 2010. This represented a 72.10%± increase since 1990. The 2020 population was indicated to be 93,949, an increase of 27.7%±, or 2.77% per year from 2010. Fayetteville is also the largest city in Washington County. Springdale is the second largest city in Washington County, and is located north of Fayetteville. The northern part of Springdale actually extends into Benton County. Springdale had a population of 69,797 in 2010. This represented a 133.1%± increase since 1990. The 2020 population was indicated to be 84,161, an increase of 20.6%±, or 2.06%± per year from 2010.

Some of the smaller cities in Washington County include Prairie Grove, Lincoln, Farmington, West Fork, Johnson, Elm Springs, etc. A small part of Elm Springs is also located in Benton County.

The following illustration displays the estimated population concentrations in the Fayetteville-Springdale-Rogers MSA:



Source: Northwest Arkansas Council

The following table reflects population changes for the major cities in the Fayetteville-Springdale-Rogers MSA since 2010:

City	2000	2010	2000-2010 % Increase	2020	2010-2020 % Increase
Fayetteville	58,047	73,580	26.8%	93,949	27.7%
Springdale	45,798	69,797	52.4%	84,161	20.6%
Rogers	38,829	55,964	44.1%	69,908	24.9%
Bentonville	19,730	35,301	78.9%	54,164	53.4%
Lowell	5,013	7,327	46.2%	9,839	34.3%
Centerton	2,146	9,515	343.4%	17,792	87.0%
Siloam Springs	10,843	15,039	38.7%	17,287	14.9%

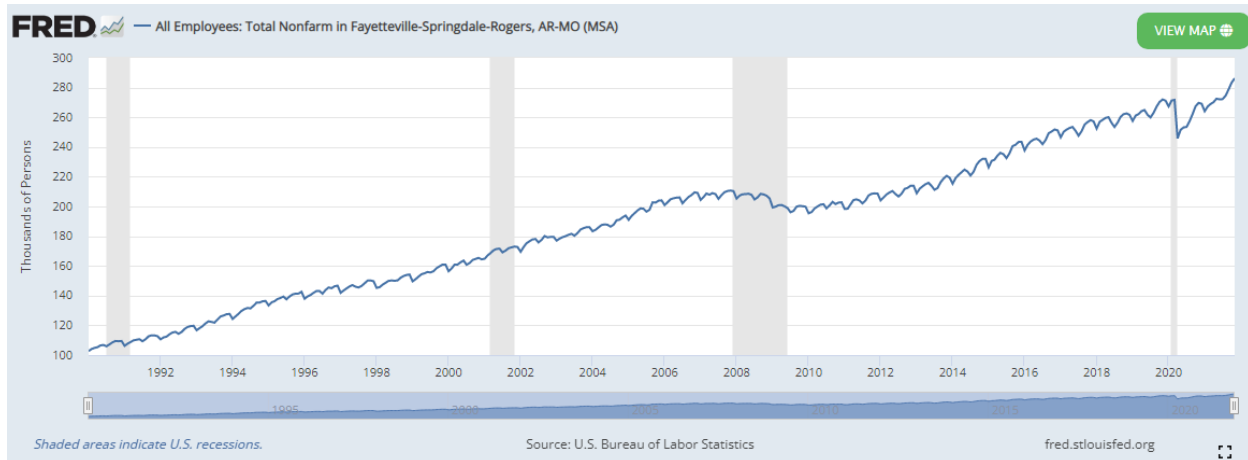
Source: U.S. Census

As previously indicated, the Fayetteville-Springdale-Rogers MSA was reported to be the 13th fastest growing MSA in the county between 2010 and 2020. Population growth in the Benton-Washington County area is considered to be moderately to rapidly increasing. This trend is expected to continue for the foreseeable future. The major cities in Benton County have typically experienced higher population growth rates than the major cities in Washington County. It should be noted that the rate of growth has declined from what appears to have been the peak period in the early/mid 2000-2010± time period. The rate of population growth declined during the mid/late 2000-2010± time period; however, still continued to increase at a moderate pace. The declining population growth rate was likely the result of the recent “Great Recession”. Oversupply issues in the real estate market that became highly visible in the mid part of the past decade, as well as deterioration in overall economic conditions, had an adverse impact on population growth. The country officially went into a recession in December 2007. The recession officially ended in June 2009; however, consumer sentiment did not necessarily support this. Economic conditions have improved since 2010±, and the real estate market has followed with significant improvement since 2012±.

Social forces, particularly area population growth, are considered to have a positive effect on real property values in Benton and Washington Counties.

Economic Forces: Economic forces are also significant to real property values. It is necessary to analyze the fundamental relationships between current and anticipated supply and demand and the economic ability of the population to satisfy its wants, needs, and demands through its purchasing power.

The following chart represents Non-Farm Employment Growth (seasonally adjusted) for the Fayetteville-Springdale-Rogers MSA since 1990:



Source: Federal Reserve Bank of St. Louis

As previously indicated, the country was officially in a recession between December 2007 and June 2009. This recession, referred to as the “Great Recession”, lasted 18 months. The previous longest recorded recessions since the Great Depression, the 1973-75 recession and the 1981-82 recession, each lasted 16 months. The Great Depression lasted 43 months. The recessions in 1991 and 2001 each lasted 8 months. The impact of COVID is also depicted in the chart above.

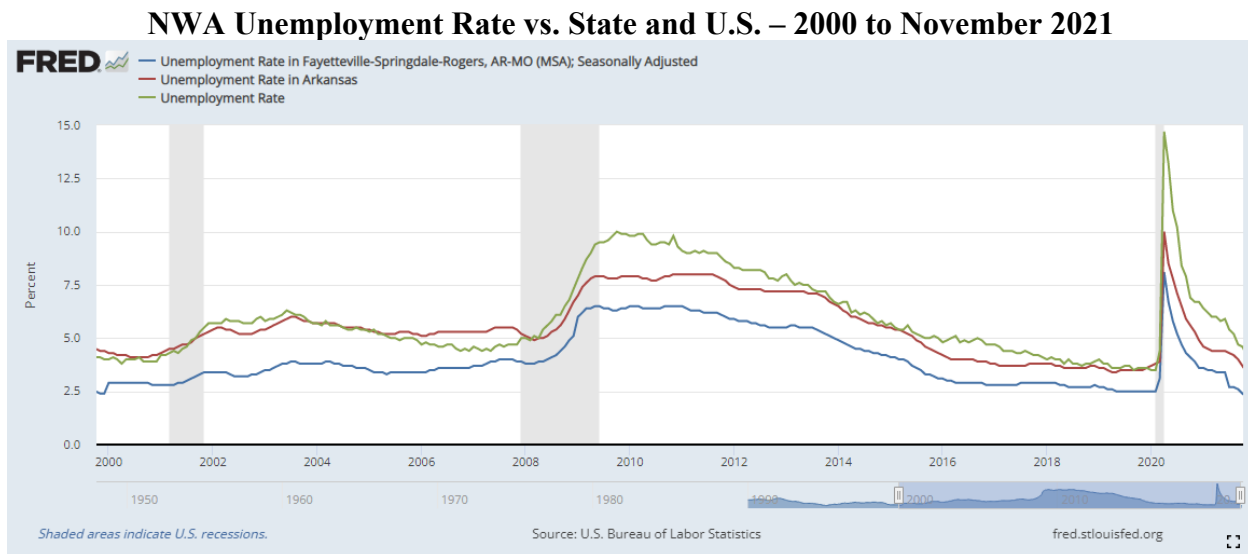
The recession obviously impacted the rate of job growth in the Fayetteville-Springdale-Rogers MSA. While the United States experienced negative year-on-year non-farm employment growth through all of 2008, the Fayetteville-Springdale-Rogers MSA remained positive through the first half of the year. However, non-farm employment numbers (year-on-year) turned negative in the MSA in mid-2008±, and remained negative throughout 2009. The unemployment rate in the Fayetteville-Springdale-Rogers MSA peaked in 2010, with an annual average of 6.5%. In May 2010, non-farm employment numbers (year-on-year) turned positive and remained positive until April 2020 when the unemployment rate in the Fayetteville-Springdale-Rogers MSA reached 7.6% due to the economic impact of the COVID-19 Pandemic. Non-farm employment numbers in November 2021 were approximately 43%± greater than in February 2008. Non-farm employment increased nearly 16% between April 2020 and November 2021. This is primarily due to economic recovery from the COVID-19 pandemic.

The civilian labor force in Benton County averaged 140,015 for the year 2020. Washington County averaged 126,141 for the same time period. In 2020, Benton County's unemployment rate averaged 4.5%, while Washington County's rate averaged 4.6%. The 2020 unemployment rates for the United States, State of Arkansas, and the Fayetteville-Springdale-Rogers MSA were 6.7%, 4.9%, and 4.5%, respectively. All of the preceding rates represent non-seasonally adjusted rates.

It should be noted that the Northwest Arkansas unemployment rate over the last twenty years peaked at 8.1% in April 2020. This is primarily due to the recent outbreak of Covid-19. Prior to

March 2020, NWA unemployment rates stabilized under 3%. The November 2021 unemployment rate was indicated to be 2.2%.

The following illustration displays the unemployment rates in the Fayetteville-Springdale-Rogers MSA, State of Arkansas, and United States between 2000 and 2020:



The Northwest Arkansas Area has been recognized by national publications, economists, and researchers for its economy, businesses, and quality of life. The following reflects several recent recognitions:

- U.S. News and World Report ranked Northwest Arkansas 4th nationally on its 2020 ranking of the “Best Places to Live” list (ranked 5th in 2017);
- The Milken Institute, which published a new report in 2020, put the Fayetteville-Springdale-Rogers Metropolitan Statistical Area's economy at No. 37 among 200 large metropolitan areas; the region was especially strong in job and wage growth, while its weaknesses were mostly related to growth in high-tech components;
- U.S. News and World Report ranked Northwest Arkansas 4th nationally in 2020 in its ranking of the “Cheapest Places to Live”;
- Forbes ranked Northwest Arkansas at No. 2 on its list of Best Midsize Cities for Jobs in May 2018; midsize cities were classified by having 150,000 to 450,000 nonfarm jobs in their metropolitan area;
- PlacesForBikes put three Northwest Arkansas cities among its Top 20 city ratings in its 2020 report: No. 6 Rogers, No. 10 Fayetteville, and No. 14 Bella Vista. Bentonville also made the list at No. 38;
- In 2020, U.S. News and World Report ranked Northwest Arkansas 12th in Best Places to Live for Quality of Life, 15th in Fastest Growing Places, and 20th in Safest Places to Live;
- Money Magazine named both Springdale and Bentonville as “2019 Best Places to Live”;
- Forbes ranked Northwest Arkansas at No. 40 on its list of “Best Places for Business and Careers” in 2019; criteria included labor supply, quality of life, college attainment, crime statistics, local college quality, and cultural and recreational opportunities;

- New Geography placed Northwest Arkansas 10th on its list of “Best Cities for Job Growth” in 2018; this was for medium sized cities and the rankings were based on recent growth trends, mid-term growth and long-term growth, momentum, and current year growth.

U.S. Census data reflect the following income figures for the Benton-Washington County area:

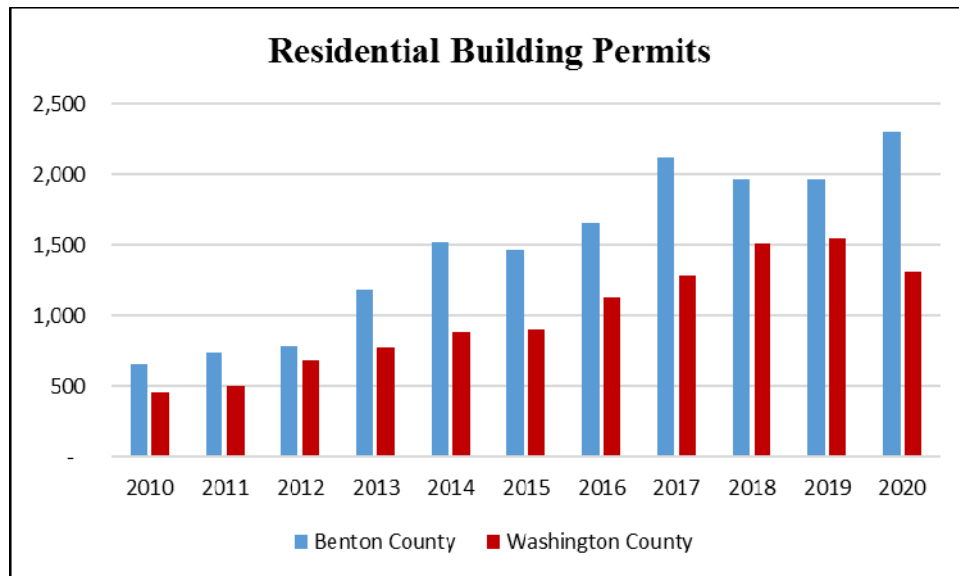
Benton County			
	2010	2019	Change
Median Household Income	\$54,592	\$66,362	21.6%
Per Capita Income	\$24,912	\$34,442	38.3%

Washington County			
	2010	2019	Change
Median Household Income	\$45,544	\$50,451	10.8%
Per Capita Income	\$21,840	\$27,790	27.2%

The single-family residential sector of the Northwest Arkansas real estate market appears to have fully rebounded from the recent “Great Recession.” Population growth and non-farm employment growth are strong in Washington and Benton Counties. This has resulted in increased overall demand for residential housing. As of the Second Half of 2020 there were 23,799 lots in 42 active subdivisions. This includes Benton, Washington, and Madison Counties. Using the absorption rate from 2020 indicates that there was a 17.6 month supply of remaining lots in active subdivisions according to The Skyline Report, by Researchers at the Center for Business and Economic Research in the Sam M. Walton College of Business at the University of Arkansas. This is down from the First Half of 2021, which indicated a 21.3 month supply. Housing starts and residential construction activity in both Benton and Washington Counties have increased significantly since 2011. Interest rates remain low, which is a positive for the housing market.

In Benton County, The Skyline Report data reflects the median home price for the Second Half of 2020 to be \$293,403, as compared to \$244,478 for the Second Half of 2018. This indicates a 20% increase. In Washington County, the median home price for the Second Half of 2020 was indicated by The Skyline Report data to be \$268,987. This compares to \$228,681 for the Second Half of 2018. The increase calculates to 17.6%.

New construction of single-family residential dwellings has occurred at a rapid pace in recent years. The number of residential building permits for Benton and Washington Counties is displayed in the following exhibit:



Source: Streetsmart Residential Market Insight Report

The multi-family residential sector of the real estate market in Benton and Washington Counties was the first sector to rebound from the recent “Great Recession”. In the multi-family sector, the two-county area indicated an overall vacancy rate of 5% in the Second Half of 2020. The Fayetteville multi-family market has a good history of strength, due to the University of Arkansas, and reflected a Second Half 2020 vacancy rate of 4.8%. The Rogers/Lowell, Bentonville, Siloam Springs, and Springdale multi-family markets also appear to be healthy with vacancy rates of 6.4%, 7.4%, .6%, and 2.10%, respectively. The multi-family residential sector has maintained low vacancy rates despite adding a significant number of new units in recent years. The majority of the new units constructed in recent years are located in Fayetteville, and Rogers. The Bentonville and Lowell markets have also experienced substantial construction of new units, while Springdale has also experienced some new construction since the 2009-2010± time period.

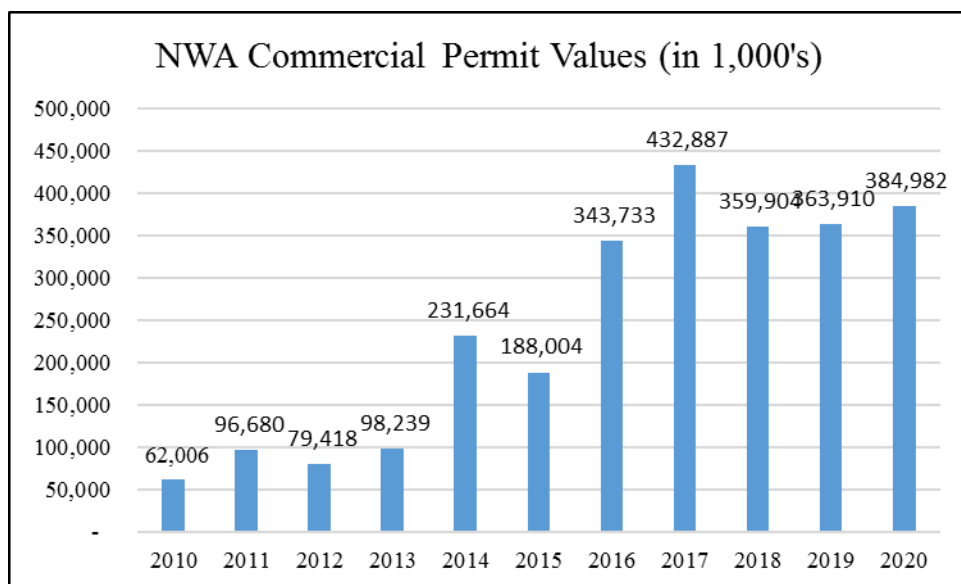
It should be noted that the Second Half of 2020 Skyline Report indicates that approximately 13,977± units in the Northwest Arkansas market were in the pipeline. This includes units very recently completed, under construction, or approved by planning commission with no building permits currently issued.

With respect to the commercial sector of the real estate market in Northwest Arkansas, the overall vacancy rate for professional office space for the 2nd Half of 2020 was indicated to be 10.8%. Obviously, job creation is critical to the absorption of office space. It should be noted that the overall professional office vacancy rate was thought to have peaked in mid/late 2010, with vacancy slowly decreasing since that time. The overall vacancy rate for retail space has also slowly declined since 2010, and was indicated to be 11.4% in the 2nd Half of 2020.

Sales and leasing activity in the commercial sector began to significantly improve in mid-2013, and are currently considered to be at healthy levels. Commercial development land must also be considered. There remains a considerable amount of potential commercial development land in the two-county area; however, absorption is occurring as prime development land has been

purchased in recent years for new development. A significant amount of construction activity has recently been completed, is on-going, and is planned in the Northwest Arkansas Area. New development projects include: Class “A” professional office buildings; strip, neighborhood, and community shopping centers; convenience stores; quick-service and full-service restaurants; hotels/motels, special-purpose properties; etc.

The dollar values (in 1,000’s) of commercial building permits in Northwest Arkansas are presented in the following exhibit:



Source: *The Skyline Report – 2nd Half 2020 Commercial Real Estate Market Summary*

With respect to hotels/motels/restaurants, the following increases/decreases in tax receipts collected between Quarter One 2019 and Quarter One 2020 were indicated:

Bentonville	-7.2%±
Fayetteville	+1.5%±
Rogers	+16.8%±
Springdale*	+2.6%±

Springdale and Rogers do not collect restaurant tax receipts.

*The City of Springdale data reflects tax receipts between 2016 and 2017 (latest available financial report).

The economic base of the region consists of four basic areas: **First**, agricultural production with the primary commodities being beef cattle, dairy cattle, and poultry. The general offices of Tyson Foods, Inc., the largest poultry processor in the world, are located in Springdale in Washington County. Benton and Washington Counties have a considerable amount of rural acreage and, therefore, it would stand to reason that agriculture would be important to the area. There is also some cropland in the area, primarily green bean and orchard production (grapes). According to the USDA, Benton and Washington counties had total agricultural sales in 2017 of \$593,371,000 and 509,256,000, respectively. **Second**, influence from the University of Arkansas

located in Fayetteville. Total enrollment for Fall 2021 at the University was 29,068±. A second public academic institution, the Northwest Arkansas Community College (NWACC), is located in Bentonville. Fall 2021 enrollment for the school was indicated to be 7,081±. In addition to the main campus, the NWACC also has branch campuses located in Springdale, Rogers, and Farmington. A Washington County Campus was recently completed in the southwest part of Springdale. Construction of the facility was completed in January 2020. **Third**, recreational usage primarily in the northeast part of Washington County, and the southeast, east, and northeast parts of Benton County. This recreational usage is primarily provided by Beaver Lake, a Corps of Engineers Reservoir on the White River. Beaver Lake affords typical fresh water sports such as boating, fishing, skiing, swimming, etc. Each of the major cities in the two-county area also has recreational amenities. It should be noted that Arvest Baseball Park opened in the Spring of 2008 in the southwest part of Springdale. This baseball park is the home of the Northwest Arkansas Naturals (Minor League AA Affiliate of the Kansas City Royals). The location is at the southwest corner of Watkins Avenue and 56th Street, just west of I- 49. **Fourth**, the large number of manufacturing businesses and industries located within the two counties. The general offices of Wal-Mart, Inc., the world's largest retailer, are located in Bentonville. Wal-Mart has had a tremendous impact on the area, particularly Benton County. The general offices of J.B. Hunt, Inc., a major trucking company, are located in Lowell. As previously indicated, the general offices of Tyson Foods, Inc., the world's largest poultry processor, are located in Springdale. Wal-Mart, J.B. Hunt, and Tyson Foods are each Fortune 500 Companies. The presence of these companies drives demand for attorneys, accountants, architects, hotels, restaurants, retailers, etc. Most of the major industries are located in the larger cities in the counties. According to the 2012 Economic Census, total value of shipments by manufacturers in Arkansas was \$62,713,000. According to State & County QuickFacts, total value of shipments by manufacturers in Washington County in 2012 was \$3,487,047. Retail sales estimates for Benton and Washington Counties for 2012, based on State & County QuickFacts, were \$2,905,967 and \$2,925,758, respectively.

The following table represents major employers in the MSA:

Employer	# of Employees±	Sector/Product	Main Location
Wal-Mart Stores (Home Office, DC's & Stores)	52,000+	Retail	Bentonville
Tyson Foods	24,000+	Protein Processing/Marketing	Springdale
University of Arkansas	28,000+	Education	Fayetteville
Simmons Foods, Inc.	7,000+	Poultry Processing	Siloam Springs
J.B. Hunt Transport Services	29,000+	Transportation	Lowell
Washington Regional	1,000+	Health	Fayetteville
George's Inc.	8,300+	Poultry	Springdale
Northwest Health Systems	2,200+	Health	Bentonville/Springdale
Mercy Health Systems	2,000+	Health	Multiple
Arvest Bank	6,300+	Finance	Bentonville

Source: Employers; Local Chambers of Commerce, M.B.A. Today

In addition, Northwest Arkansas is the home of several satellite offices of Fortune 500 companies supplying products to Wal-Mart Stores, Inc. These Fortune 500 companies with a presence in Northwest Arkansas include:

IBM, Coca-Cola, Proctor & Gamble, Pfizer, Gillette, Mattel, Hershey, Sara Lee, Kimberly Clark, Heinz, Colgate, Clorox, Ball Corp., Disney, General Mills, Kellogg, Hormel, Newell Rubbermaid, Johnson & Johnson, Pepsico, Philip Morris, etc.

Construction of the Crystal Bridges Museum of American Art in Bentonville has been a plus for the Northwest Arkansas economy, particularly the City of Bentonville. This museum opened in November 2011, and was a project of the Walton family. Crystal Bridges is located near the Central Business District of Bentonville and, along with the “Downtown Bentonville” program, has been instrumental in the revitalization of the Central Business District. Near 3,000,000± people total have visited Crystal Bridges Museum since its opening. The “Scott Family Amazeum” opened in mid-2015±, just to the east of Crystal Bridges. The “Amazeum” is a hands-on, interactive museum for children and families with a foundation in the arts and sciences.

There are many financial institutions in Benton and Washington Counties. These institutions have typically provided an adequate supply of funds for residential, commercial, industrial, and agricultural growth. It should be noted that credit conditions tightened in 2008 as financial institutions dealt with problem real estate loans, and deteriorating economic conditions. The Federal Government infused funds into the financial market in an attempt to provide liquidity and ease credit. However, credit conditions have improved significantly over the past several years. The major financial institutions in the area are located in Bentonville, Fayetteville, Rogers, Siloam Springs, and Springdale, with smaller banks and branches situated in many of the smaller communities. Currently, interest rates on long-term (15-30 years) residential first mortgages are typically in the 2.75% - 3.75% range. Interest rates on commercial mortgages are typically in the 4.00% to 5.75% range. The amortization period may be 15 to 25 years; however, the interest rate is likely to be fixed for only a 5 to 10 year period. Interest rates have begun to increase slightly due, in part, to Federal Reserve policy against inflation; however, remain in an affordable range. Federal Deposit Insurance Corporation (FDIC) data indicate there are a total of 56 financial institutions in the Fayetteville-Springdale-Rogers MSA. Deposits as of Q4 2021 totaled \$15,416,851± based on the FDIC data.

Real estate development in the area has primarily been centered in the major cities, and in smaller communities such as Centerton, Farmington, Lowell, and Prairie Grove. However, rural development is also occurring with small acreage homesites visible throughout the two counties.

Economic conditions, overall, are continuing to provide a benefit to the two-county area. The local economy has rebounded from the recent “Great Recession.” A plus for the area has been continued year over year increases in non-farm employment numbers. Continued growth in non-farm employment is crucial to the health of the Northwest Arkansas real estate market. The long-term outlook is that economic forces will have a positive effect on real property values in Benton and Washington Counties.

Governmental Forces: Governmental, political, and legal actions at all levels have a great impact on property values.

The county seats of Benton and Washington Counties, as previously discussed, are Bentonville and Fayetteville, respectively. These two cities are some 20± minutes apart via I-49.

County government in each county is under the direction of the County Judge and Quorum Court. Other elected county officials include the County Clerk, Circuit Clerk, Collector, Assessor, Treasurer, Sheriff, Coroner, etc.

Property taxes in Arkansas are collected at the county level and distributed to the counties, cities, and school districts. In Arkansas, all real property, except agricultural land, is to be appraised at market value. Agricultural land is valued based upon soil class productivity. The appraised value is multiplied by a 20% assessment ratio to arrive at the assessed value. The assessed value is then multiplied by the appropriate millage rate to arrive at the annual property tax. However, in 2001, a tax relief act was passed in Arkansas, which limits the annual increase in property tax from the base year. A new term was created, called Taxable Value. Taxable Value is now multiplied by the applicable millage rate to arrive at the annual real estate tax. The annual property tax is due by October 15th in the year after it is levied. Individual property taxes in Benton and Washington Counties have generally increased over the last several years due to the improvement in market conditions. Counties in Arkansas are under re-appraisal schedules to reflect changing market conditions.

Benton County does not have county zoning at the present time. Washington County, however, passed an ordinance introducing zoning regulations to unincorporated parts of the county. This zoning ordinance became effective in December of 2007. This zoning is enforced by the Washington County Planning Board. The major cities in the area also have zoning regulations. There are no adverse legislative restrictions on the use and development of real property in the area. However, it should be noted that some of the cities in Benton and Washington Counties have established Overlay Districts which place limitations on development of lands within the established districts.

Benton and Washington Counties are considered to have adequate medical, school, lodging, and religious facilities to service the Trade Area.

In August 2015, Arkansas Children's, Inc. announced plans to build a freestanding children's hospital in Springdale, Arkansas. Construction of the new facility was completed in early 2018. The building includes 233,613± square feet of inpatient beds, emergency care, diagnostic service, and clinical space. The building also includes a helipad. The hospital employs over 250 employees.

The following table reflects area schools' enrollments for the previous years:

Area School Enrollment	Fall 2013	Fall 2014	Fall 2015	Fall 2016	Fall 2017	Fall 2018	Fall 2020
Fayetteville Public Schools	9,421	9,503	9,652	9,321	9,525	10,017	10,151
Springdale Public Schools	20,547	21,120	21,260	21,527	21,958	21,891	21,882
Rogers Public Schools	14,757	15,027	15,077	15,486	15,857	15,604	15,355
Bentonville Public Schools	15,114	15,497	16,060	16,896	17,217	17,225	17,970
University of Arkansas – Fayetteville	24,537	26,237	26,754	27,194	27,558	27,778	27,562
Northwest Arkansas Community College Rogers/Bentonville	8,020	8,098	7,744	7,761	7,715	7,995	7,715
John Brown University – Siloam Springs	2,183	2,850	2,126	2,126	2,613	2,474	2,316

Source: Schools' Administration Offices

There are also private church schools in operation in the two-county area, as well as charter schools. There are a total of five charter schools in Benton and Washington Counties, with additional schools planned. Fall 2020 enrollment at the area charter schools was reported at 3,610.

Utilities available in the rural areas of Benton and Washington Counties include electricity and telephone service. Natural gas and rural water are also available in many areas. Public water and sewer are available in the major cities, as well as in most of the smaller communities.

Overall, governmental forces in the area provide a positive effect on real property values in Benton and Washington Counties. Lack of public water and sewer in certain areas is a drawback. However, the Two Ton Water Project and Benton-Washington County Water Authorities have addressed much of the rural water needs in the two-county area.

Environmental Forces: Both natural and man-made environmental forces influence real property values. Environmental forces include climatic conditions, topography and soil, natural barriers to future development, primary transportation systems, and the nature and desirability of the immediate area surrounding a property.

The two-county area has relatively warm summers and mild winters. High temperatures in summer are often accompanied by high humidity. The average daily temperature is about 57 degrees. Each year there are about 58± days when temperatures go above 90 degrees and typically only a few days when temperatures drop to freezing or below; however, the past few years have seen cold extremes where the temperature has dropped below freezing on several days. The area has an average of 4 to 5± inches of snow annually, although there have been recent years where this has been exceeded. Rainfall averages around 45± inches annually.

The following map illustrates the relationship between the cities and counties of the MSA:



The area is part of the Ozark Highlands. In Benton County, topography ranges from broad plains and rolling hills in the western and central parts to rocky, rough, steeper hills in the east. Much of the eastern one-third of the county is covered by Beaver Reservoir. The elevation increases from west to east and ranges from 1,000± to 1,700± feet above sea level. The elevation of Washington County also varies from 1,000± to 1,700± feet. In general, the topography of Washington County is rough along the western, eastern, southern, and northwestern boundaries. Extending through the heart of the county, from the Oklahoma line to the City of Springdale, is a plateau-like area consisting of rolling, reasonably level land. The City of Fayetteville, located in the edge of the Boston Mountain Range, is quite hilly. Soil and subsoil conditions within the two counties range from fair to good for agricultural purposes.

There are natural barriers to real property development in the area. These consist primarily of mountainous regions, rivers, etc. However, many of these barriers have a positive effect on agricultural usage.

The primary transportation routes in the two counties are I-49 and U.S. Highway 71B (north-south), and U.S. Highway 412 (east-west). From Fayetteville north to Bella Vista, I-49 provides divided highway access. South from Fayetteville, I-49 provides divided highway access to Interstate 40 at Alma. U.S. Highway 71 south from Fayetteville was made a Scenic Byway in 1998. Divided highway access is now available from the region to Fort Smith to the south via I-49/40, and to Little Rock to the southeast via I-49/40. Also, U.S. Highway 412 provides divided highway access from Tontitown westerly to Siloam Springs near the Oklahoma State Line. Divided highway access is available westerly from the region to Tulsa, Oklahoma via U.S. 412 to the Cherokee Turnpike. U.S. Highway 71B, I-49, and U.S. Highway 412 are each heavily traveled traffic arteries. U.S. Highway 71B traverses Fayetteville, Springdale, Lowell, Rogers, Bentonville, and Bella Vista. U.S. Highway 412 traverses Springdale, Tontitown, and Siloam Springs. Construction on a divided highway phase of U.S. Highway 412 east of Springdale to near Hindsville was completed in 2001. Construction of an extension of the U.S. Highway 412 divided highway to near Huntsville was completed in 2014. U.S. Highway 62 and State Highway 16 in Washington County also provide east-west access, as do State Highways 12, 102, and 264 in Benton County. In addition, there are other state highways as well as county roads providing adequate access throughout the area. There is a significant number of secondary roadways traversing the Northwest Arkansas Area. New major highway construction in the two-county area includes the Bella Vista Bypass and the Northern Springdale Bypass. With respect to the Northern Springdale Bypass, the segment of the highway west of I-49 (between I-49 &

U.S. 412) will be constructed prior to the segment east of I-49. Construction of the west segment of the Northern Bypass began in 2015, and the phase between I-49 and State Highway 112 opened in 2018. The next phase of the west segment proposed to be completed is between State Highway 112 and U.S. Highway 412 West. The Bella Vista Bypass opened October 1, 2021 and has significantly improved accessibility to/from the north. It should be noted that construction of additional lanes to I-49 in Benton and Washington Counties is being completed in phases. Some sections of the widening project have already been completed, while some sections are currently being completed. Certain sections are also proposed to be widened in the near future. Finally, several of the cities in the region are in the process of improving/constructing new transportation routes within their municipalities. It should be noted that a new Interchange opened in 2014 along I-49 in Springdale. The location is at I-49/Don Tyson Parkway in the southwest part of Springdale, and has improved access from I-49, via Don Tyson parkway, to the Tyson Foods, Inc. General Offices. Another Interchange along I-49 has been completed in Bentonville. The location is at I-49/SE 8th Street in the east part of Bentonville. This allows good access from I-49, via 8th Street, to the Wal-Mart Stores, Inc. campus, which is in the process of being relocated along 8th Street.

The Northwest Arkansas Regional Airport (XNA), which opened in November 1998, is located near the small community of Highfill in the northwest part of the region. Total construction cost was estimated near \$109± million. Some 2,185± acres were involved. There are two runways, both 8,800± feet in length by 150± feet in width. There is also a 75' x 8,800± taxiway. The terminal building was indicated initially near 69,000± square feet in size; however, has been expanded adding a new terminal. The new terminal reportedly cost \$20-25 million, and allowed parking space for twelve additional planes. The addition reportedly added 51,000± square feet of building area. Direct flights are now available to many of the major MSA's across the country. In 2020, the airport served some 360,133± passengers, while in 2019, the airport served a reported 922,533± passengers. The decline was due to the COVID-19 Pandemic. Construction of a four-level parking deck began in January of 2017. The new garage provides for an additional 1,400± parking spaces, and was completed in August 2018. A 20-Year Master Plan for the airport includes the addition of another runway. A new transportation route to the airport is also proposed to be constructed in the near future. A possible location for this new route is to run northwesterly from the west segment of the Northern Springdale Bypass, intersecting the Northern Springdale Bypass a short distance west of State Highway 112 (north-south route). State Highway 264 currently provides access to the south entrance to the airport, while State Highway 12 provides access to the north entrance. Growth has occurred toward the airport, especially along State Highway 12 from Bentonville. The airport has exceeded initial projections on the number of people utilizing the facility.

The two-county area is reasonably well located and is within relatively short driving times of major metropolitan areas. Driving time to Tulsa is less than 2± hours, to Little Rock is 2.5-3± hours, and to Kansas City is 3-4± hours.

Environmental forces, for the most part, are considered favorable for real estate development in the area, and provide a positive effect on real property values in Benton and Washington Counties.

CONCLUSIONS

Each of the major forces affecting real property values has been addressed in this section of the report. The conclusion is that each of the forces has a positive effect on value.

Between July 2019 and July 2020, the estimated population growth in Benton and Washington Counties combined was 12,888± people. This calculates to near 35± persons per day ($12,888 \div 365$ days). This represents net growth, including births, deaths, out-migration, and in-migration. This is lower than at the peak time in the mid part of the past decade; however, is still significant. This population growth is occurring in part due to the job market in Northwest Arkansas. The continued strong growth in non-farm employment in the two-county area not only increases in-migration numbers, but also reduces out-migration numbers. The population growth results in demand for residential housing, both single and multi-family, which, in turn, creates demand for commercial real estate development to provide services for the area residents. Availability of favorable financing terms continues to be an enhancement for both residential and commercial development.

Wal-Mart Stores, Inc., Tyson Foods, Inc., and the University of Arkansas are the major drivers of the Northwest Arkansas economy, and this is expected to continue into the foreseeable future. Wal-Mart Stores, Inc., has impacted development through-out the two-county area, particularly in Bentonville. The poultry industry continues to lead the Agricultural Sector of the local real estate market, with Tyson Foods, Inc., Simmons Foods, Inc., and George's, Inc., being the primary players. Tyson Foods, Inc., is also instrumental in the revitalization of the Springdale Central Business District by undertaking new development. The University of Arkansas remains the focal point of Fayetteville. Student growth is creating demand for new residential (multi-family in particular) development. The trucking industry, led by J.B. Hunt Transport Services, Inc., also represents a plus for the local economy and brings national recognition to the area.

The medical community in Benton and Washington Counties also creates demand for real estate development in the area. Washington Regional, Northwest Health systems, and Mercy Health Systems are the major employers. A new Arkansas Children's Hospital was recently developed in the southwest part of Springdale. This should create demand for residential and commercial development in that area.

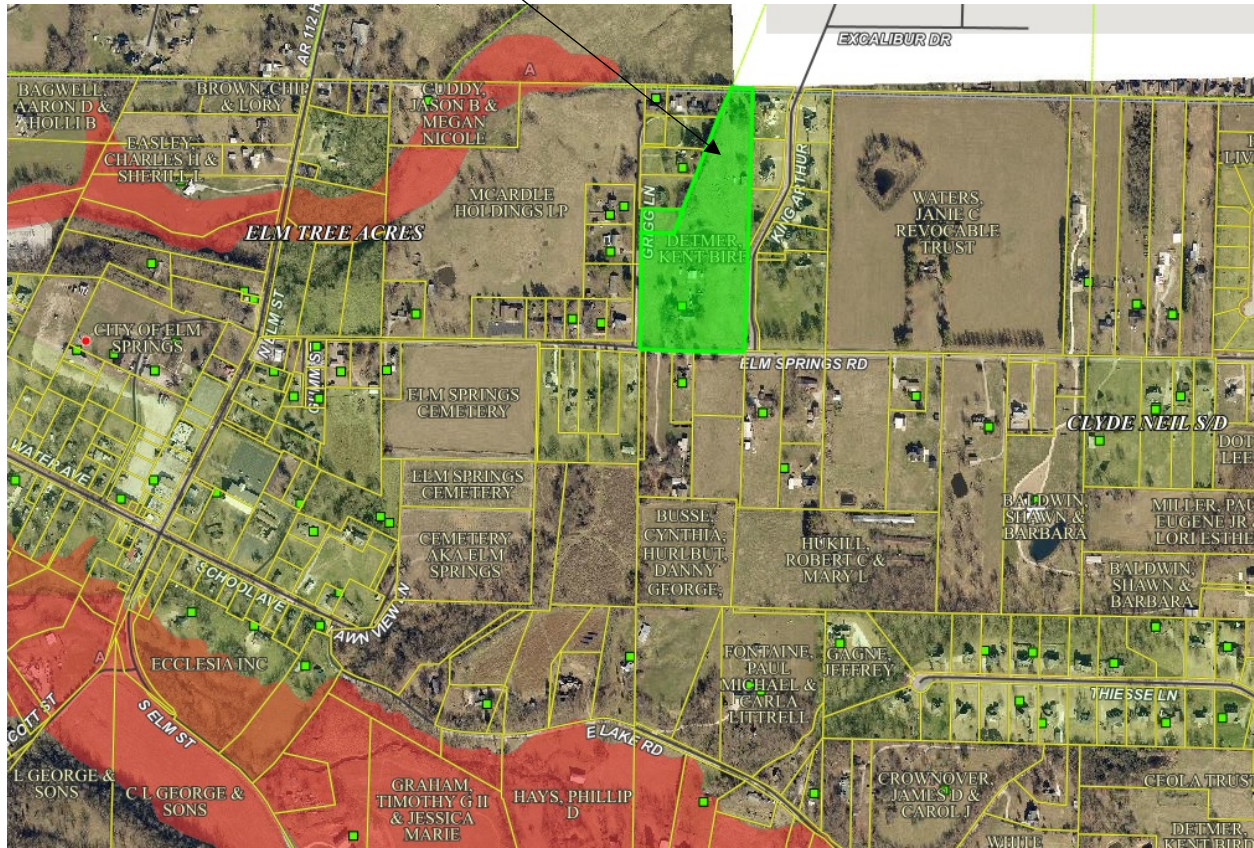
In summary, businesses continue to be concerned about the COVID-19 Pandemic. Global labor and supply chain issues have intensified the concern. Unemployment has returned to pre-pandemic levels, but labor shortages remain an issue. Several critics blame unemployment benefits, however little evidence exists suggesting this is the case. A more likely scenario is a growing number of people retiring and fewer mothers with children re-entering the workforce. There is still progress to be made before the labor issue is resolved.

The long-term outlook for the Fayetteville-Springdale-Rogers MSA remains positive. The COVID-19 Pandemic continues to be a major concern; however, there is insufficient data at the present time supporting a negative influence on real estate values in the area.

AERIAL PHOTOGRAPH



SUBJECT PROPERTY



SUBJECT PHOTOGRAPHS



FRONTAGE ALONG ELM SPRINGS ROAD – LOOKING EASTERLY



SUBJECT PROPERTY – LOOKING NORTHEASTERLY



SUBJECT PROPERTY – LOOKING EASTERLY



SUBJECT PROPERTY – LOOKING NORTHWESTERLY



SUBJECT PROPERTY – LOOKING SOUTHERLY & SHOWING
PORTION OF PROPOSED ACQUISITION



SUBJECT PROPERTY – LOOKING NORTHERLY &
SHOWING PROPOSED ACQUISITION



SUBJECT PROPERTY – LOOKING SOUTHERLY &
SHOWING PROPOSED ACQUISITION



SUBJECT PROPERTY – LOOKING SOUTHERLY &
SHOWING PROPOSED ACQUISITION

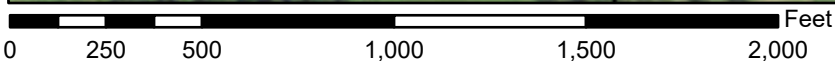
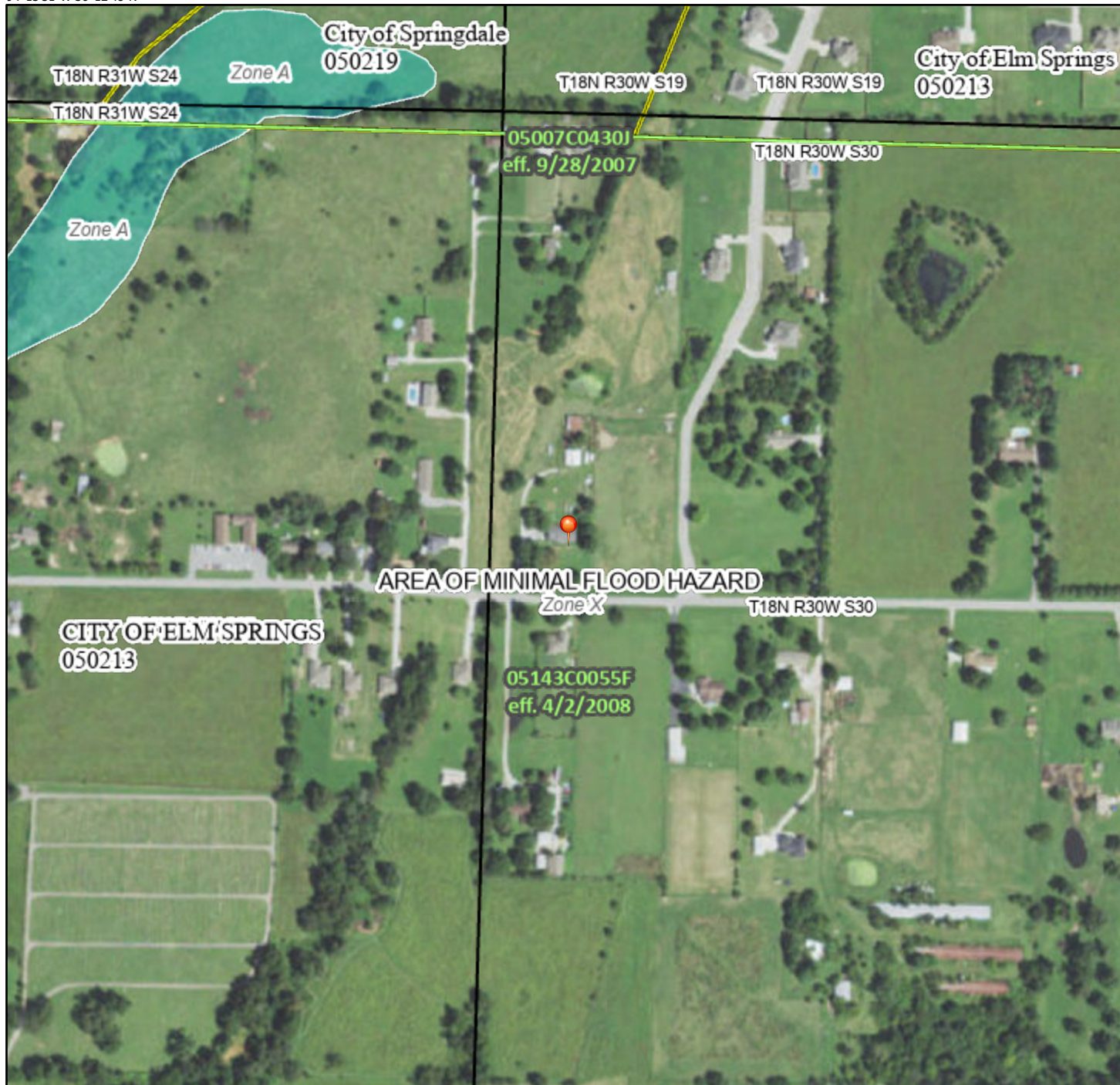


SUBJECT PROPERTY – LOOKING NORTHERLY &
SHOWING PROPOSED ACQUISITION

National Flood Hazard Layer FIRMette



94°13'51"W 36°12'48"N



1:6,000

94°13'13"W 36°12'19"N

Basemap: USGS National Map: Orthoimagery: Data refreshed October, 2020

Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS		Without Base Flood Elevation (BFE) Zone A, V, A99
		With BFE or Depth Zone AE, AO, AH, VE, AR
		Regulatory Floodway
OTHER AREAS OF FLOOD HAZARD		0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
		Future Conditions 1% Annual Chance Flood Hazard Zone X
		Area with Reduced Flood Risk due to Levee. See Notes. Zone X
		Area with Flood Risk due to Levee Zone D
OTHER AREAS		NO SCREEN Area of Minimal Flood Hazard Zone X
		Effective LOMRs
GENERAL STRUCTURES		Area of Undetermined Flood Hazard Zone D
		Channel, Culvert, or Storm Sewer
		Levee, Dike, or Floodwall
OTHER FEATURES		20.2 Cross Sections with 1% Annual Chance Water Surface Elevation
		17.5 Cross Sections with 1% Annual Chance Water Surface Elevation
		Coastal Transect
		Base Flood Elevation Line (BFE)
		Limit of Study
		Jurisdiction Boundary
MAP PANELS		Coastal Transect Baseline
		Profile Baseline
		Hydrographic Feature
		Digital Data Available
		No Digital Data Available
		Unmapped



The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on **3/21/2022 at 2:37 PM** and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.

Parcel: 750-00507-000
 Prev. Parcel: 121169-000-00
 As of: 3/18/2022

Washington County Report

ID: 33437

Property Owner

Name: DETMER, KENT BIRD

Property Information

Physical Address:

Mailing Address: 1713 W HUNTSVILLE AVE
 SPRINGDALE, AR 72762

Subdivision: GHARST ADD

Block / Lot: 001 / 004

Type: (AV) Agri Use/Vacant

S-T-R: 30-18-30

Tax Dist: (502) SPRINGDALE SCH, ELM SP

Size (Acres): 0.480

Millage Rate: 51.80

Extended Legal: LTS 4-5-6 BLOCK 1 ALSO PT NE NE 25-18-31 .48 AC (OUTLOTS)

Market and Assessed Values

Taxes

	Estimated Market Value	Full Assessed (20% Mkt Value)	Taxable Value	Estimated Taxes:	\$1
Land:	\$50	\$10	\$10	Homestead Credit:	\$0
Building:	0	0	0		
Total:	\$50	\$10	\$10		

Note: Tax amounts are estimates only. Contact the county/parish tax collector for exact amounts.

Land

Land Use	Size	Units
Pasture(06)	0.480	Acres
Total	0.480	

Deed Transfers

Deed Date	File Date	Book	Page	Deed Type	Stamps	Est. Sale	Grantee	Code	Type
10/10/2019		2019	35685	Survey			DETMER, KENT BIRD	N/A	Land Only
5/19/2011		2011	14181	Trust Deed			DETMER, KENT BIRD	Additional Properties	N/A
3/15/1995		95	12449	Warr. Deed	0.00	\$0	DETMER, VIRGINIA V TRUST	Additional Property	Land Only
1/17/1978	2/2/1978	957	28	Quit Claim	0.00	\$0	DETMER, HERBERT F & VIRGINIA VON BORA	N/A	Land Only

Reappraisal Value History

Tax Year	Total Value	Total Assessed
2015	\$50.00	\$10.00
2016	\$50.00	\$10.00
2017	\$50.00	\$10.00
2018	\$50.00	\$10.00
2019	\$50.00	\$10.00
2020	\$50.00	\$10.00
2021	\$50.00	\$10.00

Map



Property Owner

Name: DETMER, KENT BIRD

Property Information

Physical Address: 618 ELM SPRINGS RD

Mailing Address: 1713 W HUNTSVILLE AVE
SPRINGDALE, AR 72762

Subdivision: 30-18-30 ELM SPRINGS OUTLOTS

Block / Lot: N/A / N/A

Type: (AI) Agri Improved

S-T-R: 30-18-30

Tax Dist: (502) SPRINGDALE SCH, ELM SP

Size (Acres): 11.370

Millage Rate: 51.80

Extended Legal: PT FRL NW NW 11.37 A, ALSO ADJ RR/RW FURTHER DESCRIBED FROM 2014-8411 AS: Part of the Fractional Northwest Quarter (Fri. NW 1/4) of the Fractional Northwest Quarter (Fri. NW 1/4) of Section Thirty (30), Township Eighteen (18) North, Range Thirty (30) West, and part of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of Section Twenty-Five (25), Township Eighteen (18) North, Range Thirty-one (31) West, more particularly described as follows, to-wit: Beginning at the Northeast corner of the Fractional Northwest Quarter (Fri. NW 1/4) of the Fractional Northwest Quarter (Fri. NW 1/4) of Section Thirty (30), thence South 89°57'50" West 405.00 feet to the Point of Beginning, thence South 89°57'50" West 111.62 feet, thence South 20°14'14" West 651.09 feet, thence South 89°50'08" West 216.32 feet, thence South 00°02'37" East 703.95 feet to the centerline of Elm Springs Road, thence along said centerline South 87°58'54" East 250.26 feet, thence North 88°53'04" East 306.27 feet, thence leaving centerline of Elm Springs Road North 00°09'36" West 1,318.40 feet to the point of beginning.

Market and Assessed Values

Taxes

	Estimated Market Value	Full Assessed (20% Mkt Value)	Taxable Value	Estimated Taxes:	\$612
Land:	\$46,850	\$9,370	\$4,570	Homestead Credit:	\$375
Building:	148550	29710	14486	Note: Tax amounts are estimates only. Contact the county/parish tax collector for exact amounts.	
Total:	\$195,400	\$39,080	\$19,056		

Land

Land Use	Size	Units
HL 1.15 AC		
Homesite	1.000	Acres
Pasture(06)	6.830	Acres
Pasture(13)	1.490	Acres
Pasture(12)	1.300	Acres
Pasture(11)	0.750	Acres
Total	11.370	

Not a Legal Document.

Subject to terms and conditions.

www.actDataScout.com

Parcel: 750-00579-000
 Prev. Parcel: 121240-000-00
 As of: 3/18/2022

Washington County Report

ID: 33557

Deed Transfers

Deed Date	File Date	Book	Page	Deed Type	Stamps	Est. Sale	Grantee	Code	Type
5/19/2011		2011	14181	Trust Deed			DETMER, KENT BIRD	Unval.	N/A
2/16/1995		95	12449	Warr. Deed	0.00	\$0	DETMER, VIRGINIA V REVOCABLE TRUST	Inc. Additiona l Prop.	N/A
2/18/1993				DeathCer	0.00	\$0	DETMER, VIRGINIA VON BORA	N/A	N/A
1/17/1978		957	28	Warr. Deed	0.00	\$0	DETMER, HERBERT F & VIRGINIA VON BORA	N/A	Improve d
5/9/1977		0DR1	225	Survey			DETMER, HERBERT F & VIRGINIA VON BORA	N/A	Improve d
1/25/1973		843	136	Quit Claim			DETMER,VIR GINIA VON BORA; JACKSON, BARBARA JEAN	N/A	Improve d
11/17/1962	12/3/1962	584	260	Warr. Deed	11.55	\$10,500	BIRD, WALTER	Unval.	Improve d
7/8/1943		335	513	Warr. Deed			DELOZIER, HAROLD & LENA	N/A	Improve d
5/21/1934		291	358	Warr. Deed			DELOZIER, W S & AUDRA	N/A	Improve d
11/9/1914		5	11	Survey			DELOZIER, W S & AUDRA	N/A	Improve d
11/9/1914		4	83	Survey			DELOZIER, W S & AUDRA	N/A	Improve d

Reappraisal Value History

Tax Year	Total Value	Total Assessed
2015	\$142,350.00	\$18,556.00
2016	\$142,350.00	\$18,615.00
2017	\$142,350.00	\$18,674.00
2018	\$142,350.00	\$18,733.00
2019	\$142,350.00	\$18,792.00
2020	\$195,400.00	\$18,880.00
2021	\$195,400.00	\$18,968.00

Details for Residential Card 1

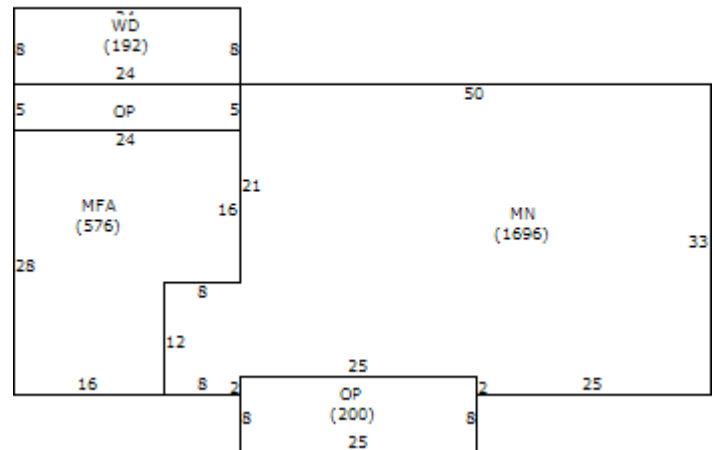
Occupancy	Story	Construction	Total Liv	Grade	Year Built	Age	Condition	Beds
Single Family	ONE	Masonry Veneer	1,696	4	1985	35	Average	

Not a Legal Document.
 Subject to terms and conditions.
www.actDataScout.com

Exterior Wall: BV
Foundation: Closed Piers
Floor Struct: Wood with subfloor
Floor Cover: Carpet & Tile
Insulation: Ceilings Walls
Roof Cover: Fiberglass Shingle
Roof Type: Gable

Plumbing: Full: 1 Half: 1
Fireplace: N/A
Heat / Cool: Central
Basement: N/A
Basement Area:
Year Remodeled:
Style:

DataScout, LLC



Base Structure

Item	Label	Description	Area
A	MN	Main Living Area	1696
B	MFA	Garage - masonry finished, att	576
C	WD	Wood deck	192
D	OP	Porch, open	120
E	OP	Porch, open	200

Outbuildings and Yard Improvements

Item	Type	Size/Dim	Unit Multi.	Quality	Age
Pole Shed		48x24	1		
General Purpose Barn		36x36	1	L	
Driveway, concrete		23x23	1		
Outbuilding, frame		6x10	1		
Pole Shed		41x31	1		
Well House		10x12			

Parcel: 750-00579-000
Prev. Parcel: 121240-000-00
As of: 3/18/2022

Washington County Report

ID: 33557

Other Adjustments

Code	Type	Quantity
FRPL	1SA	1

Map



EXEMPT

TRUSTEE'S DEED

KNOW ALL MEN BY THESE PRESENTS:

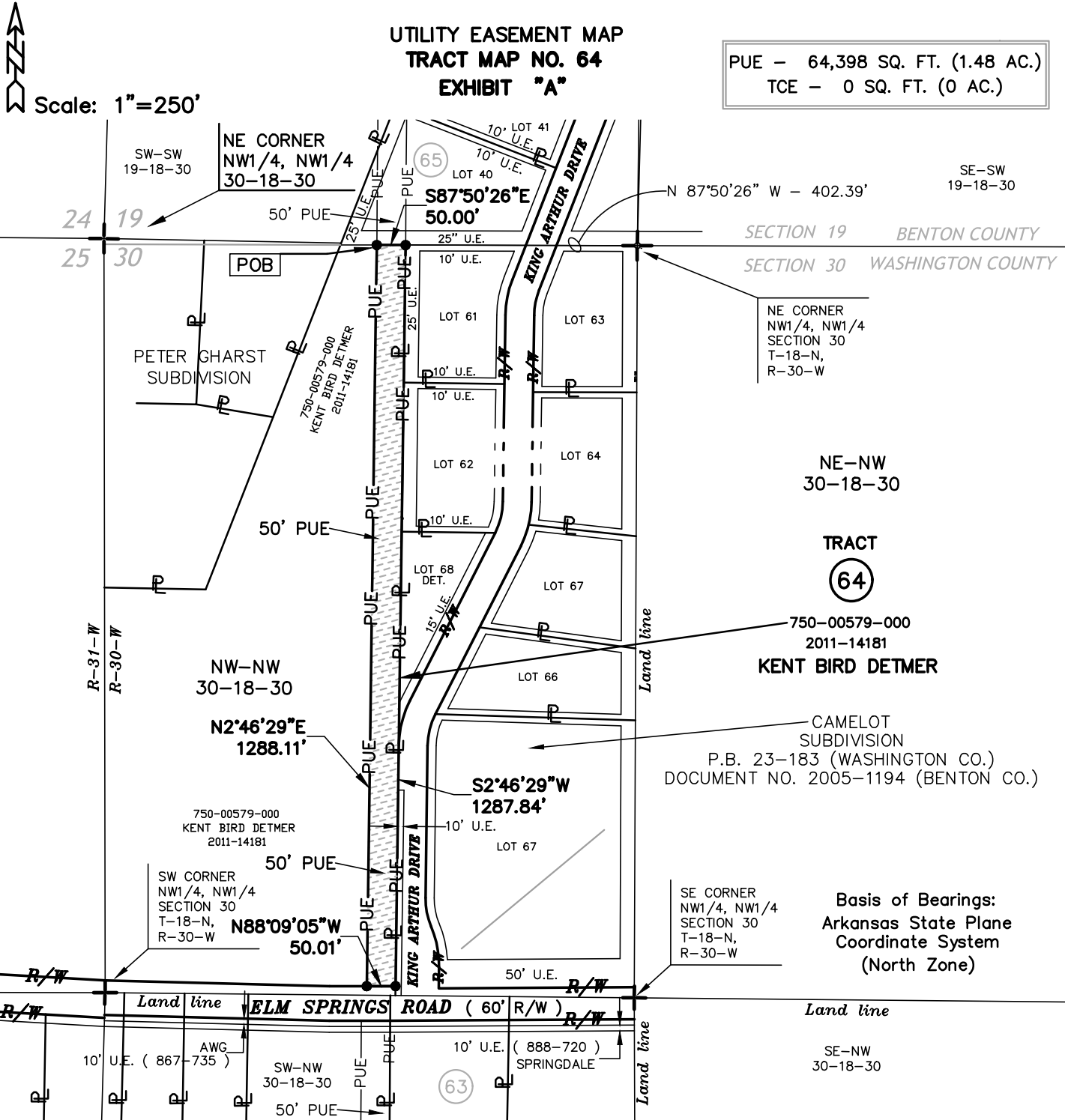
That I, **VIRGINIA V. DETMER**, Trustee of **THE VIRGINIA V. DETMER REVOCABLE TRUST, u/t/d February 16, 1995**, hereinafter called Grantor, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration to me in hand paid by **KENT BIRD DETMER**, a single man, hereinafter called Grantee, do hereby grant, bargain and sell unto the said Grantee and Grantee's successors and assigns, the following described land situate in Washington County, State of Arkansas, to-wit:

The fractional NW $\frac{1}{4}$ of the fractional NW $\frac{1}{4}$ of Section 30 in Township 18 North of Range 30 West, and a part of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 25 in Township 18 North of Range 31 West, described as beginning at the Northeast corner of said fractional NW $\frac{1}{4}$ of the fractional NW $\frac{1}{4}$ of said Section 30, and running thence South along the East quarter section line to the center of the Elm Springs – Springdale Road; thence West with the center of said Road 753 feet; thence North 87° 07' West with the center of said Road 210.2 feet; thence North to and continuing along the East line of a lane or road running from the Elm Springs – Springdale Road North to the Howard Grigg Lands, a distance of 698.5 feet, more or less, to a point due West of the Southwest corner of Lot 1 in Block 1, Peter Gharst Addition to the Town of Elm Springs, Arkansas; thence East to and continuing along the South line of Lots 1, 2 and 3 in Block 1 of said Addition to the center of the abandoned right-of-way of the Kansas City & Memphis Railway Company; thence Northeasterly with the center of said right-of-way to a point which is 12 feet due South of the North line of said fractional quarter section; thence in a direct line Easterly to a point where the East line of said right-of-way intersects the North line of said fractional quarter section; thence East to the point of beginning, subject to an easement along the Southerly part thereof for the Elm Springs – Springdale Road

CITY OF FAYETTEVILLE
WEST TRANSMISSION MAIN ROUTE
EASEMENT DESCRIPTION
TRACT NO. 64
(Washington County Parcel # 750-00579-000)

Part of the Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4) of Section 30, Township 18 North, Range 30 West, Washington County, Arkansas, being more particularly described as follows:

Commencing at the Northeast corner of the NW 1/4 of the NW 1/4 of said Section 30; thence along the North line of said NW 1/4 of the NW 1/4 North $87^{\circ}50'26''$ West, a distance of 402.39 feet to the POINT OF BEGINNING (P.O.B.); thence leaving said North line and along the West line of Camelot Subdivision, as shown in Plat Book 23, Page 00183 of the Washington County records South $02^{\circ}46'29''$ West, a distance of 1287.84 feet to the North right-of-way line of Elm Springs Road (60' R/W); thence leaving the West line of Camelot Subdivision and along the North line of Elm Springs Road North $88^{\circ}09'05''$ West, a distance of 50.01 feet; thence leaving said North right-of-way line of Elm Springs Road North $02^{\circ}46'29''$ East, a distance of 1288.11 feet to the North line of said NW 1/4 of the NW 1/4; thence along said North line South $87^{\circ}50'26''$ East, a distance of 50.00 feet to the POINT OF BEGINNING (P.O.B.), containing 64,398 square feet, 1.48 acres.



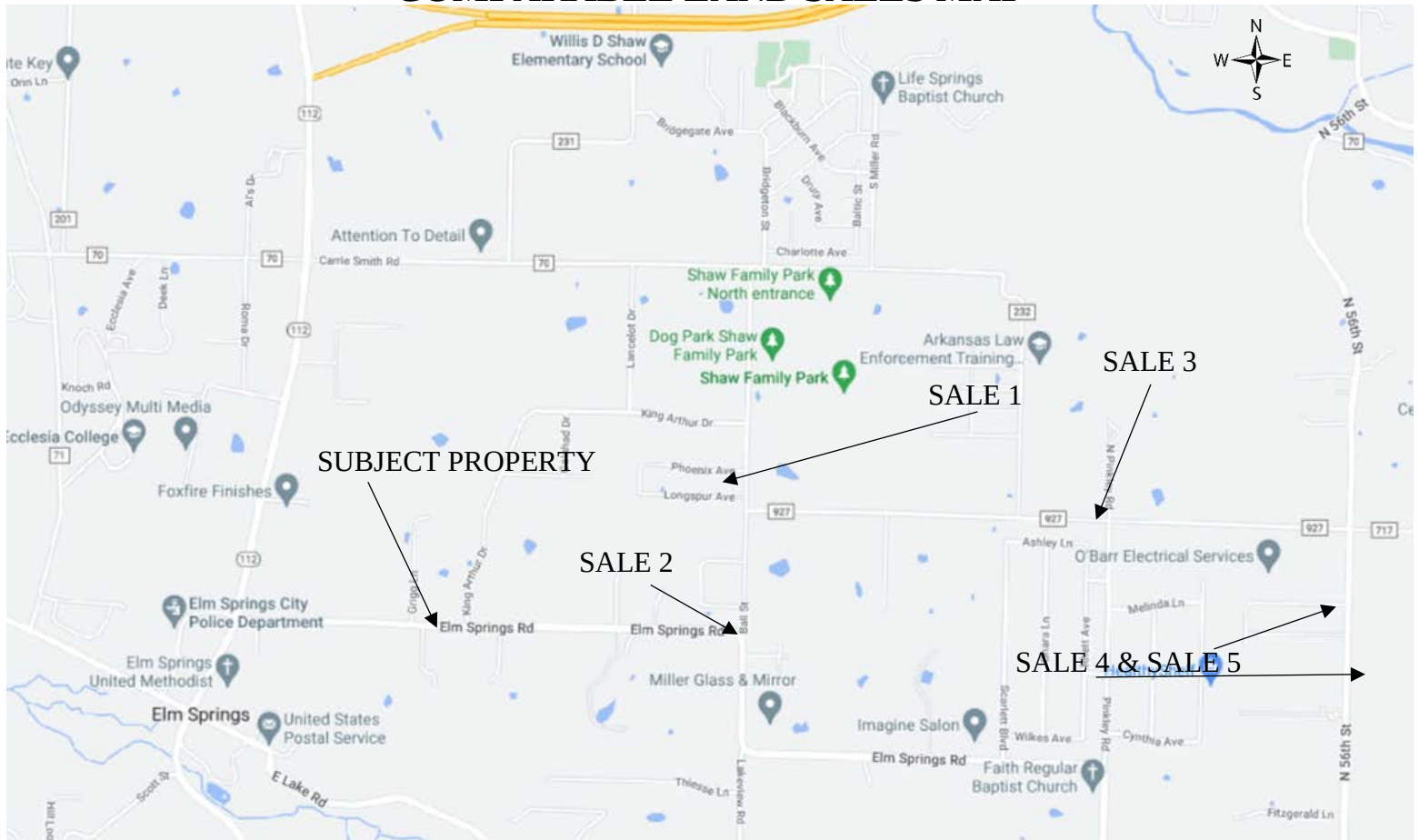
PUE — 64,398 SQ. FT. (1.48 AC.)
TCE — 0 SQ. FT. (0 AC.)

Scale: 1"=250'

LEGEND			
	Permanent Utility Easement		Temporary Construction Easement
	Property Line		Corner of Permanent Utility Easement
	Street Right-of-Way		Existing Utility Easement Line
750-00579-000	Tax Parcel Number		Permanent Utility Easement
2011-14181	Deed Record		Temporary Construction Easement

CITY OF FAYETTEVILLE	Property Owner : KENT BIRD DETMER		Project Name : West Transmission Main Route
	Drawn by : McClelland Consulting Engineers		
	Date: May 2019	Scale : 1" = 250'	
	Project No. 112184	Tract No. 64	

COMPARABLE LAND SALES MAP



LAND SALE 1



GENERAL INFORMATION

General/Specific Type: Residential

Location: Along the west side of Ball Road, 1,300'± north of Elm Springs Road.

City: Springdale

County: Benton

Record #: 2348

Book/Page: L2018/36207

Parcel(s): 21-00167-480

S-T-R: 19-18-30

Lot/Block: See Legal

Subdivision: None

Legal: THE SOUTH HALF (S 1/2) OF THE SOUTHWEST QUARTER (SW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION NINETEEN (19), TOWNSHIP EIGHTEEN (18) NORTH, RANGE THIRTY (30) WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF SPRINGDALE, BENTON COUNTY, ARKANSAS

SALE INFORMATION

Sale Date: July 12, 2018

Sale Price: \$875,000

Adjusted Sale Price: \$875,000

Grantor: Billy Fields

Grantee: Ball Street Real Estate LLC

Financing: Believed Market Terms

Conditions of Sale: Arm's-Length

Exposure Time: 129 DOM

Rights Conveyed: Fee Simple

Verification: MLS & Public Records

PROPERTY INFORMATION

Gross Land Size: 20.130± Acres, or 876,863± SF

Total Frontage: 650'±, Ball Road

Zoning: SF-2, Medium Density Single Family Residential

Topography: Gently rolling, clear, small ponds

Utilities: Typical city

Highest & Best Use: Residential

Indicators

Sale Price/Gross Acre: \$43,467±

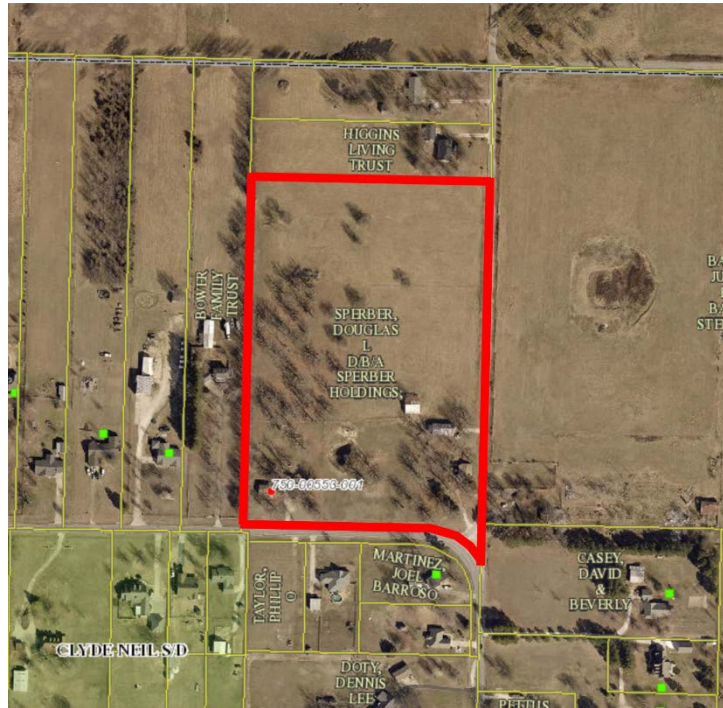
Sale Price/Gross SF: \$1.00±

Adjusted Sale Price/Gross Acre: \$43,467±

Adjusted Sale Price/Gross SF: \$1.00±

Remarks: This represents the sale of 20.13± acres located along the west side of Ball Road, north of Elm Springs Road in Springdale. The property was improvement with some improvements at the time of sale; however, the improvements did not provide contributory value to the site. Shaw Park is located across Ball Road to the east. Reported consideration was \$875,000 or \$43,467/acre. Subsequent to the sale, the site was developed in to a single-family residential subdivision.

LAND SALE 2



GENERAL INFORMATION

General/Specific Type: Agricultural/Residential

Record #: 2699

Location: At the northwest corner of Elm Springs Road & Ball Street

Book/Page: 2019-22510

City: Elm Springs

County: Washington

State: AR

Parcel(s): 750-00553-000

S-T-R: 30-18-30

Lot/Block: See Legal

Subdivision: N/A

Legal: Extended Legal Description - see public records

SALE INFORMATION

Sale Date: February 26, 2019

Financing: Believed Market Terms

Sale Price: \$630,000

Conditions of Sale: Believed Arm's-Length

Adjusted Sale Price: \$630,000

Exposure Time: Unknown

Grantor: Jessie Leroy Stacy & Mona Estelle Stacy
Joint Trust

Rights Conveyed: Market Terms

Grantee: Douglas L. Sperber, D/B/A Sperber
Holdings, and Anderson Investments, LLC

Verification: Public Records

PROPERTY INFORMATION

Gross Land Size: 15.000± Acres, or 653,400± SF

Indicators

Total Frontage: 1,780'±, Elm Springs Road & Ball
Street

Sale Price/Gross Acre: \$42,000±

Zoning: RSF-1 & A-1

Sale Price/Gross SF: \$0.96±

Topography: Near Level/Mostly Cleared

Adjusted Sale Price/Gross Acre: \$42,000±

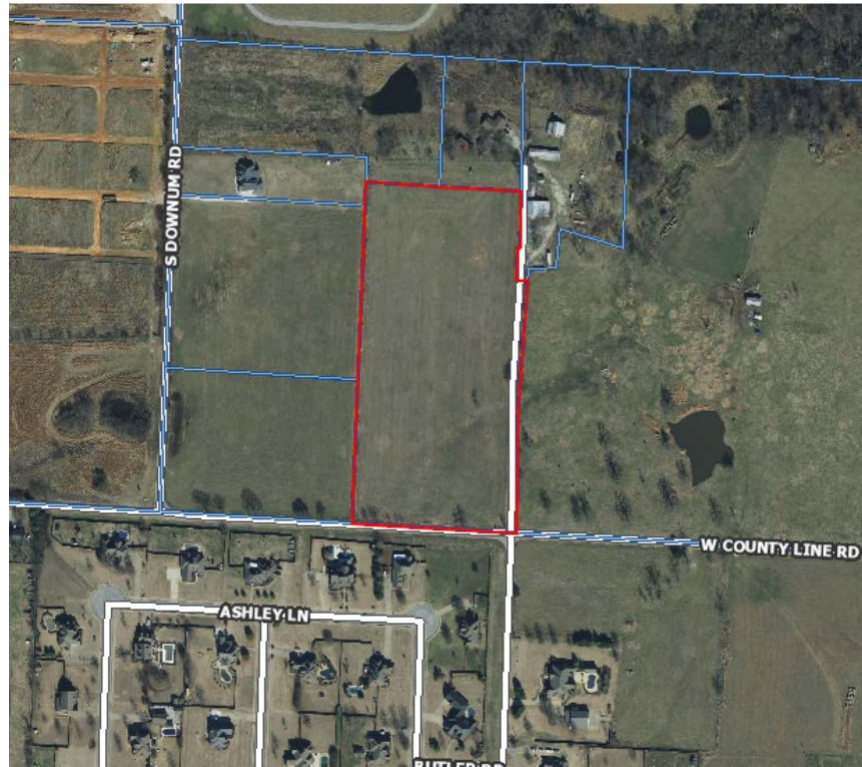
Utilities: Water, No Sewer

Adjusted Sale Price/Gross SF: \$0.96±

Highest & Best Use: Residential

Remarks: This represents the sale of 15± acres located at the northwest corner of Elm Springs Road and Ball Road in Elm Springs. The property has access to public water at the street, however, public sewer is not available. Agricultural improvements were located on the site at the time of sale; however, were not considered to provide contributory value to the site. Subsequent to the sale, the site was developed in to a single-family residential subdivision.

LAND SALE 3



GENERAL INFORMATION

General/Specific Type: Agricultural/Residential

Record #: 2909

Location: At the northwest corner of W. County Line Road & Pinkley Road

Book/Page: L2021-4335

City: Springdale

County: Benton

State: AR

Parcel(s): 21-00167-568

S-T-R: 20-18-30

Lot/Block: N/A

Subdivision: N/A

Legal: Extended Legal Description - see public records

SALE INFORMATION

Sale Date: January 19, 2021

Financing: Market Terms

Sale Price: \$350,000

Conditions of Sale: Arm's-Length

Adjusted Sale Price: \$350,000

Exposure Time: 110 Days On Market

Grantor: Pinkley Farms, Inc.

Rights Conveyed: Fee Simple

Grantee: Steven & Linda Geels

Verification:

PROPERTY INFORMATION

Gross Land Size: 10.000± Acres, or 435,600± SF

Indicators

Total Frontage: W. County Line Road & Pinkley Road

Sale Price/Gross Acre: \$35,000±

Zoning: A-1, Agricultural

Sale Price/Gross SF: \$0.80±

Topography: Gently Sloping

Adjusted Sale Price/Gross Acre: \$35,000±

Utilities: Water, No Sewer

Adjusted Sale Price/Gross SF: \$0.80±

Highest & Best Use: Residential

Remarks: This represents the sale of 10± acres located at the northwest corner of W. County Line Road and Pinkley Road in Springdale.

LAND SALE 4



GENERAL INFORMATION

General/Specific Type: Residential	Book/Page: 2021/27591
Location: 56 th Street See Remarks	State: AR
City: Springdale	County: Washington
Parcel(s): 815-29789-292	NWAMLS: #1192010
S-T-R: 28-18-30	Lot/Block: N/A
Legal: Extended legal – to follow	Asking/Listing Price: \$525,000
	Subdivision: N/A

SALE INFORMATION

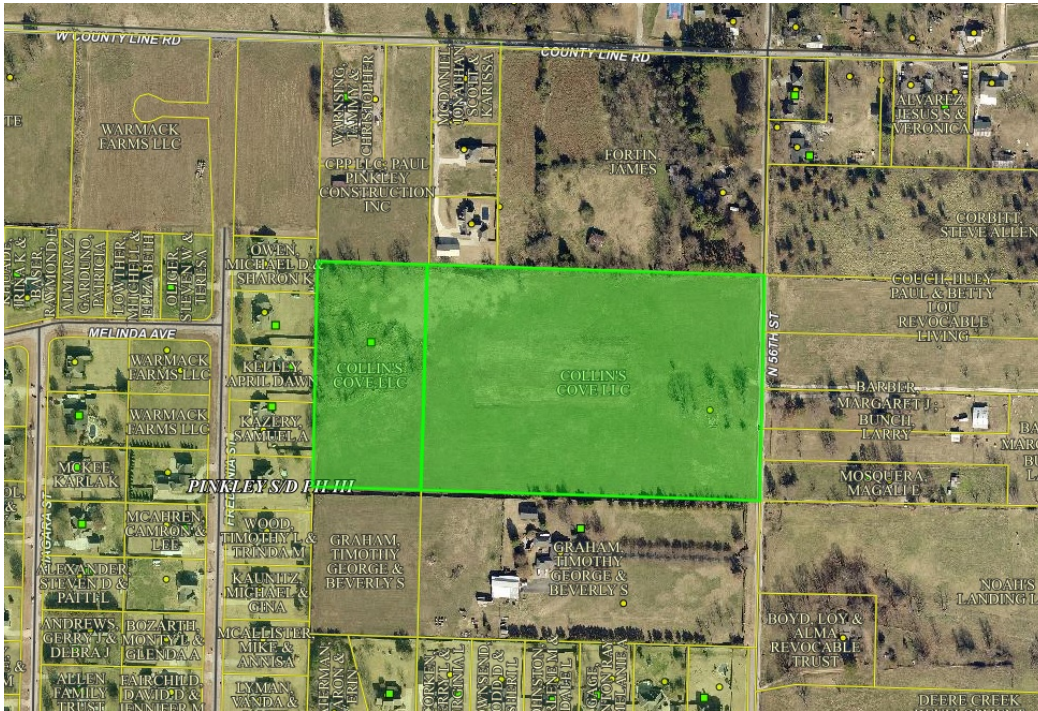
Sale Date: July 16, 2021	Financing: Market Terms
Sale Price: \$526,250	Conditions of Sale: Arm's-Length
Adjusted Sale Price: \$526,250	Exposure Time/DOM: 0 days
Grantor: Loy E. and Alma L. Boyd, Trustees of the Loy & Alma Boyd Revocable Trust, u/t/a, October 21, 2016	Rights Conveyed: Fee Simple
Grantee: Noah's Landing, LLC	Verification: EPSIII W/listing agent Larry Marion/Bassett Mix and Associates.

PROPERTY INFORMATION

Gross Land Size: 14.27± Acres, or 621,601± SF	Indicators
Frontage: 56 th Street	Sale Price/Gross Acre: \$36,878±
Zoning: A-1 Agriculture	Sale Price/Gross SF: \$0.85±
Topography: Near Level – Open/Wooded	Adjusted Sale Price/Gross Acre: \$36,878±
Utilities: Natural Gas, Electric, Public Water & Sewer	Adjusted Sale Price/Gross SF: \$0.85±
Highest & Best Use: Residential Development	

Remarks: This represents the sale of 14.27± acres located along the east side of 56th Street, south of County Line Road in Springdale. The site is being developed in to Noah's Landing subdivision.

LAND SALE 5



GENERAL INFORMATION

General/Specific Type: Single-Family Residential		Record #: 3174
Location: West side of 56th Street, south of County Line Road		Book/Page: 2021-11791
City: Springdale	County: Washington	State: AR
Parcel(s): 750-00807-000 and 815-30919-000		
S-T-R: 29-18-30	Lot/Block: NA	Subdivision: NA
Legal: The S/2 of the NE/4 of the NE/4 of Section 29, Township 18 North, Range 30 West, Washington County, Arkansas		

SALE INFORMATION

Sale Date: March 26, 2021	Financing: Believed to be Market Terms
Sale Price: \$750,000	Conditions of Sale: Arm's-Length
Adjusted Sale Price: \$750,000	Exposure Time: Unknown
Grantor: Legend Builders, Inc. and Kent Burnett Properties, Inc.	Rights Conveyed: Fee Simple
Grantee: Hylton Road Real Estate, LLC	Verification: Washington County Circuit Clerk/Assessor's Office

PROPERTY INFORMATION

Gross Land Size: 20.000± Acres, or 871,200± SF	Indicators
Total Frontage: 56th Street	Sale Price/Gross Acre: \$37,500±
Zoning: SF-1, Low Density Single Family	Sale Price/Gross SF: \$0.86±
Topography: Gently Sloping	Adjusted Sale Price/Gross Acre: \$37,500±
Utilities: Typical City; no sewer	Adjusted Sale Price/Gross SF: \$0.86±
Highest & Best Use: Residential Development	

Remarks: This represents the sale of 20± acres located along the west side of 56th Street, south of County Line Road in Springdale and Elm Springs. Approximately 5± acres of the site is located within Elm Springs. The site is being developed in to a 57 lot subdivision. Reported consideration \$750,000 or \$37,500/acre. The site is located in the Springdale School District.

ASSUMPTIONS AND LIMITING CONDITIONS

This Appraisal Report has been made with the following general assumptions:

1. No responsibility is assumed for the legal description or for matters including legal or title consideration. Title to the property is assumed to be good and merchantable unless otherwise stated.
2. The property is appraised free and clear of any or all liens or encumbrances unless otherwise stated.
3. Responsible ownership and competent property management are assumed.
4. The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy.
5. All engineering is assumed to be correct. The plot plans and illustrative material in this report are included only to assist the reader in visualizing the property.
6. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them.
7. It is assumed that there is full compliance with all applicable federal, state and local environmental regulations and laws unless noncompliance is stated, defined, and considered in the appraisal report.
8. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a nonconformity has been stated, defined, and considered in the appraisal report.
9. It is assumed that all required licenses, certificates of occupancy, consents, or other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
10. It is assumed that the utilization of the land and improvements is within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted in the report.
11. "Unless otherwise stated in this report, the existence of hazardous materials which may or may not be present on the property was not observed by the appraiser. No responsibility is assumed for any such conditions or any expertise or engineering knowledge required to discover them. The client is urged to retain an expert if desired."

This Appraisal Report has been made with the following general limiting conditions:

1. The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.
2. Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the appraiser, and in any event only with proper written qualification and only in its entirety.
3. The appraiser herein by reason of this appraisal is not required to give further consultation, testimony, or be in attendance in court with reference to the property in question unless arrangements have been previously made.
4. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser, or the firm with which the appraiser is connected) shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent and approval of the appraiser.
5. The Americans with Disabilities Act (ADA) became effective January 26, 1992. I (we) have not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property together with a detailed analysis of the requirements of the ADA could reveal that the property is not in compliance with one or more of the requirements of the act. If so, this fact could have a negative effect upon the value of the property. Since I (we) have no direct evidence relating to this issue, I (we) did not consider possible noncompliance with the requirements of ADA in estimating the value of the property.

QUALIFICATIONS OF KATIE REED HAMPTON

EDUCATION

B.S.B.A. in Finance/Real Estate, Minor in Marketing-University of Arkansas, December 2006

PROFESSIONAL EXPERIENCE

May 2008-May 2011 – Research Assistant for REED & ASSOCIATES, INC., Fayetteville, Arkansas

May 2011–Present – Certified General Appraiser for REED & ASSOCIATES, INC., Fayetteville, Arkansas

Colliers International Branch Office – Commercial Real Estate/Development, 3739 N. Steele Blvd., Suite 322, Fayetteville, Arkansas – Sales Associate/Property Manager

January 2007-May 2011 – Commercial Coordinator for Streetsmart NWA, LLC, Fayetteville, Arkansas

PROFESSIONAL AFFILIATIONS AND DESIGNATIONS

Real Estate Salespersons License-Arkansas

Certified General Appraiser – Arkansas – CG3642

Arkansas Chapter of the Appraisal Institute

Member of the Northwest Arkansas Appraisal Section

International Right Of Way Association – Secretary

Arkansas Appraisal Board Member

PROFESSIONAL COURSES COMPLETED

Real Estate Principles – UA – 2005

Real Estate Investment & Appraisal – UA – 2006

Real Estate Finance – UA – 2006

Appraisal Institute – Chicago Chapter – Course OL-401G – General Appraiser Sales Comparison Approach – December 2011

National Uniform Standards of Professional Appraisal Practice (USPAP) – 15 Hours – Russellville, AR

Appraisal Institute – Chicago Chapter – Business Practice & Ethics - 2012

Appraisal Institute – Chicago Chapter – Basic Appraisal Principles - 2013

Appraisal Institute – Chicago Chapter – General Appraiser Site Valuation & Cost Approach – 2013

Appraisal Institute – Chicago Chapter – General Appraiser Report Writing – 2013

Appraisal Institute – Chicago Chapter – General Appraiser Income Capitalization Approach I – 2013

Appraisal Institute – Chicago Chapter – General Appraiser Income Capitalization Approach II – 2014

16-Hour Uniform Appraisal Standards for Federal Land Acquisitions – Arkansas Chapter of the Appraisal Institute; Little Rock, Arkansas

Appraisal Institute – Chicago Chapter – General Appraiser Market Analysis & Highest & Best Use – 2015

Appraisal Institute – Chicago Chapter – Eminent Domain and Condemnation – 2016

National Uniform Standards of Professional Appraisal Practice (USPAP) – 7 Hour Update – 2016

Appraisal Institute – Green Country and Ozark Mountain Chapter – Advanced Income Capitalization Approach – 2017

National Uniform Standards of Professional Appraisal Practice (USPAP) – 7 Hour Update – 2018

The Cost Approach: Unnecessary of Vital to a Healthy Practice – 2020 - Appraisal Institute – Arkansas Chapter

National Uniform Standards of Professional Appraisal Practice (USPAP) – 7 Hour Update – 2020 - Appraisal Institute – Arkansas Chapter

Case Studies in Complex Valuation – 2020 – Appraisal Institute – Arkansas Chapter

Examining Property Rights & Implications in Valuation – 2020- Appraisal Institute – Arkansas Chapter

CLIENTELE

Arkansas State Highway and Transportation Department

O.R. Colan Associates

Universal Field Services

Cities of: Springdale, Fayetteville, Rogers, Lowell, Bentonville, Prairie Grove, Siloam Springs

Carroll Electric Cooperative Corporation

Various Water Authorities, Attorneys, Corporations, and Individuals

Financial Institutions – Arvest Bank, Legacy National Bank, First Security Bank, Centennial Bank, Bear State Bank, United Bank, First Western Bank, IberiaBank, Bancorp South, Signature Bank, Cornerstone Bank, and others.

RELEVANT COLLEGE COURSES

Microeconomics, Macroeconomics, Principles of Marketing, Business Statistics, Real Estate Principles, Real Estate Investment & Appraisal, Real Estate Finance, International Finance, Financial Markets & Institutions, Financial Analysis & Valuation, Business Strategy & Planning, International Marketing, Market Research



March 29, 2022

Kent B. Detmer
1713 W Huntsville Ave
Springdale, AR 72762

RE: West Transmission Main Line
Parcel No. 750-00579-000 (618 Elm Springs Rd)
Tract 64
Offer Letter

Dear Mr. Detmer:

As you are aware, the City of Fayetteville, in conjunction with Beaver Water District, is planning the construction of a 48-inch water main extension from Van Asche (Hwy 112) and Garland Avenue in Fayetteville to Elm Springs west of US Interstate 49. It is our intent to obtain 50-foot wide easements for this future 48-inch water line. The route we have chosen is specifically designed to be as unobtrusive as possible to the property, staying close to the property lines whenever possible. Unfortunately, the best route across your property after all our reviews will be through the pole shed/barn and we have allowed for that in the offer below.

The City of Fayetteville hereby offers \$48,400.00 for rights associated with the permanent easement (1.18 acres) within the outside side setback and \$3,100.00 for rights associated with the permanent easement (0.30 acres) within inside side setback and \$9,000.00 as damages for removal of the pole shed/barn within the easement area and \$4,000.00 as damages for 4 trees within the easement area on your tract as well as \$20,100.00 in additional damages for a total offer of **\$84,600.00**. This offer is based on an appraisal of your property by Reed & Associates, Inc. and I have included the summary sheet for you. Additionally, the City will repair or replace any damage done to the existing fence(s) during construction.

Should you elect to accept this offer, the *Water/Sewer Easement* contained herein should be executed by all parties with current ownership interest in the particular property. The document should be notarized and returned to the City of Fayetteville. A City Land Agent will be pleased to witness and notarize the execution of the documents if you will advise our office accordingly. Payment will be requested upon receipt of all documents by the City and normally take about three weeks to process.

Please provide us with a Social Security Number so that a check can be written. A W-9 is enclosed for this purpose.

A City Land Agent will be glad to meet with you at your convenience and discuss all phases of this project and the associated easements and acquisitions. Please contact Holly Jones at (479) 444-3414 (hjones@fayetteville-ar.gov) or Brandi Samuels (479) 444-3421 (bsamuels@fayetteville-ar.gov). For questions or concerns, please contact Corey Granderson, Utilities Engineer at cgranderson@fayetteville-ar.gov or Tim Nyander, Utilities Director at tnyander@fayetteville-ar.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim Nyander", is written over a light blue horizontal line.

Tim Nyander
Utilities Director

TN/hj

Enclosures

City of Fayetteville Water & Sewer/Utilities Department: 479-575-8386

Mailing Address:
113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov



July 28, 2022

Kent B. Detmer
1713 W Huntsville Ave
Springdale, AR 72762

RE: West Transmission Main Line
Parcel No. 750-00579-000 (618 Elm Springs Rd)
Tract 64
Reminder Letter

Dear Mr. Detmer:

As you are aware, the City of Fayetteville, in conjunction with Beaver Water District, is planning the construction of a 48-inch water main extension from Van Asche (Hwy 112) and Garland Avenue in Fayetteville to Elm Springs west of US Interstate 49. It is our intent to obtain 50-foot wide easements for this future 48-inch water line. The route we have chosen is specifically designed to be as unobtrusive as possible to the property, staying close to the property lines whenever possible. Unfortunately, the best route across your property after all our reviews will be through the pole shed/barn and we have allowed for that in the offer below.

We have not heard from you and it is important that we do so to move forward with this section of waterline acquisitions.

The City of Fayetteville has offered \$48,400.00 for rights associated with the permanent easement (1.18 acres) within the outside side setback and \$3,100.00 for rights associated with the permanent easement (0.30 acres) within inside side setback and \$9,000.00 as damages for removal of the pole shed/barn within the easement area and \$4,000.00 as damages for 4 trees within the easement area on your tract as well as \$20,100.00 in additional damages for a total offer of **\$84,600.00**. This offer is based on an appraisal of your property by Reed & Associates, Inc. and I have included the summary sheet for you. Additionally, the City will repair or replace any damage done to the existing fence(s) during construction.

Should you elect to accept this offer, the *Water/Sewer Easement* previously sent should be executed by all parties with current ownership interest in the particular property. The document should be notarized and returned to the City of Fayetteville. A City Land Agent will be pleased to witness and notarize the execution of the documents if you will advise our office accordingly. Payment will be requested upon receipt of all documents by the City and normally take about three weeks to process. Please provide us with a Social Security Number so that a check can be written. A W-9 was enclosed for this purpose.

A City Land Agent will be glad to meet with you at your convenience and discuss all phases of this project and the associated easements and acquisitions. Please contact Holly Jones at (479) 444-3414 (hjones@fayetteville-ar.gov) or Brandi Samuels (479) 444-3421 (bsamuels@fayetteville-ar.gov). For questions or concerns, please contact Corey Granderson, Utilities Engineer at cgranderson@fayetteville-ar.gov or Tim Nyander, Utilities Director at tnyander@fayetteville-ar.gov.

Sincerely,

Holly Jones

Holly Jones
Land Agent

/hj

City of Fayetteville Water & Sewer/Utilities Department: 479-575-8386



August 31, 2022

Kent B. Detmer
1713 W Huntsville Ave
Springdale, AR 72762

RE: West Transmission Main Line
Parcel No. 750-00579-000 (618 Elm Springs Rd)
Tract 64
Reminder Letter

Dear Mr. Detmer:

In March, you were sent an offer to acquire an easement for a water main the City of Fayetteville is planning in conjunction with Beaver Water District, is planning. The construction of a 48-inch water main extension from Van Asche (Hwy 112) and Garland Avenue in Fayetteville to Elm Springs west of US Interstate 49 is expected to begin within the next 5-10 years. It is our intent to obtain 50-foot wide easements for this 48-inch water main line presently to avoid future development at the time of construction. The route we have chosen is specifically designed to be as unobtrusive as possible to the property, staying close to the property lines whenever possible. Unfortunately, the best route across your property after all our reviews will be through the pole shed/barn and we have allowed for that in the offer below.

We have not heard from you since our meeting in April and it is important that we do so to move forward with this section of waterline acquisitions.

The City of Fayetteville has offered \$48,400.00 for rights associated with the permanent easement (1.18 acres) within the outside side setback and \$3,100.00 for rights associated with the permanent easement (0.30 acres) within inside side setback and \$9,000.00 as damages for removal of the pole shed/barn within the easement area and \$4,000.00 as damages for 4 trees within the easement area on your tract as well as \$20,100.00 in additional damages for a total offer of **\$84,600.00**. This offer is based on an appraisal of your property by Reed & Associates, Inc. and I have included the summary sheet for you. Additionally, the City will repair or replace any damage done to the existing fence(s) during construction.

Should you elect to accept this offer, the *Water/Sewer Easement* previously sent should be executed by all parties with current ownership interest in the particular property. The document should be notarized and returned to the City of Fayetteville. A City Land Agent will be pleased to witness and notarize the execution of the documents if you will advise our office accordingly. *Payment will be requested upon receipt of all documents by the City and normally take about three weeks to process.* Please provide us with a Social Security Number so that a check can be written. A W-9 was enclosed for this purpose. If you need another copy of the documents, please let me know and one will be forwarded immediately.

A City Land Agent will be glad to meet with you at your convenience and discuss all phases of this project and the associated easements and acquisitions. Please contact Holly Jones at (479) 444-3414 (hjones@fayetteville-ar.gov) or Brandi Samuels (479) 444-3421 (bsamuels@fayetteville-ar.gov). For questions or concerns, please contact Corey Granderson, Utilities Engineer at cgranderson@fayetteville-ar.gov or Tim Nyander, Utilities Director at tnyander@fayetteville-ar.gov.

Sincerely,

Holly Jones

Holly Jones
Land Agent

/hj

City of Fayetteville Water & Sewer/Utilities Department: 479-575-8386

Mailing Address:
113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov



February 14, 2023

Kent B. Detmer
1713 W Huntsville Ave
Springdale, AR 72762

RE: West Transmission Main Line
Parcel No. 750-00579-000 (618 Elm Springs Rd)
Tract 64
Final Offer Letter

Dear Mr. Detmer:

As you are aware, the City of Fayetteville, in conjunction with Beaver Water District, is planning the construction of a 48-inch water main extension from Van Asche (Hwy 112) and Garland Avenue in Fayetteville to Elm Springs west of US Interstate 49. It is our intent to obtain 50-foot wide easements for this future 48-inch water line. The route we have chosen is specifically designed to be as unobtrusive as possible to the property, staying close to the property lines whenever possible. Unfortunately, the best route across your property after all our reviews will be through the pole shed/barn and we have allowed for that in the offer below. After not hearing from you, we have chosen to acquire a final updated appraisal from Reed & Associates, Inc. and that offer is stated below.

The City of Fayetteville hereby offers \$56,650.00 for rights associated with the permanent easement (1.18 acres) outside side setback and \$3,600.00 for rights associated with the permanent easement (0.30 acres) within the side setback and \$10,000.00 as damages for removal of the pole shed/barn within the easement area and \$4,000.00 as damages for 4 trees within the easement area on your tract as well as \$23,500.00 in additional damages for a total offer of **\$97,750.00**. This offer is based on an appraisal of your property by Reed & Associates, Inc. and I have included the summary sheet for you. Additionally, the City will repair or replace any damage done to the existing fence(s) during construction.

We must hear from you by March 1, 2023. This project is moving forward.

Should you elect to accept this offer, the *Water/Sewer Easement* previously provided should be executed by all parties with current ownership interest in the particular property. The document should be notarized and returned to the City of Fayetteville. A City Land Agent will be pleased to witness and notarize the execution of the documents if you will advise our office accordingly. Payment will be requested upon receipt of all documents by the City and normally take about three weeks to process. Please provide us with a Social Security Number so that a check can be written. A W-9 was provided for this purpose. If you need additional copies of these documents, please reach out to the Land Agents and they will make sure you get them immediately.

A City Land Agent will be glad to meet with you at your convenience and discuss all phases of this project and the associated easements and acquisitions. Please contact Holly Jones at (479) 444-3414 (hjones@fayetteville-ar.gov) or Brandi Samuels (479) 444-3421 (bsamuels@fayetteville-ar.gov). For questions or concerns, please contact Corey Granderson, Utilities Engineer at cgranderson@fayetteville-ar.gov or Tim Nyander, Utilities Director at tnyander@fayetteville-ar.gov.

Sincerely,



Tim Nyander
Utilities Director

TN/hj

City of Fayetteville Water & Sewer/Utilities Department: 479-575-8386

Mailing Address:
113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov



March 30, 2023

Kent B. Detmer
1713 W Huntsville Ave
Springdale, AR 72762

RE: West Transmission Main Line
Parcel No. 750-00579-000 (618 Elm Springs Rd)
Tract 64
Notification Letter

Dear Mr. Detmer:

As you are aware, the City of Fayetteville, in conjunction with Beaver Water District, is planning the construction of a 48-inch water main extension from Van Asche (Hwy 112) and Garland Avenue in Fayetteville to Elm Springs west of US Interstate 49. It is our intent to obtain 50-foot wide easements for this future 48-inch water line. The route we have chosen is specifically designed to be as unobtrusive as possible to the property, staying close to the property lines whenever possible. Unfortunately, the best route across your property after all our reviews will be through the pole shed/barn and we have allowed for that in the offer below.

The City of Fayetteville has offered \$56,650.00 for rights associated with the permanent easement (1.18 acres) outside side setback and \$3,600.00 for rights associated with the permanent easement (0.30 acres) within the side setback and \$10,000.00 as damages for removal of the pole shed/barn within the easement area and \$4,000.00 as damages for 4 trees within the easement area on your tract as well as \$23,500.00 in additional damages for a total offer of **\$97,750.00**. This offer is based on an appraisal of your property by Reed & Associates, Inc. and you were provided the summary sheet. Additionally, the City will repair or replace any damage done to the existing fence(s) during construction.

We have not heard from you since the end of February and the information you were going to provide was not forthcoming. We are happy to review that information once it is provided and discuss any concerns you may have regarding this project. We will be handing this project over to our City Attorney's office to take to City Council to request approval for Resolution to move forward with condemnation on this easement on the 2nd day of May 2023. They meet at 113 W. Mountain Street, Fayetteville, AR in Room 219 at 5:30 p.m. A document is enclosed explaining the condemnation process and how negotiations may continue through that process.

Should you elect to accept this offer, the *Water/Sewer Easement* previously provided should be executed by all parties with current ownership interest in the particular property. The document should be notarized and returned to the City of Fayetteville. A City Land Agent will be pleased to witness and notarize the execution of the documents if you will advise our office accordingly. Payment will be requested upon receipt of all documents by the City and normally take about three weeks to process. Please provide us with a Social Security Number so that a check can be written. A W-9 was provided for this purpose. If you need additional copies of these documents, please reach out to the Land Agents and they will make sure you get them immediately.

I will be glad to meet with you at your convenience and discuss all phases of this project and the associated easements and acquisitions. Please contact Holly Jones at (479) 444-3414 (hjones@fayetteville-ar.gov) or Brandi Samuels (479) 444-3421 (bsamuels@fayetteville-ar.gov). For questions or concerns, please contact Corey Granderson, Utilities Engineer at cgranderson@fayetteville-ar.gov or Tim Nyander, Utilities Director at tnyander@fayetteville-ar.gov.

Sincerely,

Holly Jones

Holly Jones
Land Agent

/hj

City of Fayetteville Water & Sewer/Utilities Department: 479-575-8386

Mailing Address:
113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov



April 25, 2023

Kent B. Detmer
1713 W Huntsville Ave
Springdale, AR 72762

RE: West Transmission Main Line
Parcel No. 750-00579-000 (618 Elm Springs Rd)
Tract 64
Correction Notification Letter

Dear Mr. Detmer:

As you are aware, the City of Fayetteville, in conjunction with Beaver Water District, is planning the construction of a 48-inch water main extension from Van Asche (Hwy 112) and Garland Avenue in Fayetteville to Elm Springs west of US Interstate 49. It is our intent to obtain 50-foot wide easements for this future 48-inch water line. The route we have chosen is specifically designed to be as unobtrusive as possible to the property, staying close to the property lines whenever possible. Unfortunately, the best route across your property after all our reviews will be through the pole shed/barn and we have allowed for that in the offer below.

The City of Fayetteville has offered \$56,650.00 for rights associated with the permanent easement (1.18 acres) outside side setback and \$3,600.00 for rights associated with the permanent easement (0.30 acres) within the side setback and \$10,000.00 as damages for removal of the pole shed/barn within the easement area and \$4,000.00 as damages for 4 trees within the easement area on your tract as well as \$23,500.00 in additional damages for a total offer of **\$97,750.00**. This offer is based on an appraisal of your property by Reed & Associates, Inc. and you were provided the summary sheet. Additionally, the City will repair or replace any damage done to the existing fence(s) during construction.

We have not heard from you since the end of February and the information you were going to provide was not forthcoming. We are happy to review that information once it is provided and discuss any concerns you may have regarding this project. We will be handing this project over to our City Attorney's office to take to City Council to request approval for Resolution to move forward with condemnation on this easement on the 16th day of May 2023. They meet at 113 W. Mountain Street, Fayetteville, AR in Room 219 at 5:30 p.m. A document is enclosed explaining the condemnation process and how negotiations may continue through that process.

Should you elect to accept this offer, the *Water/Sewer Easement* previously provided should be executed by all parties with current ownership interest in the particular property. The document should be notarized and returned to the City of Fayetteville. A City Land Agent will be pleased to witness and notarize the execution of the documents if you will advise our office accordingly. Payment will be requested upon receipt of all documents by the City and normally take about three weeks to process. Please provide us with a Social Security Number so that a check can be written. A W-9 was provided for this purpose. If you need additional copies of these documents, please reach out to the Land Agents and they will make sure you get them immediately.

I will be glad to meet with you at your convenience and discuss all phases of this project and the associated easements and acquisitions. Please contact Holly Jones at (479) 444-3414 (hjones@fayetteville-ar.gov) or Brandi Samuels (479) 444-3421 (bsamuels@fayetteville-ar.gov). For questions or concerns, please contact Corey Granderson, Utilities Engineer at cgranderson@fayetteville-ar.gov or Tim Nyander, Utilities Director at tnyander@fayetteville-ar.gov.

Sincerely,

Holly Jones

Holly Jones
Land Agent

/hj

City of Fayetteville Water & Sewer/Utilities Department: 479-575-8386

Mailing Address:
113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

WATER/SEWER EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT **Kent Bird Detmer, a single person**, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby GRANT, SELL and CONVEY unto the **City of Fayetteville, Arkansas, a municipal corporation**, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement and a temporary construction and grading easement to construct, lay, remove, relay, inspect, enlarge and/or operate a water and/or sanitary sewer pipe line or lines, manholes, and appurtenances thereto, on, over, across, and under the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION: (Deed Ref: 2011-14181)

The fractional NW $\frac{1}{4}$ of the fractional NW $\frac{1}{4}$ of Section 30 in Township 18 North of Range 30 West, and a part of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 25 in Township 18 North of Range 31 West, described as beginning at the Northeast corner of said fractional NW $\frac{1}{4}$ of the fractional NW $\frac{1}{4}$ of said Section 30, and running thence South along the East quarter section line to the center of the Elm Springs – Springdale Road; thence West with the center of said Road 753 feet; thence North 87°07' West with the center of said Road 210.2 feet; thence North to and continuing along the East line of a lane or road running from the Elm Springs – Springdale Road North to the Howard Grigg Lands, a distance of 698.5 feet, more or less to a point due West of the Southwest corner of Lot 1 in Block 1, Peter Gharst Addition to the Town of Elm Springs, Arkansas; thence East to and continuing along the South line of Lots 1, 2 and 3 in Block 1 of said Addition to the center of the abandoned right of way of the Kansas City & Memphis Railway Company; thence Northeasterly with the center of said right of way to a point which is 12 feet due South of the North line of said fractional quarter section; thence in a direct line Easterly to a point where the East line of said right of way intersects the North line of said fractional quarter section; thence East to the point of beginning, subject to an easement along the Southerly part thereof for the Elm Springs – Springdale Road.

PERMANENT EASEMENT DESCRIPTION:

Part of the Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4) of Section 30, Township 18 North, Range 30 West, Washington County, Arkansas, being more particularly described as follows: Commencing at the Northeast corner of the NW 1/4 of the NW 1/4 of said Section 30; thence along the North line of said NW 1/4 of the NW 1/4 North 87°50'26" West, 402.39 feet to the POINT OF BEGINNING (P.O.B.); thence leaving said North line and along the West line of Camelot Subdivision, as shown in Plat Book 23, Page 00183 of the Washington County records South 02°46'29" West, 1287.84 feet to the North right-of-way line of Elm Springs Road (60' R/W); thence leaving the West line of Camelot Subdivision and along the North line of Elm Springs Road North 88°09'05" West, 50.01 feet; thence leaving said North right-of-way line of Elm Springs Road North 02°46'29" East, 1288.11 feet to the North line of said NW 1/4 of the NW 1/4; thence along said North line South 87°50'26" East, 50.00 feet to the POINT OF BEGINNING (P.O.B.), containing 64,398 square feet, 1.48 acres.

Together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, so long as such pipe line or lines, manholes and/or appurtenances thereto shall be maintained, together with free ingress to and egress from the real estate first hereinabove described for the uses and purposes hereinabove set forth.

The said Grantor is to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said Grantee, which hereby agrees to bury all pipes, where feasible, to a sufficient depth so as not to interfere with cultivation of soil, and that manholes will be constructed flush with the surface of the ground except in bottom lands where they shall be at a height above high water.

The Grantor agrees not to erect any buildings or structures in said easement. Driveways and parking lots will not be considered permanent structures.

The Grantee shall have the right to construct pipe lines and/or make repairs to lines within the above described easement at any time in the future and agrees to pay for or repair any damages as a result of such future construction and/or repairs as set out in this easement.

It is further understood that Grantee's easement shall be exclusive and that Grantor and/or Grantor's successors shall convey no parallel rights to any person, utility or corporation on, across or under said easement without the express written permission of Grantee.

The consideration first above recited as being paid to Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

It is hereby understood and agreed that the party securing this document in behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this the _____ day of _____, 2023.

Kent Bird Detmer

[spouse]

ACKNOWLEDGMENT

STATE OF ARKANSAS)
COUNTY OF _____) SS.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Kent Bird Detmer and _____**, **spouse**, if any to me well known as the person(s) who executed the foregoing document, and who stated and acknowledged that he/they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

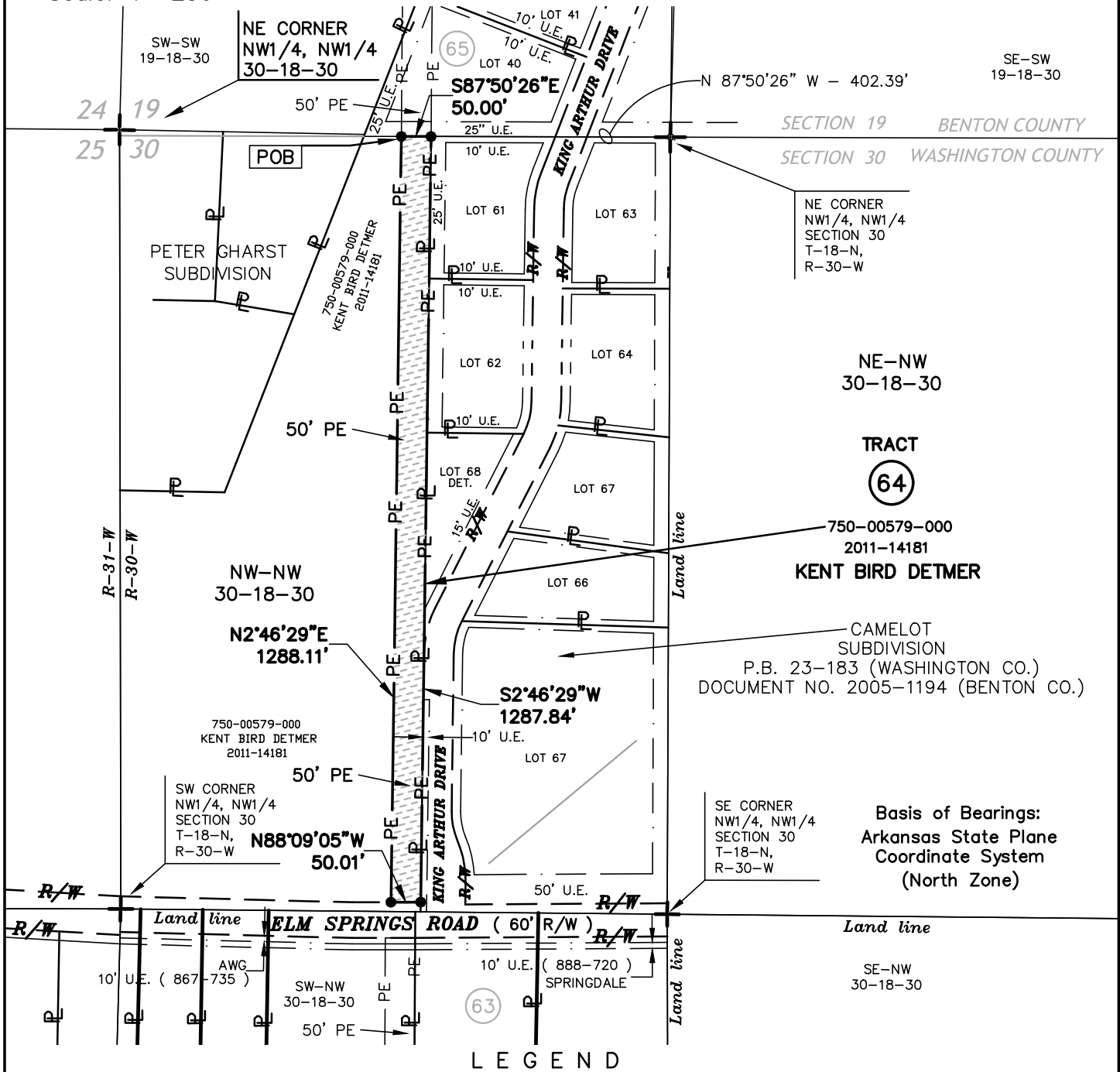
WITNESS my hand and seal on this _____ day of _____, 2023.

MY COMMISSION EXPIRES:

Notary Public

PE - 64,398 SQ. FT. (1.48 AC.)
TCE - 0 SQ. FT. (0 AC.)

Scale: 1"=250'



***CITY OF
FAYETTEVILLE***

Tract No. 64

Project Name :
West Transmission
Main Route

CASE HISTORY
WEST TRANSMISSION MAIN
Tract 64 Kent Detmer

7/23/2019	HJ, CG, BS and rep from McClelland met with Mr. Detmer to discuss the alignment of the easement and get his input. He gave us direction and input on his preferred route and MCE will look into it.
2/18/2022	Appraisal of property received from MCE done by Reed & Assoc.
3/29/2022	Offer to Mr. Detmer of \$51,500.00 for the permanent easement area of 1.48 acres, \$9,000.00 for removal of the pole shed/barn within the easements, \$4,000.00 in landscaping damages and \$20,100.00 in severance damages to the remainder of the property due to the size of the easement for a total offer of \$84,600.00.
4/22/2022	NB at MCE and HJ met with Mr. Detmer and he indicated that he wasn't sure that the offer was high enough and that he would be presenting a counteroffer.
7/28/2022	Reminder letter sent to Mr. Detmer
8/31/2022	Reminder letter sent to Mr. Detmer
2/7/2023	Appraisal updated with new market
2/14/2023	Final Offer letter sent based on updated appraisal: \$60,250 for PE, \$10,000 for pole barn/shed, \$4,000.00, landscaping and \$23,500 damages for new total offer of \$97,750. This letter gave him until March 1 to respond.
2/23/2023	Mr. Detmer called after he had received his revised offer. He is getting a bid from somewhere to remove and replace the shed. He thinks our offer of \$10K is too low. He will have them email HJ. He was very concerned about meeting the March 1 deadline. HJ let him know that if he kept an open line of communication, the deadline was not as serious. But he needed to send the bid soon. The bid has not come.
3/30/2023	Mr. Detmer was mailed a Notification letter letting him know that his tract would be sent to Council on May 2. We have missed that agenda.
4/26/2023	Mr. Detmer was mailed a Correction Notification letter regarding the date of council changing to May 16, 2023.

Mr. Detmer and Ms. Jones have spoken by phone on several occasions over the years. He's always eager to please and ready to cooperate, but there is always an excuse why we can't do it this week or he's just not ready to close. 479-841-5456

IMPORTANT TERMS USED IN THIS BROCHURE

Complaint

The initial pleading of a of the City to the court, that identifies the court's jurisdiction, describes in detail the property sought to be condemned, states the City's right to condemn, and identifies the interest or claim of each property owner.

Condemnation

Condemnation is the legal process of acquiring private property for public use or purpose through the agency's power of eminent domain.

Easement

In general, an easement is the right of one person to use all or part of the property of another person for some specific purpose. Easements can be permanent or temporary (i.e., limited to a stated period of time). Examples are: permanent easement for utilities, permanent easement for perpetual maintenance of drainage structures, and temporary easement to allow reconstruction of a driveway during construction. Ownership of the land affected by an easement is retained by the legal property owner(s) of record.

Eminent Domain

Eminent domain is the right of government to take private property for public use. In the U.S., just compensation must be paid for private property acquired for federally-funded programs or projects.

Just Compensation

Just compensation is the price an agency must pay to acquire real property. An agency official must make the estimate of just compensation to be offered to you for the property needed. That amount may not be less than the amount established in the approved appraisal report as the fair market value for your property. If you and the agency cannot agree on the amount of just compensation to be paid for the property needed, and it becomes necessary for the agency to use the condemnation process, the amount determined by the court will be the just compensation for your property.

Order of Possession

Order of possession refers to a court order in a condemnation allowing the government to enter and use lands.

ADDITIONAL INFORMATION

If you have any questions after reading this booklet, you may contact the City and discuss your concerns with the City's representative during regular offices hours; M-F, 8:00 am to 5:00 pm.

City of Fayetteville / Engineering Division
113 W. Mountain Street
Fayetteville, AR 72701
Engineering Main Line: (479) 575-8206
Land Agents Office: (479) 444-3407
(479) 444-3414

Brochure adapted from "When a Public Agency Acquires Your Property", as published by:

U.S. Department of Housing and Urban Development,
Office of Community Planning and Development

www.hud.gov/relocation

PROPERTY ACQUISITION BY EMINENT DOMAIN



Questions and Answers about the Eminent Domain Process



INTRODUCTION

The City of Fayetteville often has to acquire land and easements for use on public works projects, whether that be water and sewer utilities, street or drainage improvements, City buildings, Parks, Trails, or other public purposes. The City makes every attempt to acquire this property by negotiating an acceptable settlement with the property owner, based on appraisals or other methods of property valuation.

Unfortunately, in some cases the City must acquire property by the use of the City's power of Eminent Domain, which is authorized by Arkansas State Law. Eminent Domain, also known as condemnation, is a process by which the City can acquire property through the court system, so that the project for which property is needed is not delayed.

This brochure is intended to provide you with answers to questions that you may have about the eminent domain process. It is not intended to be all inclusive or to provide legal advice.

FREQUENTLY ASKED QUESTIONS

I received a letter that says the City is preparing to take eminent domain action. Does that mean I can no longer negotiate with the City?

No. The eminent domain process is relatively long, with several steps involved. You may continue to negotiate with the City's land agents or other representatives all the way up to the date that the eminent domain action is filed. In fact, you may negotiate even after that, although you will probably then be speaking with the City Attorney's Office as they take over the negotiations at that point. Negotiations may continue to occur for months, even years, after the initial filing.

Will my condemnation suit stop the proposed project from being constructed?

No. Condemnation proceedings can frequently take many months before they actually go to court and are resolved. In order not to delay the project, an Order of Possession will be requested from the court (after fair market value has been deposited into the escrow account). This allows the City to proceed with project construction while waiting for just compensation to be determined by the court.

Can the City really just "take" my property without compensation?

No. The City does have the power to acquire private property for a public purpose, but it must fairly compensate the property owner for the taking. The amount of compensation is called just compensation, and is usually determined initially by a property appraisal.

What is the eminent domain process the City uses, and how long does it take for the City to acquire property by eminent domain?

There are several steps that the City has to take in order to receive an Order of Possession:

- 1) First, the Fayetteville City Council must authorize the City Attorney to file an eminent domain action. City Council review and approval normally takes about 3 weeks.
- 2) Second, the City Attorney must process paperwork and prepare the Complaint, and a check in the amount of the City's determination of just compensation must be prepared. It usually takes about 2 weeks for this step.
- 3) Then, the City Attorney files the complaint with the court, and deposits the just compensation with the Court.
- 4) After the case is filed, the City must serve notice to the property owner that an eminent domain action has been filed.
- 5) After the filing, the Judge issues an Order of Possession, which provides the City the rights to the property so that the planned public works project can proceed.

All together, the process from City Council review to issuance of the Order of Possession normally takes approximately 5 to 8 weeks.

What rights and responsibilities do I have during the condemnation process, prior to the City filing the eminent domain action?

You have the right to:

- 1) Continue to negotiate with the City's representatives.
- 2) Have your own appraisal prepared, at your expense.
- 3) Hire an attorney to represent you in negotiations.

4) Attend City Council Meetings and address the Council during their consideration of the request for authorization to proceed to condemnation.

You do not have to take any action prior to the filing of the case or the issuance of the order of possession, nor should you have to spend any money during the process, unless you choose to hire an appraiser, attorney, or other consultant to assist you.

What rights and responsibilities do I have after the Order of Possession is granted to the City?

You have the right to:

- 1) Continue to negotiate with the City to try and negotiate a settlement prior to a jury trial.
- 2) Withdraw the funds deposited by the City into the court for your use, less any amounts necessary to pay off any mortgage or other liens on the property and to resolve any special ownership problems. Withdrawal of your share of the money will not affect your right to seek additional compensation for your property.
- 3) Hire legal counsel, appraisers, or other consultants to assist you with your case.

Your responsibilities are:

- 1) You must respond to the suit in a timely manner, and follow all rules and procedures as set forth by the legal system. In most cases, this is handled by an attorney, but you may represent yourself if you wish.
- 2) You must allow the City, its contractors, private utility companies, and any others to exercise their rights granted by the order of possession. For example, if the City acquires an easement to construct a sewer line, you must allow them to do so within the easement area.

If I am not able to negotiate a settlement, and the case proceeds to trial, then what happens?

During the condemnation trial, you will be provided an opportunity to introduce your evidence as to the value of your property. Of course, the City will have the same right. After hearing the evidence of all parties, a jury will determine the amount of just compensation. If that amount exceeds the amount deposited by the City, you will be paid the difference, plus any interest that may be provided by law.



MEETING OF MAY 16, 2023

TO: Mayor Jordan and City Council

THRU: Chris Brown, Public Works Director
Susan Norton, Chief of Staff

FROM: Matt Mihalevich, Active Transportation Manager

DATE:

SUBJECT: Resolution to apply for Federail-aid Funding

RECOMMENDATION:

Staff recommends approval of a resolution expressing the willingness to apply for federal-aid funds and allowing staff to submit applications for 80% federal 20% local matching grants through the Federal Highway Administration, the Arkansas Department of Transportation and the Northwest Arkansas Regional Planning Commission. Grant projects include the I-49 & Highway 62 interchange, Ruppel Road Lighting, Maple Street Improvements, Drake Street Trail Connection, Safe Routes to School Plan, Millsap Rd. & College Ave Intersection, College Avenue Improvements, and Joyce Blvd. Safety Improvements.

BACKGROUND:

The passage of the Bipartisan Infrastructure Bill provides more opportunities for Federal funding assistance. New grant programs, including the Safe Streets for All and Carbon Reduction Programs add to traditional programs like the Transportation Alternatives Program and the Surface Transportation Block Grant Program.

DISCUSSION:

Eight projects have been identified for application for federal funding as shown below and a spreadsheet is included in the packet with more detail.

Grant Program	Project Description	Amount Requested
Transportation Alternatives	I-49 – MLK & 15 th St. trail payment to ARDOT	\$300,000
Transportation Alternatives & Carbon Reduction	Ruppel Road Lighting – Persimmon to MLK (Hwy 62)	\$500,000
Transportation Alternatives	Drake Street protected bike lanes and trail connection to Gordon Long Park	\$500,000
Carbon Reduction Program	Safe Routes to School Plan	\$100,000
Surface Transportation Block Grant Program – Attributable	Millsap & College Intersection Improvements	\$2,800,000
Safe Streets for All	Maple Street Improvements	\$8,000,000
Safe Streets for All	College Ave. Improvements (Sycamore to Township)	\$8,800,000
Safe Streets for All	Joyce Blvd. (Vantage to Crossover)	\$4,800,000

BUDGET/STAFF IMPACT:

If the grants are approved, the City of Fayetteville will be responsible for 20% of the total project cost while Federal funding will provide 80%. Matching funding has been budgeted through various accounts in anticipation of award of grant funding.

The Active Transportation Advisory Committee reviewed the grant project proposals during their April 12th, 2023 meeting and voted unanimously to forward the request to apply to the Transportation Committee.

On April 26th, 2023, the Transportation Committee reviewed the grant project proposals and voted unanimously to forward the request to apply to the full City Council for approval. The grant programs require a resolution with the application and a sample resolution has been included.

ATTACHMENTS: SRF 2023-718 Federal Aid Grants, 2023_Sample_Resolution, Federal Grant Funding Schedule, Federal Aid Grant Project Concept Plans

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2023-718

Resolution to apply for Federail-aid Funding

A RESOLUTION TO EXPRESS THE WILLINGNESS OF THE CITY OF FAYETTEVILLE TO APPLY FOR 80/20 FEDERAL-AID TRANSPORTATION ALTERNATIVE PROGRAM, CARBON REDUCTION PROGRAM, SAFE STREETS FOR ALL, AND SURFACE TRANSPORTATION BLOCK GRANT PROGRAM - ATTRIBUTABLE FUNDS IN THE TOTAL AMOUNT OF \$25,800,000.00

WHEREAS, the City of Fayetteville understands Federal-aid Transportation Alternatives Program, Carbon Reduction Program, Safe Streets for All, and Surface Transportation Block Grant Program – Attributable funds are available at 80% federal participation and 20% local match to develop or improve the I-49 & Highway 62 Interchange, Ruppel Road Lighting, Maple Street Improvements, Drake Street Trail Connection, Safe Routes to School Plan, Millsap Road & College Avenue Intersection, College Avenue Improvements, and Joyce Boulevard Safety Improvements Projects; and

WHEREAS, the City of Fayetteville understands that Federal-Aid funds are available for this project on a reimbursable basis, requiring work to be accomplished and proof of payment prior to actual monetary reimbursement; and

WHEREAS, this project, using federal funding, will be open and available for use by the general public and maintained by the applicant for the life of the project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas expresses its willingness to participate in accordance with its designated responsibilities in these projects, including maintenance of these projects and providing local matching funds for each grant.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Mayor to execute all appropriate applications, agreements, and contracts necessary to expedite the construction of the above stated projects.

Section 3: That the City Council of the City of Fayetteville, Arkansas pledges its full support and hereby authorizes the City of Fayetteville to cooperate with the Arkansas Department of Transportation to initiate action to implement these projects.

City of Fayetteville Staff Review Form

2023-718

Item ID

May 16th, 2023

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Matt Mihalevich

4/27/2023

ENGINEERING (621)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval of a resolution expressing the willingness to apply for federal-aid funds and allow staff to submit applications for 80% federal 20% local matching grants through the Federal Highway Administration, the Arkansas Department of Transportation and the Northwest Arkansas Regional Planning Commission. Grant projects include the I-49 & Highway 62 interchange, Ruppel Road Lighting, Maple Street Improvements, Drake Street Trail Connection, Safe Routes to School Plan, Millsap Rd. & College Ave Intersection, College Avenue Improvements, and Joyce Blvd. Safety Improvements.

Budget Impact:

Various

Various

Account Number

Fund

Various

Various

Project Number

Project Title

Budgeted Item? Yes

Total Amended Budget

\$ -

Expenses (Actual+Encum)

\$ -

Available Budget

\$ -

Does item have a direct cost? No

Item Cost

\$ -

Is a Budget Adjustment attached? No

Budget Adjustment

\$ -

Remaining Budget

\$ -

V20221130

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:

SAMPLE RESOLUTION

RESOLUTION NO. _____

**A RESOLUTION EXPRESSING THE WILLINGNESS OF
CITY OF FAYETTEVILLE**

**TO UTILIZE FEDERAL-AID TRANSPORTATION ALTERNATIVES PROGRAM,
CARBON REDUCTION PROGRAM, SAFE STREETS FOR ALL, AND SURFACE
TRANSPORTATION BLOCK GRANT PROGRAM - ATTRIBUTABLE FUNDS**

WHEREAS, City of Fayetteville understands Federal-aid Transportation Alternatives Program or Recreational Trails Program Funds are available at 80% federal participation and 20% local match to develop or improve the I-49 & Highway 62 interchange, Ruppel Road Lighting, Maple Street Improvements, Drake Street Trail Connection, Safe Routes to School Plan, Millsap Rd. & College Ave Intersection, College Avenue Improvements, and Joyce Blvd. Safety Improvements.

WHEREAS, City of Fayetteville understands that Federal-aid Funds are available for this project on a reimbursable basis, requiring work to be accomplished and proof of payment prior to actual monetary reimbursement, and

WHEREAS, this project, using federal funding, will be open and available for use by the general public and maintained by the applicant for the life of the project.

NOW THEREFORE, BE IT RESOLVED BY FAYETTEVILLE CITY COUNCIL THAT:

SECTION I: City of Fayetteville will participate in accordance with its designated responsibility, including maintenance of this project.

SECTION II: Mayor Lioneld Jordan is hereby authorized and directed to execute all appropriate agreements and contracts necessary to expedite the construction of the above stated project.

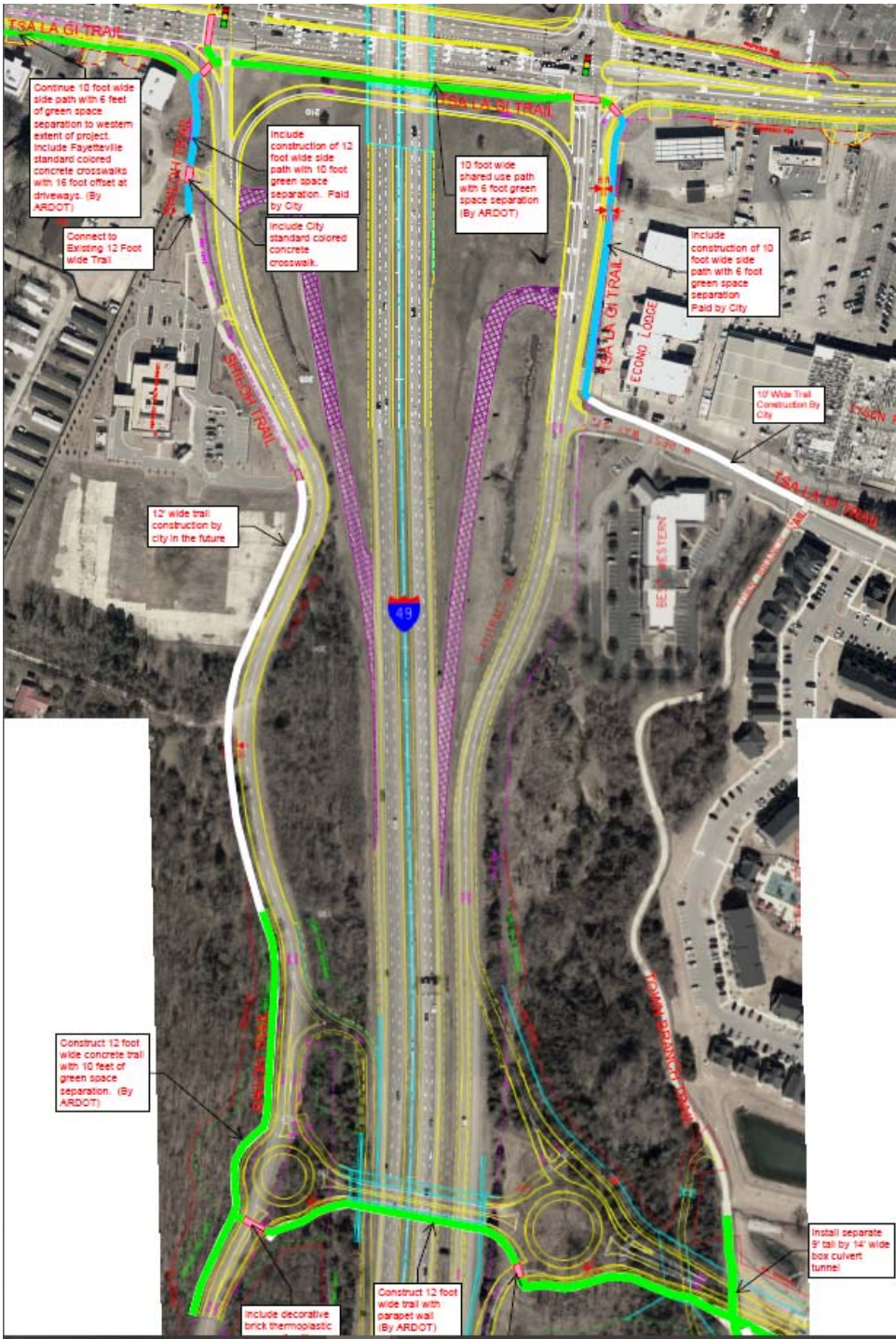
SECTION III: The Fayetteville City Council pledges its full support and hereby authorizes the Arkansas Department of Transportation to initiate action to implement this project.

THIS RESOLUTION adopted this _____ day of _____, 2023.

Signed: _____
Mayor Lioneld Jordan

ATTEST: _____
(SEAL)

Grant Program	Grant Organization	Grant Funding Cycle Year	Project Description	Total Project Cost	Grant Amount Requested	Matching Funds Required (20% of project cost)	Matching Funds Account
Transportation Alternatives Program (TAP)	ARDOT	2023	I-49 - MLK & 15th Street sidepaths additional payments to ARDOT	\$375,000	\$300,000	\$75,000	Trails Bond
Transportation Alternatives Program (TAP) & Carbon Reduction Program (CRP)	ARDOT & NWARPC	2023	Rupple Road Lighting (Hwy 62 to Persimmon)	\$625,000	\$500,000	\$125,000	Trails CIP/Transportation Bond
Safe Streets for All (SS4A)	Federal DOT	2023	Maple Street Improvements (Matching Funds split with UofA)	\$10,000,000	\$8,000,000	\$2,000,000	Trails Bond
Transportation Alternatives Program (TAP)	NWARPC	2023	Drake Street Protected Bike Lanes & Trail to Gordon Long Park	\$625,000	\$500,000	\$125,000	Trails CIP
Carbon Reduction Program (CRP) - Planning Grant	NWARPC	2023	Safe Routes to School Plan - Matching Funds split with Fayetteville Public Schools \$10,000 each	\$125,000	\$100,000	\$25,000	Mobility Program
Surface Transportation Block Grant Program - Attributable (STBGP-A)	NWARPC	2023	Millsap & College Intersection Improvements	\$3,500,000	\$2,800,000	\$700,000	Transportation Bond
Safe Streets for All (SS4A) & Surface Transportation Block Grant Program (STBGP-A)	Federal DOT	2023	College Avenue - Sycamore to Township	\$11,000,000	\$8,800,000	\$2,200,000	Transportation Bond
Safe Streets for All (SS4A)	Federal DOT	2023	Joyce Blvd. Vantage to Crossover	\$6,000,000	\$4,800,000	\$1,200,000	Transportation Bond



I-49/MLK/15th St.
 ARDOT
 Trail shown in cyan and
 white is a city cost
 Grant Request \$300,000
 Transportation Alternatives
 Program





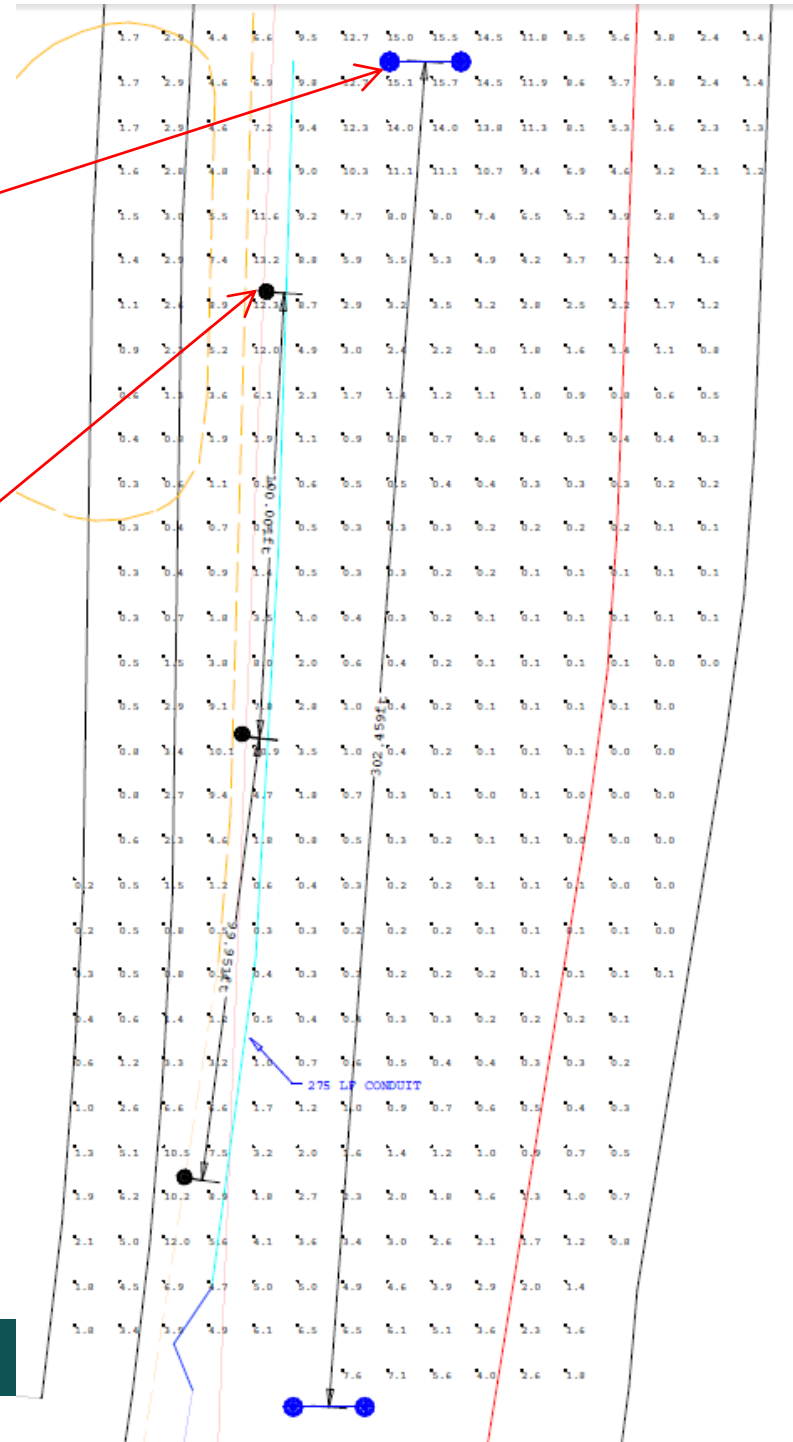
Ruppel Road Lighting:
Persimmon St. to MLK Jr.
Blvd.
Grant Request: \$500,000
Transportation
Alternatives Program
And
Carbon Reduction
Program

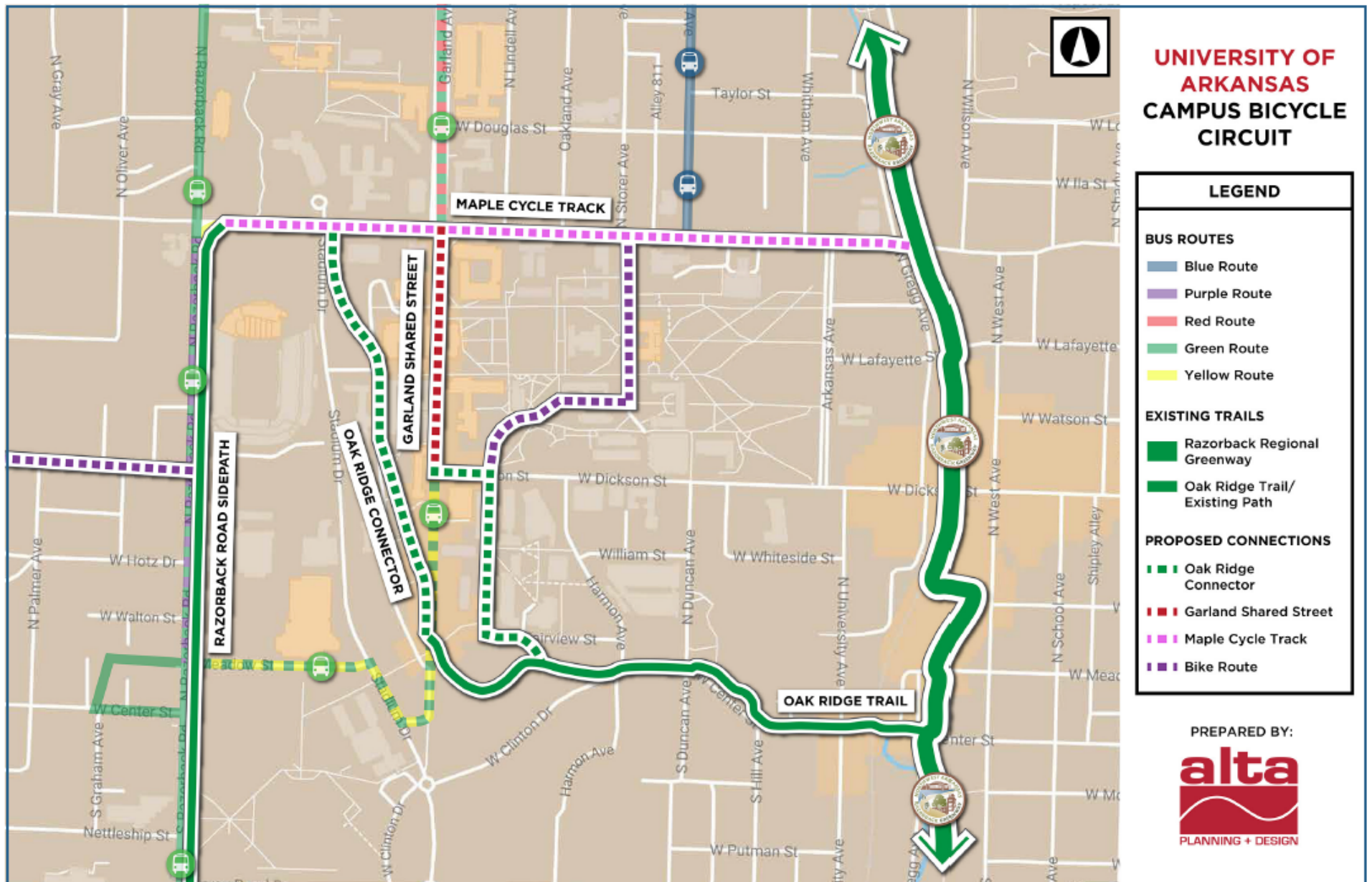


Median Light
Every 300 feet

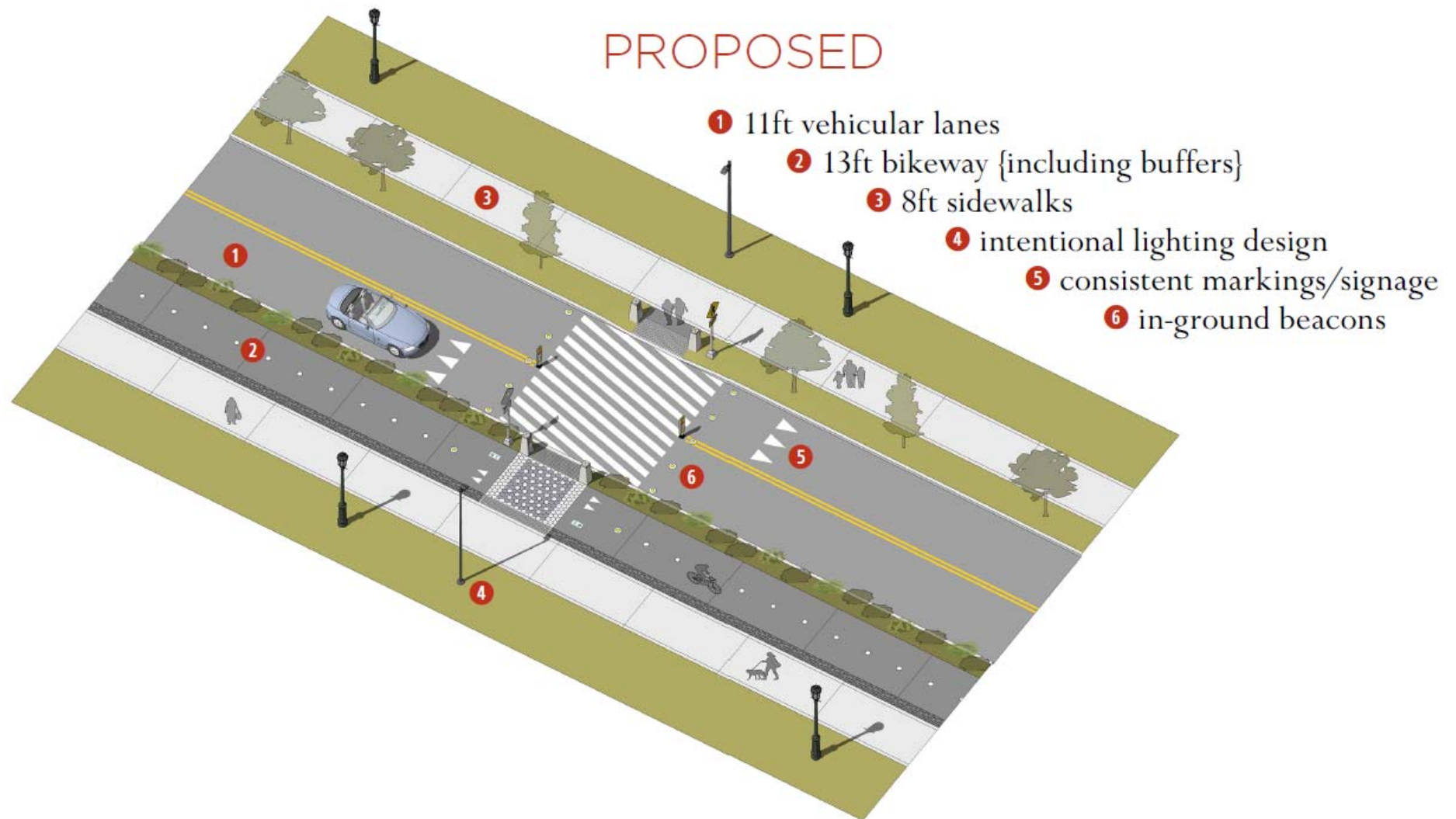


Trail Light
Every 100 feet



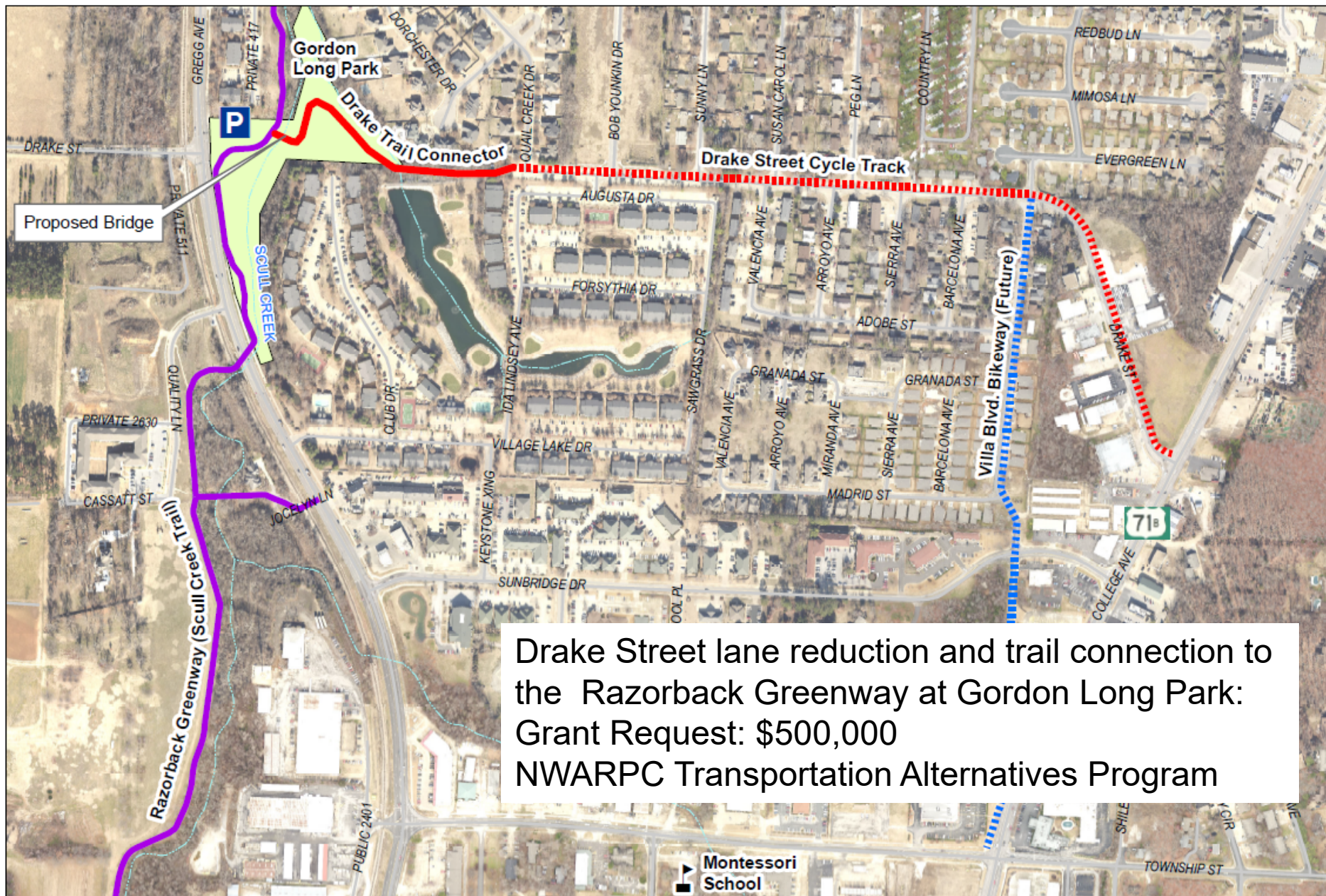


Maple Street Improvements: Garland to Razorback
Greenway
Grant Request: \$8,000,000
Safe Streets for All



The transformation of Maple Street takes a **holistic view** of the corridor, simultaneously addressing best design practices for safety and adding new mobility options, while enhancing the character of the city and campus.





Legend

- Proposed Drake Trail Connection - 0.22 Miles
- - - Proposed Drake Street Cycletrack - 0.62 Miles
- Existing Trails Multi-Use

Drake Street Trail Connection and Cycle Track Proposed TAP Project

0 100 200 400 600 800 1,000 Feet





Safe Routes

National Center for Safe Routes to School

[What We Believe](#) | [What We Do](#) | [School Data](#) | [About Us](#)



Children deserve safe places to walk and bike
—starting with the trip to school.

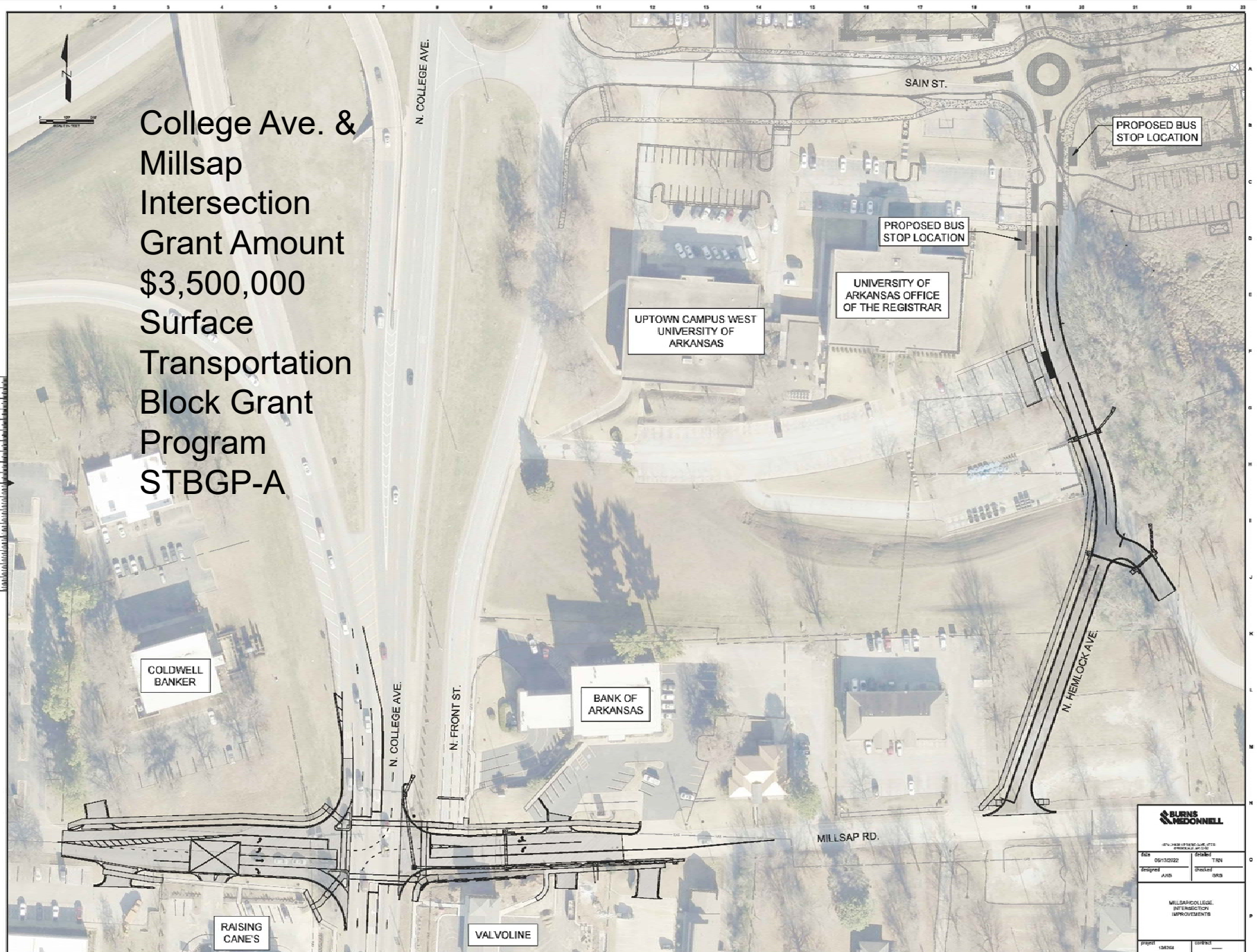
By starting with children and the trip to school, communities become safe places
for everyone to walk and bike.

By creating safe places for everyone, communities take a major step towards meeting the national
goal of ending traffic deaths on roads.

Safe Routes to
School
Planning Grant
Grant Amount
\$100,000
Match Split with
Fayetteville
Public Schools
Carbon
Reduction
Program



CITY OF
FAYETTEVILLE
ARKANSAS





Safe Streets for All
& Surface
Transportation Block
Grant Program
(STBGP-A)

College Avenue
Sycamore to
Township

Grant Request
Amount \$8,800,000

College Avenue Streetscape - E Sycamore St to E Township St





Safe Streets for All

Joyce Blvd. Safety
Improvements

Grant Request
Amount
\$4,800,000

JOYCE BLVD.
SAFETY IMPROVEMENTS



MEETING OF MAY 16, 2023

TO: Mayor Jordan and City Council
THRU: Susan Norton, Chief of Staff
FROM: Jared Rabren, Airport Director
DATE:
SUBJECT: Taxiway E Extension Environmental Assessment

RECOMMENDATION:

Staff requests approval for the Aviation Division to submit a Federal Aviation Administration (FAA) environmental-only grant application to fund 90% of project costs to complete an Environmental Assessment (EA) for the proposed Taxiway E Extension project at Drake Field.

BACKGROUND:

There are currently over 80 aircraft based east on the east side of the airfield. The southernmost taxiway providing access to the east side of the airfield is currently Taxiway E, located 3,400 ft from the Runway 16 threshold. Under favorable conditions, most small- to medium sized aircraft arriving on Runway 16 can decelerate in time to safely maneuver onto Taxiway D. However; larger aircraft, and smaller aircraft under unfavorable conditions, are unable to decelerate prior to reaching Taxiway D and must exit the runway to the west. These aircraft must then cross the runway at either Taxiway D or Taxiway C to reach their intended destination.

This project will provide a new taxiway connector located 4,800 ft from the Runway 16 threshold. Analysis of aircraft performance data available from the FAA indicates increasing the available distance from 3,400 ft to 4,800 ft from the Runway 16 end will significantly reduce the number of aircraft having to cross the runway to access hangars on the east side of the airfield. Reducing runway crossings will improve airport safety by reducing the potential for runway incursions.

Early environmental investigations for the project were initiated late 2022. Potential wetlands and floodplain impacts were identified, prompting coordination with regulatory agencies. Considering these potential impacts and associated mitigation efforts, the FAA determined a separate Environmental Assessment (EA) is required prior to initiating project design.

DISCUSSION:

This project is included on the Airport's 5-year Capital Improvement Plan (CIP) and is programmed for an environmental-only FAA AIP grant in federal fiscal year (FY) 2023. Design and construction will be funded under separate FAA grants in federal FY 2024 and FY 2026, respectively. Pending Council approval, Garver, in collaboration with the Aviation Division, will prepare an FAA AIP environmental-only grant application for signature of the Mayor. Upon receipt of an FAA environmental-only grant offer in Spring 2023, the Aviation Division will seek approval from Council to execute the grant offer and execute Task Order 07 in the amount of

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

\$208,000 with Garver, LLC to complete the Environmental Assessment. All costs associated with Task Order 07 will be included in the FAA environmental-only grant application. The FAA AIP grant will cover 90% of project costs which total \$189,450.00. The Aviation Division will submit a grant application to the ADA for reimbursement of the remaining 10% of project costs at the conclusion of the environmental phase.

BUDGET/STAFF IMPACT:

The Aviation Division may expend up to \$121,050 of its fund balance reserve. This amount includes \$100,000 for cash-flow to cover the FAA's 90% share of billed invoices until monthly reimbursement is issued, and \$21,050 for cash-flow to cover the ADA's share until reimbursement at the end of the project.

ATTACHMENTS: Txwy E Extension Environmental Assessment Grant App SRF, FYV Taxiway E Extension Environmental Assessment - AIP Grant Application Package

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2023-714

Taxiway E Extension Environmental Assessment

A RESOLUTION TO AUTHORIZE THE APPLICATION FOR A FEDERAL AVIATION ADMINISTRATION GRANT IN THE AMOUNT OF \$189,450.00 TO FUND 90% OF THE COSTS OF AN ENVIRONMENTAL ASSESSMENT FOR THE PROPOSED TAXIWAY E EXTENSION PROJECT AT DRAKE FIELD AIRPORT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby authorizes Mayor Jordan to submit an application for a Federal Aviation Administration Grant in the amount of \$189,450.00 to fund 90% of the costs of an environmental assessment for the proposed Taxiway E Extension Project at Drake Field Airport.

City of Fayetteville Staff Review Form

2023-714

Item ID

5/16/2023

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Jared Rabren

4/26/2023

AIRPORT SERVICES (760)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff requests approval for the Aviation Division to submit a Federal Aviation Administration (FAA) environmental-only grant application to fund 90% of project costs to complete an Environmental Assessment (EA) for the proposed Taxiway E Extension project at Drake Field.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? No

Total Amended Budget

\$ -

Expenses (Actual+Encum)

\$ -

Available Budget

\$ -

Does item have a direct cost? No

Item Cost

\$ -

Is a Budget Adjustment attached? No

Budget Adjustment

\$ -

Remaining Budget

\$ -

V20221130

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:



April 28, 2023

Federal Aviation Administration
Attn: Ms. Kelly Oliver-Amy
10101 Hillwood Parkway
Fort Worth, TX 76177

Re: Fayetteville – Drake Field
Taxiway E Extension – Environmental Assessment (Environmental Planning)
FAA Grant Application (3-05-0020-053-2023)

Dear Ms. Oliver-Amy:

We are pleased to submit our application for a FY 2023 environmental planning grant for our Taxiway E Extension – Environmental Assessment project. If you have any questions regarding the application, please feel free to contact me or Kyle Bennett with Garver.

Sincerely,

Jared Rabren
Airport Director
City of Fayetteville

Attachments: SF 424 Application
 FAA Form 5100-100
 Sponsor Certifications
 Record of Negotiations
 Engineering Contract
 Exhibit A – Airport Property Map

Application for Federal Assistance SF-424

* 1. Type of Submission:

- ☐ Preapplication
☒ Application
☐ Changed/Corrected Application

* 2. Type of Application:

- ☒ New
☐ Continuation
☐ Revision

* If Revision, select appropriate letter(s):

* Other (Specify):

* 3. Date Received:

04/28/2023

4. Applicant Identifier:

FYV

5a. Federal Entity Identifier:

5b. Federal Award Identifier:

3-05-0020-053-2023

State Use Only:

6. Date Received by State:

7. State Application Identifier:

8. APPLICANT INFORMATION:

* a. Legal Name:

City of Fayetteville

* b. Employer/Taxpayer Identification Number (EIN/TIN):

71-6018462

* c. UEI:

JNDMR71AKHT3

d. Address:

* Street1:

4500 S School Avenue

Street2:

* City:

Fayetteville

County/Parish:

* State:

AR: Arkansas

Province:

* Country:

USA: UNITED STATES

* Zip / Postal Code:

72701-8016

e. Organizational Unit:

Department Name:

Transportation

Division Name:

Aviation

f. Name and contact information of person to be contacted on matters involving this application:

Prefix:

Mr.

* First Name:

Jared

Middle Name:

* Last Name:

Rabren

Suffix:

Title:

Aviation Director

Organizational Affiliation:

City of Fayetteville Aviation Division, Drake Field, KFYV

* Telephone Number:

479-718-7642

Fax Number:

479-718-7646

* Email:

jrabren@fayetteville-ar.gov

Application for Federal Assistance SF-424

* 9. Type of Applicant 1: Select Applicant Type:

C: City or Township Government

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

* Other (specify):

* 10. Name of Federal Agency:

Federal Aviation Administration (FAA)

11. Catalog of Federal Domestic Assistance Number:

20.106

CFDA Title:

Airport Improvement Program (AIP)

* 12. Funding Opportunity Number:

N/A

* Title:

N/A

13. Competition Identification Number:

N/A

Title:

N/A

14. Areas Affected by Project (Cities, Counties, States, etc.):

Add Attachment

Delete Attachment

View Attachment

* 15. Descriptive Title of Applicant's Project:

Taxiway E Extension - Environmental Assesement

Attach supporting documents as specified in agency instructions.

View Attachments

Application for Federal Assistance SF-424**16. Congressional Districts Of:*** a. Applicant * b. Program/Project

Attach an additional list of Program/Project Congressional Districts if needed.

17. Proposed Project:* a. Start Date: * b. End Date: **18. Estimated Funding (\$):**

* a. Federal	189,450.00
* b. Applicant	0.00
* c. State	21,050.00
* d. Local	0.00
* e. Other	0.00
* f. Program Income	0.00
* g. TOTAL	210,500.00

*** 19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

- ☐ a. This application was made available to the State under the Executive Order 12372 Process for review on .
- ☐ b. Program is subject to E.O. 12372 but has not been selected by the State for review.
- ☒ c. Program is not covered by E.O. 12372.

*** 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes," provide explanation in attachment.)**

☐ Yes ☒ No

If "Yes", provide explanation and attach

21. *By signing this application, I certify (1) to the statements contained in the list of certifications and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)**

☒ ** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: * First Name:

Middle Name:

* Last Name:

Suffix:

* Title: * Telephone Number: Fax Number: * Email:

* Signature of Authorized Representative:



* Date Signed:



Application for Federal Assistance (Planning Projects)

Part II – Project Approval Information

Section A – Statutory Requirements

The term “Sponsor” refers to the applicant name as provided in box 8 of the associated SF-424 form.

Item 1 Does Sponsor maintain an active registration in the System for Award Management (www.SAM.gov)?	☒ Yes ☐ No
Item 2 Can Sponsor commence the work identified in the application in the fiscal year the grant is made or within six months after the grant is made, whichever is later?	☒ Yes ☐ No ☐ N/A
Item 3 Are there any foreseeable events that would delay completion of the project? If yes, provide attachment to this form that lists the events.	☐ Yes ☒ No ☐ N/A
Item 4 Is the project covered by another Federal assistance program? If yes, please identify other funding sources by the Catalog of Federal Domestic Assistance (CFDA) number. CFDA: _____	☐ Yes ☒ No ☐ N/A
Item 5 Will the requested Federal assistance include Sponsor indirect costs as described in 2 CFR Appendix VII to Part 200, States and Local Government and Indian Tribe Indirect Cost Proposals? If the request for Federal assistance includes a claim for allowable indirect costs, select the applicable indirect cost rate the Sponsor proposes to apply: ☐ De Minimis rate of 10% as permitted by 2 CFR § 200.414 ☐ Negotiated Rate equal to ____% as approved by _____ (the Cognizant Agency) on _____ (Date) (2 CFR part 200, appendix VII) <i>Note: Refer to the instructions for limitations of application associated with claiming Sponsor indirect costs.</i>	

Section B – Certification Regarding Lobbying

The declarations made on this page are under the signature of the authorized representative as identified in box 21 of form SF-424, to which this form is attached. The term "Sponsor" refers to the applicant name provided in box 8 of the associated SF-424 form.

The Authorized Representative certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Sponsor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Authorized Representative shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions

(3) The Authorized Representative shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Part III – Budget Information

Section A – Budget Summary

Grant Program (a)	Federal Catalog No (b)	New or Revised Budget		
		Federal (c)	Non-Federal (d)	Total (e)
1. Airport Improvement Program	20-106	\$ 189,450	\$ 21,050	\$ 210,500
2.				
3. TOTALS		\$ 189,450	\$ 21,050	\$ 210,500

Section B – Budget Categories (All Grant Programs)

4. Object Class Categories	Airport Improvement Program (1)		Other Program (2)		Total
	Amount	Adjustment + or (-) Amount (Use only for revisions)	Amount	Adjustment + or (-) Amount (Use only for revisions)	
a. Administrative expense	\$ 2,250	\$	\$	\$	\$ 2,250
b. Airport Planning					
c. Environmental Planning	187,200				187,200
d. Noise Compatibility Planning					
e. Subtotal	189,450				189,450
f. Program Income					
g. TOTALS (line e minus line f)	\$ 189,450	\$	\$	\$	\$ 189,450

Section C – Non-Federal Resources

Grant Program (a)	Applicant (b)	State (c)	Other Sources (d)	Total (e)
5. Airport Improvement Program	\$	\$ 21,050	\$	\$ 21,050
6.				
7. TOTALS	\$	\$ 21,050	\$	\$ 21,050

Section D – Forecasted Cash Needs

Source of funds	Total for Project	1 st Year	2 nd Year	3 rd Year	4 th Year
8. Federal	\$ 189,450	\$ 94,725	\$ 94,725	\$	\$
9. Non-Federal	21,050	10,525	10,525		
10. TOTAL	\$ 210,500	\$ 105,250	\$ 105,250	\$	\$

Section E – Other Budget Information

11. Other Remarks: (attach sheets if necessary)

*Non-federal share will be funded by an Arkansas Department of Aeronautics grant.

Part IV - Program Narrative

(Suggested Format)

PROJECT: Taxiway E Extension - Environmental Assessment
AIRPORT: Fayetteville - Drake Field Airport (FYV)
1. Objective: The planned extension of Taxiway E will eliminate runway crossing at Taxiway C & Taxiway D by aircraft wishing to access the east side of the airfield following a Runway 16 arrival, which is the primary runway utilized at FYV. The overall project will improve safety at FYV by eliminating unnecessary runway crossings. This phase of the project will be to conduct an Environmental Assessment for the Taxiway E Extension. Early environmental investigations determined potential impacts to existing wetlands, leading to the need for an EA to be completed. The EA will meet AIP policy of protecting the environment.
2. Benefits Anticipated: Finding of no significant impact (FONSI) for the future project location.
3. Approach: <i>(See approved Scope of Work in Final Application)</i> The environmental assessment (EA) will consist of four major sections which address: 1) Purpose and Need for the Project (which includes the Proposed Action), 2) Alternatives, 3) Affected Environment, and 4) Environmental Consequences & Mitigation. To complete the EA, a Cover Sheet, Table of Contents, and appropriate appendices will be included. These Appendices will include Preparer and Qualifications, Agencies Consulted, Public Involvement, Sponsor Land Use Letter, and Aviation Forecast Data. Additional appendices will be included, if necessary, to complete the EA. A Cultural Resources Survey will be conducted that extends to the visual/auditory study area/APE. The EA will commence after grant execution.
4. Geographic Location: 4500 South School Ave, Fayetteville, AR 72701-8016
5. If Applicable, Provide Additional Information:
6. Sponsor's Representative: <i>(include address & telephone number)</i> Mr. Jared Rabren, Airport Director 4500 South School Ave Fayetteville, AR 72701

Drug-Free Workplace Airport Improvement Program Sponsor Certification

Sponsor: City of Fayetteville

Airport: Fayetteville Airport - Drake Field

Project Number:

Description of Work: Taxiway E Extension - Environmental Assessment

Application

49 USC § 47105(d) authorizes the Secretary to require certification from the sponsor that it will comply with the statutory and administrative requirements in carrying out a project under the Airport Improvement Program (AIP). General requirements on the drug-free workplace within federal grant programs are described in 2 CFR part 182. Sponsors are required to certify they will be, or will continue to provide, a drug-free workplace in accordance with the regulation. The AIP project grant agreement contains specific assurances on the Drug-Free Workplace Act of 1988.

Certification Statements

Except for certification statements below marked as not applicable (N/A), this list includes major requirements of the construction project. Selecting "Yes" represents sponsor acknowledgement and confirmation of the certification statement. The term "will" means Sponsor action taken at appropriate time based on the certification statement focus area, but no later than the end of the project period of performance. This list is not comprehensive and does not relieve the sponsor from fully complying with all applicable statutory and administrative standards. The source of the requirement is referenced within parenthesis.

1. A statement has been or will be published prior to commencement of project notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the sponsor's workplace, and specifying the actions to be taken against employees for violation of such prohibition (2 CFR § 182.205).

☒ Yes ☐ No ☐ N/A

2. An ongoing drug-free awareness program (2 CFR § 182.215) has been or will be established prior to commencement of project to inform employees about:

- a. The dangers of drug abuse in the workplace;
- b. The sponsor's policy of maintaining a drug-free workplace;
- c. Any available drug counseling, rehabilitation, and employee assistance programs; and
- d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

☒ Yes ☐ No ☐ N/A

3. Each employee to be engaged in the performance of the work has been or will be given a copy of the statement required within item 1 above prior to commencement of project (2 CFR § 182.210).

☒ Yes ☐ No ☐ N/A

4. Employees have been or will be notified in the statement required by item 1 above that, as a condition employment under the grant (2 CFR § 182.205(c)), the employee will:

- a. Abide by the terms of the statement; and
- b. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.

☒ Yes ☐ No ☐ N/A

5. The Federal Aviation Administration (FAA) will be notified in writing within 10 calendar days after receiving notice under item 4b above from an employee or otherwise receiving actual notice of such conviction (2 CFR § 182.225). Employers of convicted employees must provide notice, including position title of the employee, to the FAA (2 CFR § 182.300).

☒ Yes ☐ No ☐ N/A

6. One of the following actions (2 CFR § 182.225(b)) will be taken within 30 calendar days of receiving a notice under item 4b above with respect to any employee who is so convicted:

- a. Take appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; and
- b. Require such employee to participate satisfactorily in drug abuse assistance or rehabilitation programs approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

☒ Yes ☐ No ☐ N/A

7. A good faith effort will be made, on a continuous basis, to maintain a drug-free workplace through implementation of items 1 through 6 above (2 CFR § 182.200).

☒ Yes ☐ No ☐ N/A

Site(s) of performance of work (2 CFR § 182.230):

Location 1

Name of Location: Fayetteville Airport - Drake Field

Address: 4500 South School Avenue, Fayetteville, AR 72701-8016

Location 2 (if applicable)

Name of Location:

Address:

Location 3 (if applicable)

Name of Location:

Address:

Attach documentation clarifying any above item marked with a "No" response.

Sponsor's Certification

I certify, for the project identified herein, responses to the forgoing items are accurate as marked and additional documentation for any item marked "no" is correct and complete.

Executed on this day of , .

Name of Sponsor: City of Fayetteville

Name of Sponsor's Authorized Official: Honorable Lioneld Jordan

Title of Sponsor's Authorized Official: Mayor, City of Fayetteville

Signature of Sponsor's Authorized Official: _____

I declare under penalty of perjury that the foregoing is true and correct. I understand that knowingly and willfully providing false information to the federal government is a violation of 18 USC § 1001 (False Statements) and could subject me to fines, imprisonment, or both.

Selection of Consultants

Airport Improvement Program Sponsor Certification

Sponsor: City of Fayetteville

Airport: Fayetteville Airport - Drake Field

Project Number:

Description of Work: Taxiway E Extension - Environmental Assessment

Application

49 USC § 47105(d) authorizes the Secretary to require certification from the sponsor that it will comply with the statutory and administrative requirements in carrying out a project under the Airport Improvement Program (AIP). General requirements for selection of consultant services within federal grant programs are described in 2 CFR §§ 200.317-200.326. Sponsors may use other qualifications-based procedures provided they are equivalent to standards of Title 40 chapter 11 and FAA Advisory Circular 150/5100-14, Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects.

Certification Statements

Except for certification statements below marked as not applicable (N/A), this list includes major requirements of the construction project. Selecting "Yes" represents sponsor acknowledgement and confirmation of the certification statement. The term "will" means Sponsor action taken at appropriate time based on the certification statement focus area, but no later than the end of the project period of performance. This list is not comprehensive and does not relieve the sponsor from fully complying with all applicable statutory and administrative standards. The source of the requirement is referenced within parenthesis.

1. Sponsor acknowledges their responsibility for the settlement of all contractual and administrative issues arising out of their procurement actions (2 CFR § 200.318(k)).
☒ Yes ☐ No ☐ N/A
2. Sponsor procurement actions ensure or will ensure full and open competition that does not unduly limit competition (2 CFR § 200.319).
☒ Yes ☐ No ☐ N/A
3. Sponsor has excluded or will exclude any entity that develops or drafts specifications, requirements, or statements of work associated with the development of a request-for-qualifications (RFQ) from competing for the advertised services (2 CFR § 200.319).
☒ Yes ☐ No ☐ N/A

4. The advertisement describes or will describe specific project statements-of-work that provide clear detail of required services without unduly restricting competition (2 CFR § 200.319).
☒ Yes ☐ No ☐ N/A
5. Sponsor has publicized or will publicize a RFQ that:
a. Solicits an adequate number of qualified sources (2 CFR § 200.320(d)); and
b. Identifies all evaluation criteria and relative importance (2 CFR § 200.320(d)).
☒ Yes ☐ No ☐ N/A
6. Sponsor has based or will base selection on qualifications, experience, and disadvantaged business enterprise participation with price not being a selection factor (2 CFR § 200.320(d)).
☒ Yes ☐ No ☐ N/A
7. Sponsor has verified or will verify that agreements exceeding \$25,000 are not awarded to individuals or firms suspended, debarred or otherwise excluded from participating in federally assisted projects (2 CFR § 180.300).
☒ Yes ☐ No ☐ N/A
8. A/E services covering multiple projects: Sponsor has agreed to or will agree to:
a. Refrain from initiating work covered by this procurement beyond five years from the date of selection (AC 150/5100-14); and
b. Retain the right to conduct new procurement actions for projects identified or not identified in the RFQ (AC 150/5100-14).
☒ Yes ☐ No ☐ N/A
9. Sponsor has negotiated or will negotiate a fair and reasonable fee with the firm they select as most qualified for the services identified in the RFQ (2 CFR § 200.323).
☒ Yes ☐ No ☐ N/A
10. The Sponsor's contract identifies or will identify costs associated with ineligible work separately from costs associated with eligible work (2 CFR § 200.302).
☐ Yes ☐ No ☒ N/A
11. Sponsor has prepared or will prepare a record of negotiations detailing the history of the procurement action, rationale for contract type and basis for contract fees (2 CFR § 200.318(i)).
☒ Yes ☐ No ☐ N/A
12. Sponsor has incorporated or will incorporate mandatory contract provisions in the consultant contract for AIP-assisted work (49 U.S.C. Chapter 471 and 2 CFR part 200 Appendix II)
☒ Yes ☐ No ☐ N/A

13. For contracts that apply a time-and-material payment provision (also known as hourly rates, specific rates of compensation, and labor rates), the Sponsor has established or will establish:

- a. Justification that there is no other suitable contract method for the services (2 CFR §200.318(j));
- b. A ceiling price that the consultant exceeds at their risk (2 CFR §200.318(j)); and
- c. A high degree of oversight that assures consultant is performing work in an efficient manner with effective cost controls in place 2 CFR §200.318(j)).

☒ Yes ☐ No ☐ N/A

14. Sponsor is not using or will not use the prohibited cost-plus-percentage-of-cost (CPPC) contract method. (2 CFR § 200.323(d)).

☒ Yes ☐ No ☐ N/A

Attach documentation clarifying any above item marked with "no" response.

Sponsor's Certification

I certify, for the project identified herein, responses to the forgoing items are accurate as marked and additional documentation for any item marked "no" is correct and complete.

I declare under penalty of perjury that the foregoing is true and correct. I understand that knowingly and willfully providing false information to the federal government is a violation of 18 USC § 1001 (False Statements) and could subject me to fines, imprisonment, or both.

Executed on this day of , .

Name of Sponsor: City of Fayetteville

Name of Sponsor's Authorized Official: Honorable Lioneld Jordan

Title of Sponsor's Authorized Official: Mayor, City of Fayetteville

Signature of Sponsor's Authorized Official: _____

I declare under penalty of perjury that the foregoing is true and correct. I understand that knowingly and willfully providing false information to the federal government is a violation of 18 USC § 1001 (False Statements) and could subject me to fines, imprisonment, or both.

Certification and Disclosure Regarding Potential Conflicts of Interest

Airport Improvement Program Sponsor Certification

Sponsor: City of Fayetteville

Airport: Fayetteville Airport - Drake Field

Project Number:

Description of Work: Taxiway E Extension - Environmental Assessment

Application

Title 2 CFR § 200.112 and § 1201.112 address Federal Aviation Administration (FAA) requirements for conflict of interest. As a condition of eligibility under the Airport Improvement Program (AIP), sponsors must comply with FAA policy on conflict of interest. Such a conflict would arise when any of the following have a financial or other interest in the firm selected for award:

- a) The employee, officer or agent,
- b) Any member of his immediate family,
- c) His or her partner, or
- d) An organization which employs, or is about to employ, any of the above.

Selecting "Yes" represents sponsor or sub-recipient acknowledgement and confirmation of the certification statement. Selecting "No" represents sponsor or sub-recipient disclosure that it cannot fully comply with the certification statement. If "No" is selected, provide support information explaining the negative response as an attachment to this form. This includes whether the sponsor has established standards for financial interest that are not substantial or unsolicited gifts are of nominal value (2 CFR § 200.318(c)). The term "will" means Sponsor action taken at appropriate time based on the certification statement focus area, but no later than the end of the project period of performance.

Certification Statements

1. The sponsor or sub-recipient maintains a written standards of conduct governing conflict of interest and the performance of their employees engaged in the award and administration of contracts (2 CFR § 200.318(c)). To the extent permitted by state or local law or regulations, such standards of conduct provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the sponsor's and sub-recipient's officers, employees, or agents, or by contractors or their agents.

☒ Yes ☐ No

2. The sponsor's or sub-recipient's officers, employees or agents have not and will not solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements (2 CFR § 200.318(c)).

☒ Yes ☐ No

3. The sponsor or sub-recipient certifies that it has disclosed and will disclose to the FAA any known potential conflict of interest (2 CFR § 1200.112).

☒ Yes ☐ No

Attach documentation clarifying any above item marked with "no" response.

Sponsor's Certification

I certify, for the project identified herein, responses to the forgoing items are accurate as marked and have the explanation for any item marked "no" is correct and complete.

Executed on this day of , .

Name of Sponsor: City of Fayetteville

Name of Sponsor's Authorized Official: Honorable Lioneld Jordan

Title of Sponsor's Authorized Official: Mayor, City of Fayetteville

Signature of Sponsor's Authorized Official: _____

I declare under penalty of perjury that the foregoing is true and correct. I understand that knowingly and willfully providing false information to the federal government is a violation of 18 USC § 1001 (False Statements) and could subject me to fines, imprisonment, or both.

ENGINEERING SERVICES RECORD OF NEGOTIATION

Fayetteville – Drake Field

Taxiway E Extension – Environmental Assessment (Environmental Planning)

Anticipated A.I.P. Grant: 3-05-0020-053-2023

Engineering Contract

- On March 3, 2023, Jared Rabren, City of Fayetteville, requested a scope of services from Garver for environmental planning services for a “Taxiway E Extension – Environmental Assessment” project.
- On March 17, 2023, Garver sent a scope of services for the “Taxiway E Extension – Environmental Assessment” project to Jared Rabren to review. The Airport approved the scope of services and submitted the scope to Kelly Oliver-Amy, FAA for review on March 20, 2023.
- On April 11, 2023, Kelly Oliver-Amy, FAA sent an email to Jared Rabren providing comments regarding the proposed scope of services.
- The sponsor utilized Independent Fee Estimates, LLC of Meridian, Idaho to perform an independent fee estimate (IFE). The IFE was completed on April 17, 2023. A copy of the IFE is attached to this document. The results of the IFE are as follows:

Taxiway E Extension – Environmental Assessment (IFE) - \$258,634.37

- Garver submitted a contract to the sponsor on April 28, 2023. A copy of the contract submission is included in the grant application. Garver’s total contract fee is as follows:

Master Plan Update (Garver) - \$210,500.00

- The submitted contract was less than the IFE. The negotiations were conducted in good faith to ensure the fees are fair and reasonable.

Independent Fee Estimates, LLC

April 17, 2023

Mr. Jared Rabren, Airport Director
Drake Field - Fayetteville
4500 S. School Ave
Fayetteville, AR 72701

RE: Independent Fee Estimate
Drake Field Airport
Environmental Assessment – Taxiway E Extension

Dear Mr. Rabren;

Please find attached the Independent Fee Estimate (IFE) spreadsheets for the above referenced project at Fayetteville – Drake Field Airport. If you have any questions regarding the hours, fees, or line items, please contact me at your convenience.

This analysis was based upon the “Exhibit A-07 Scope of Services”, an exhibit of the project area, and a blank spreadsheet - which you provided via email on March 20, 2023. In addition, you stated via email on March 23, 2023, that there are no threatened or endangered species, no hazardous materials, and no cultural or historical resource concerns within the area of concern. The only environmental consideration might be for wetlands within the project area.

A breakdown of the associated hours and fees for the project are shown in the attached spreadsheet. A summary of estimated costs for the project include:

Environmental Assessment Labor & Overhead:	\$195,924.00
Environmental Assessment Expenses:	\$ 3,711.60
EA Cultural Resources Subconsultant:	\$ 15,800.00
Profit on EA:	<u>\$ 29,388.60</u>
Subtotal for EA:	\$244,824.20
DBE Program Labor & Overhead:	\$ 11,895.80
DBE Expenses:	\$ 130.00
Profit on DBE:	<u>\$ 1,784.37</u>
Subtotal for DBE:	\$ 13,810.17
Grand Total:	\$258,634.37

It was unclear whether this work effort included an ALP Update. As the Scope did not specify, we did not include it. It also seemed as though a task item should have been included for ground surveying as the impacts for the wetlands or impervious surfaces are typically calculated from CAD files and those are based upon a baseline survey. As the Scope did not specify this work, we assumed that ground surveying had already been completed as part of another project.

We calculated the hours for meetings and site visits with travel time from Fayetteville, Arkansas as your consultant has an office in that location. As such, expenses were very limited. However, we used the General Services Administration's rate of \$0.655/mile for mileage to calculate local expenses. The information provided by the GSA is customarily accepted for federally-funded projects.

Cost estimates for labor, overhead, and associated fees for completing this type of work were estimated with Mid-West consulting firms in mind. Please note that labor and sub-consultant costs may differ from the estimates and actual costs should be reviewed and assessed for acceptability given local circumstances, credentials, and experience of assigned personnel.

After Fayetteville – Drake Field Airport and the FAA have determined that the IFE is acceptable, and after any significant differences have been addressed to your satisfaction, please submit this letter as an **invoice for \$2,380** to your accounting department for services rendered.

Remember to submit the fee for this IFE as an administrative expense on your first Request For Reimbursement (RFR) as it is 90%+ reimbursable by the FAA.

Thank you for the opportunity to assist you with this project.

Sincerely,

J. D. Heithoff

J. D. Heithoff, P.E., C.M.
Senior Airport Engineer

Joe Guenther
Senior Environmental PM

Independent Fee Estimate

Fayetteville-Drake Field Airport Taxiway E Extension

Environmental Assessment

WORK TASK DESCRIPTION	ENV PM/QC ES-6	ENV Spec His/Wet Scientist ES-5	SR Env Plan ES-4	Env Planner ES-3	Cad/GIS Drafter ES-2	Admin ES-1	Principal E-6	PE / Engr / E-3
Hourly Rates:	\$58.50	\$48.00	\$46.00	\$42.00	\$34.50	\$28.00	\$83.50	\$49.00
	hr	hr	hr	hr	hr	hr	hr	hr
1. Study Development								
Scoping Meeting with Lead Agency and Stakeholders	4	4	4	0	0	4	4	4
Review Current Environmental Conditions	1	4	4	8	4	2	0	0
Review Pertinent Airport Data, Proposed Airport Improvements, Forecasts, Planning Study, NEPA Documents	1	0	4	4	0	0	0	0
Identify Specific Issues to be Addressed in the EA	1	4	4	4	0	0	0	2
Attend Project Kick-off Initiation Meeting	2	4	4	0	0	6	0	4
Conceptual Layout (Proposed Action)	1	0	4	4	8	2	0	2
Subtotal - Study Development	10	16	24	20	12	14	4	12
2. Purpose and Need for the Project								
Identify Purpose/Need and Federal Requirements			4	6				
Establish Proposed Time Frame/Schedule for Project	2	2	4	2				4
Collect Project Documentation/Relevant Information		8	4	8	8	2		4
Subtotal - Purpose and Need for the Project	2	10	12	16	8	2	0	8
3. Alternatives								
Develop/Describe and Evaluate Alternatives (Proposed Action, No Build and one build alternative)	1	6	6	12	12			12
Alternatives Analysis for Preferred Alternative	1		4	8	4			4
Subtotal - Alternatives	2	6	10	20	16	0	0	16
4. Affected Environment								
Site Visit to Review Presence of Environmentally Sensitive Features	8	16	8	8				8
Develop Site Vicinity map, Location Map, Proposed Action Layout and Photographs		4	4	12	16	4		8
Document Existing Environmental Conditions for Resources Identified in Section 5		8	4	4	6	2		4
Subtotal - Affected Environment	8	28	16	24	22	6	0	20

Independent Fee Estimate

Fayetteville-Drake Field Airport Taxiway E Extension

Environmental Assessment

WORK TASK DESCRIPTION	ENV PM/QC ES-6	ENV Spec His/Wet Scientist ES- 5	SR Env Plan ES- 4	Env Planner ES-3	Cad/GIS Drafter ES-2	Admin ES-1	Principal E-6	PE / Engr / E-3
5. Environmental Consequences & Mitigation								
Air Quality			2	6	2			
Biological Resources (incl. fish, wildlife & plants)		24	8	12	16	4		
Federally Listed Threatened & Endangered Species & Habitat Assessment								
Climate			1	2				
Coastal Resources - NA			0	0				
DOT Section 4(f) De minimis			4	8				
Farmlands			2	4	2			
Hazardous Materials, Solid Waste, and Pollution Prevention			6	10	2			8
Historical, Architectural, Archaeological, and Cultural Resources		6	2	8	2			
Land Use			2	4	2			
Natural Resources and Energy Supply			2	4				
Noise and Noise-Compatible Land Use		8	4	12	8			8
Risks			4	8	4			
Visual Effects (Light Emissions, Visual Resources / Visual Character)			4	8	4			
Water Resources (Wetlands, Floodplains, Surface Waters, Groundwater, Wild and Scenic Rivers)		64	24	32	20			16
Subtotal - Environmental Consequences & Mitigation	0	102	65	118	62	4	0	32
6. Coordination with Government Agencies and Tribes								
Coordinate with FAA the Area of Potential Effect	4		8	4	4	2		8
Agencies	4	12	8	8				8
Provide data for FAA Tribal Coordination and Review	2	8	2	4		2		
Respond to Agency Concerns	2	8	4	8	4	2		4
Include pertinent information from Agencies & Tribes in EA	2	12	2	4		2		4
Subtotal - Coordination with Government Agencies and Tribes	14	40	24	28	8	8	0	24

Independent Fee Estimate

Fayetteville-Drake Field Airport Taxiway E Extension

Environmental Assessment

WORK TASK DESCRIPTION	ENV PM/QC ES-6	ENV Spec His/Wet Scientist ES-5	SR Env Plan ES-4	Env Planner ES-3	Cad/GIS Drafter ES-2	Admin ES-1	Principal E-6	PE / Engr / E-3
7. NEPA Document Preparation and Coordination								
Prepare Draft EA	2	4	24	40	16			4
Draft EA Internal QC Review	4	4	2	4	2			2
Submit Draft EA to Airport	1	4	2	2				
Address Draft EA Comments from Airport	2	4	2	4	2			2
Submit Draft EA to FAA Before Distribution/Advertising	1		4			2		
Address Draft EA Comments from FAA	2	4	4	8	8	2		2
Prepare and Submit Revised Draft EA to Airport & FAA for Review	1		2	4	2			
Distribute Draft EA for local/state/federal review	1		2	4		2		
Review/incorporate Agency Draft EA Comments	2	2	2	4	2	2		2
Send Airport Information for posting on their website for Public Feedback	2	2	2	2	2			2
Advertise for Notice of Public Meeting or Hearing			2	4		8		
Prepare, Participate in, and hold one (1) Public meeting or Hearing	8	16	20	24	12	12		8
Public meeting or hearing Synopses or incorporate / Address Comments in EA	1	2	4	8		2		
Prepare Final EA, Submit to Airport and Address Comments	1	2	4	4	2	4		2
Submit Final EA to FAA and Address Comments	1							2
Review FONSI and Advertise	2	2	2	8	2	2		2
Subtotal - NEPA Document Preparation and Coordination	31	46	78	120	50	36	0	28
8. Project Management								
Coordination with Client	35	24	16	24		8	8	16
Project Management	44	8	16	8			4	8
Subtotal - Project Management	79	32	32	32	0	8	12	24

Independent Fee Estimate

Fayetteville-Drake Field Airport Taxiway E Extension

Environmental Assessment

WORK TASK DESCRIPTION	ENV PM/QC ES-6	ENV Spec His/Wet Scientist ES-5	SR Env Plan ES-4	Env Planner ES-3	Cad/GIS Drafter ES-2	Admin ES-1	Principal E-6	PE / Engr / E-3
Hours	146	280	261	378	178	78	16	164
Salary Costs	\$8,541.00	\$13,440.00	\$12,006.00	\$15,876.00	\$6,141.00	\$2,184.00	\$1,336.00	\$8,036.00
SUBTOTAL - SALARIES:	\$67,560.00							
LABOR AND GENERAL								
ADMINISTRATIVE OVERHEAD:	\$128,364.00							
<u>DIRECT NON-LABOR EXPENSES</u>								
Document Printing / Reproduction / Assembly	\$550.00							
Survey Supplies	\$1,250.00							
Draft EA and FONSI Ads	\$440.00							
GPS Equipment	\$1,000.00							
Travel Costs	\$471.60							
SUBTOTAL - DIRECT NON-LABOR EXPENSES:	\$3,711.60							
SUBTOTAL:	\$199,635.60							
SUBCONSULTANTS FEE (Cultural Resources Survey):	\$15,800.00							
PROFESSIONAL FEE (Profit)	\$29,388.60							
TOTAL FEE:	\$244,824.20							

5 work day survey 250 / day topcon GIS / Trimble
 4 notice @110
 36 4- AE 8- EC 24- mtg
 Local office 20m Round trip
 720 est miles @ \$0.655 / mi

80 hrs @ \$185 / hr loaded.
 Plus SHPO fees for 4 sq / m @250/sq

Independent Fee Estimate

Fayetteville-Drake Field Airport Taxiway E Extension

DBE Program Administration

WORK TASK DESCRIPTION	Senior PM / E-5	Senior PE / E-4	Engineer / E-2	EIT / E-1	Senior Tech / T-3	CAD Tech / T-2	T-1
INSERT RATES HERE	\$68.50	\$58.50	\$42.00	\$36.00	\$37.50	\$34.50	\$30.00
	hr	hr	hr	hr	hr	hr	hr
1. 3-Year DBE Goal Development							
DBE Kickoff Meeting		1	1				
FAA Coordination		2					
Miscellaneous Coordination		1					
DBE Goal Consultation							
Gather list of DBEs in the State			2				
Prepare for Consultation Meeting		0.5	1				
Conduct Consultation Meeting		1	1				
Prepare and Distribute Consultation Meeting Minutes		0.5	1				
Gather and confirm owner/DBELO information		0.5					
Gather Projects and Estimated Project Amounts From CIP	1	3	8			4	
Determine NAICS Codes for Each Project			1				
Categorize Construction and Engineering Amounts by NAICS			0.5				
Obtain and Categorize DBEs by NAICS			1				
Determine number of DBE Firms in the Market Area		1	2				
Calculate Base DBE Goal		0.5	4				
Gather Historical DBE Accomplishments		0.5	2				
Calculate Adjusted DBE Goal		0.5	2				
Issue Public Notice			2				
Submit DBE Goal to FAA Connect			0.5				
Annual Reporting							
Gather Project Information		1	3				
Calculate New, Ongoing, or Completed DBE Results		0.5	2				
Submit DBE Results to DBE Connect			0.5				
Address Revisions per QC Review		1	3				
Address FAA Review Revisions		0.5	3				

Independent Fee Estimate

Fayetteville-Drake Field Airport Taxiway E Extension

DBE Program Administration

WORK TASK DESCRIPTION	Senior PM / E-5	Senior PE / E-4	Engineer / E-2	EIT / E-1	Senior Tech / T-3	CAD Tech / T-2	T-1
Develop DBE Program							
Prepare DBE Program Documents and Attachments	1	2	8				
Small Business Program	0.5	1	4				
Organizational Chart		0.5	1.5				
Address FAA Review Revisions	0.5	0.5	3				
Quality Control (QC) Review	1						
Address Revisions per QC Review		1	3				
Subtotal - 3-Year DBE Goal Development	4	20	60	0	0	4	0

Hours	4	20	60	0	0	4	0
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Salary Costs	\$274.00	\$1,170.00	\$2,520.00	\$0.00	\$0.00	\$138.00	\$0.00
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SUBTOTAL - SALARIES: **\$4,102.00**

**LABOR AND GENERAL
ADMINISTRATIVE OVERHEAD:** **\$7,793.80**

DIRECT NON-LABOR EXPENSES

Document Printing/Reproduction/Assembly	\$100.00
Postage/Freight/Courier	\$30.00
Travel Costs	\$0.00

SUBTOTAL - DIRECT NON-LABOR EXPENSES: **\$130.00**

SUBTOTAL: **\$12,025.80**

SUBCONSULTANTS FEE: (None) **N/A**

PROFESSIONAL FEE (Profit) **\$1,784.37**

TOTAL FEE: **\$13,810.17**

DBE

APPENDIX A-07

TASK ORDER 07 FAYETTEVILLE – DRAKE FIELD AIRPORT TAXIWAY E EXTENSION

This TASK ORDER is made as of _____, 2023 by and between the CITY OF FAYETTEVILLE of Fayetteville, Arkansas hereinafter referred to as “CITY OF FAYETTEVILLE,” and GARVER, LLC, hereinafter referred to as “GARVER”, in accordance with the provisions of the AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES executed on November 17, 2020.

Under this Task Order, the CITY OF FAYETTEVILLE intends to make the following improvements for the FYV Taxiway E Extension project.

Proposed improvements associated the Taxiway E Extension consist primarily of extending the existing Taxiway E to the south to connect to Taxiway B3. Total length of proposed new taxiway is approximately 1,840 linear ft.

GARVER will provide professional services related to these improvements as described herein.

SECTION 1 - SCOPE OF SERVICES

GARVER will provide services as detailed in Exhibit A-07.

SECTION 2 – PAYMENT

For the work described under SECTION 1 - SCOPE OF SERVICES, the CITY OF FAYETTEVILLE will pay GARVER on a lump sum basis.

The table below presents a summary of the fee amounts and fee types for this contract.

WORK DESCRIPTION	FEE AMOUNT	FEE TYPE
Environmental Assessment	\$200,000	Lump Sum
DBE Program Administration	\$8,000	Lump Sum
TOTAL FEE	\$208,000	

The CITY OF FAYETTEVILLE will pay GARVER the lump sum amount not to exceed \$208,000. For informational purposes, a breakdown of GARVER’s estimated costs is included in Exhibit B-07 with approximate current hourly rates for each employee classification.

Additional Services (Extra Work). For work not described or included in Section 1 – Scope of Services but requested by the CITY OF FAYETTEVILLE in writing, the CITY OF FAYETTEVILLE will pay GARVER, for time spent on the project, at the rates shown in Exhibit B-07 for each classification of GARVER’s personnel, plus overhead, plus 15% profit, plus reimbursable expenses including but not limited to printing, courier service, reproduction, and travel.

SECTION 3 –EXHIBITS

3.1 The following Exhibits are attached to and made a part of this Agreement:

- 3.1.1 Exhibit A-07 Scope of Services
- 3.1.2 Exhibit B-07 Manhour Tables
- 3.1.3 Exhibit C-07 Project Exhibit

This Agreement may be executed in two (2) or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Approval and acceptance of this Task Order, including attachments listed in SECTION 3 –EXHIBITS, shall incorporate this document as part of the Agreement. Garver is authorized to begin performance upon receipt of a copy of this Task Order signed by the CITY OF FAYETTEVILLE. The effective date of this Task Order shall be the last date written below.

CITY OF FAYETTEVILLE, ARKANSAS

GARVER

By : _____
Mayor, Lioneld Jordan

By: _____

ATTEST:

By: _____
City Clerk

Title: _____ Senior Project Manager



EXHIBIT A-07 (SCOPE OF SERVICES)

Generally, the Scope of Services includes the following professional services to support the completion of an Environmental Assessment (EA) for the Taxiway E extension project at Drake Field Airport (Airport). The EA will consist primarily of assessing the impacts of the proposed project for the Airport as shown in Exhibit B. Garver (Consultant) will prepare an EA in accordance with Federal Aviation Administration (FAA) Orders 5050.4B & 1050.1F and the FAA Environmental Desk Reference for Airport Actions (Airports Desk Reference). The EA will consist of the following major sections:

- Purpose and Need
- Proposed Action and Alternatives
- Affected Environment, Environmental Consequences, and Mitigation
- Public Involvement

A.1 Environmental Assessment

A.1.1 Study Development

Garver will review current environmental conditions based on desktop review of governmental databases and other resources. A review of pertinent airport data, forecasts, planning or feasibility studies, and other environmental documents will be completed prior to initiating the EA.

Garver will identify the specific issues to be addressed in the EA and attend a virtual project kick-off meeting. Upon concurrence of the issues to be addressed in the EA, Garver will develop a conceptual layout for the Taxiway E extension (Proposed Action) and connected actions.

A.1.2 Purpose and Need for the Project

Garver will clearly identify the need for the project, the purpose or the proposed action, and the proposed time frames for the proposed actions. The proposed action includes the following:

- Extension of Taxiway E
- Associated NAVAIDS
- Grading and drainage improvements

Garver will verify that the proposed action(s) is consistent with the Airport Layout Plan (ALP) and coordinate with the Airport Sponsor the collection or documentation of relevant information supporting the need for the project, including specific justification and/or forecasts.

A.1.3 Alternatives

Garver will define the No Action, one build alternative, and Proposed Action alternatives. No other reasonable alternatives are anticipated to be described in the EA. The ALP defines the Taxiway E extension and will be screened as the build alternative. Documentation of why other alternatives were not considered will be supplied in the EA as it relates to statutory or regulatory requirements applicable to the alternative. Each action's expected environmental impacts will be discussed along with proposed mitigation measures as appropriate.

A.1.4 Affected Environment

Garver will conduct a site visit to review the presence of readily visible and environmentally sensitive features such as wetlands, endangered and threatened species habitats, streams, farmlands, historic



properties, residences, businesses, and parks. Photos of the site will be taken being sure to include environmentally sensitive features. A minimum of four photos will be included in the EA.

Garver will document existing and planned land uses, including noise-sensitive receptors such as residences, schools, churches and hospitals; public parks; wildlife and waterfowl refuges; floodplains; recreation areas; historic properties; and archaeological sites. Special interest groups such as low income or minorities, will be identified, if present. The affected environment is anticipated to encompass an area around the airport within the noise review area.

A.1.5 Environmental Consequences and Mitigation

Garver will analyze and document the potential impacts and mitigation of the No Action and Proposed Action (no other reasonable alternatives are anticipated to be included in detailed review in the EA), including consultation with the appropriate agencies. Garver's reviews will include but not be limited to the following resources:

1. Air Quality – Determine if threshold levels specified in the Airports Desk Reference will be reached. Measures to be utilized to minimize adverse air quality effects will be documented. The FAA Air Quality Handbook will be used as a guide. A detailed air quality analysis is not anticipated.
2. Biological Resources – Assess the potential effects of the proposed project on biological communities (including Federally-Listed Endangered and Threatened Species and State-listed species of concern). Complete Section 7 informal consultation with the U.S. Fish and Wildlife Service (USFWS). Consult the state Department of Natural Resources (DNR) or appropriate wildlife resources agency. If directed, a biological survey for the project area will be completed as extra work and submitted to the USFWS and state wildlife resources agencies for review.

In compliance with Section 7 of the Endangered Species Act, coordinate the completion of a habitat assessment for potential preferred habitat.

3. Climate – The Proposed Action, build alternative, and No Action alternatives are not anticipated to cause a net change in greenhouse gas emissions. Consideration should be given to whether there are areas within the scope of the project where emissions could be reduced. However, reduction is not mandated and will not be possible in all situations.
4. Coastal Barriers – Review not required.
5. Coastal Zone Management – Review not required.
6. Department of Transportation Act, Section 4(f) – Contact the appropriate federal (Department of the Interior), state Department of Natural Resources (DNR), and local agencies to determine if any 49 Section 303(c), 4(f) lands (public parks, recreation areas, wildlife or waterfowl refuges, or public/private historic sites) will be affected by the proposed project.
7. Farmlands – Consult with the U.S. Department of Agriculture, Soil Conservation Service (county district office) to determine what impacts the proposed project will have on prime or unique farmland and submit Form AD-1006.
8. Hazardous Materials, Solid Waste, and Pollution Prevention – Discuss if the project has the potential to involve or affect hazardous materials. If so, include a discussion of the means of compliance with applicable regulations. Describe the measures to be taken in the event of



a release of a hazardous substance. Determine if any “Superfund” sites are in the project area and discuss the impacts of the project on the site, if applicable. Potential impacts will be evaluated and discussed in the EA.

If the proposed project will cause or change a solid waste stream, discuss how the solid waste will be handled and disposed of properly to minimize environmental effects. Determine whether local disposal facilities have the capacity to hold solid waste streams the proposed airport facilities would produce during their construction or operation.

Pollution prevention measures both employed by the Airport and those that could be implemented during construction will be described.

9. Historic & Archaeological Resources – Assess the potential effects of the proposed project on historic resources. Consult with FAA on the Direct and Indirect (visual) Area of Potential Effect (APE) and the State Historic Preservation Office (SHPO). If directed, a Cultural Resources Survey will be conducted for ground disturbance areas and above-ground historic resources. Potential impacts to NRHP eligible and NRHP listed sites will be evaluated. The Cultural and Historic Resources Surveys and recommendations will be submitted to FAA and SHPO for impact determination.
10. Land Use – Address compatibility of existing and planned land uses in the vicinity of the proposed project. Reference and include a copy of the Sponsor’s “Land Use Compatibility Assurance Letter” in the EA Appendix. The Consultant does not anticipate the requirement to rezone the property or attend meetings requiring rezoning.
11. Natural Resources and Energy Supply – Discuss any project effects on utilities, consumable materials, or aircraft fuel consumption.
12. Noise and Noise-Compatible Land Use – A noise analysis not anticipated according to FAA Order 1050.1.
13. Socioeconomics, Environmental Justice, and Children’s Health and Safety Risks – Discuss secondary or induced impacts from construction of the Proposed Action. Document anticipated no effect on low income or minority communities. Assess the potential of the proposed project to cause health and safety risks to children, relocation or homes and businesses, dividing or disrupting communities, changing surface transportation patterns, disrupting orderly planned development, or creating notable change in employment. This EA will reference recently completed demographic and socioeconomic studies, if available, pertaining to the Airport.
14. Visual Effects, Light Emissions, Visual Resources/Visual Character – Assess the potential effects of light emissions and visual effects and character per Order 1050.1F Desk Reference resulting from the proposed action and no-action alternatives. This effort includes documenting visual effects on biological resources Section 4(f) sites, and cultural resources sites. Mitigation measures and BMPs will be proposed in the EA.
15. Water Resources, Wetlands, Floodplains, Surface Waters, Groundwater, and Wild and Scenic Rivers

Wetlands – Assess the potential effect of construction and operation of the proposed project on jurisdictional waters and wetlands. Consult with the U.S. Army Corps of Engineers (USACE), the U.S. Fish and Wildlife Service, state DNR, and state Department of Agriculture



and propose mitigation measures as required for EA purposes. A Jurisdictional Determination will be obtained from the USACE if jurisdictional waters are located within the study area. A wetland delineation for the project area will be completed and submitted to the USACE for review. Section 404 permitting shall be completed as extra work.

Floodplains – Review the Federal Emergency Management Agency (FEMA) 100-year floodplain map and consult with local floodplain authorities as necessary to determine whether the proposed project will significantly impact a base floodplain and if permits will be necessary.

Water Quality – Assess the potential for any water quality impacts, including potential contamination of groundwater aquifers or surface waters and document measures to be incorporated to minimize adverse water quality effects. Contact the state water quality control agency and other applicable agencies, as necessary. Disturbance of land equal to or greater than one acre will require a National Pollutant Discharge Elimination System (NPDES) permit at the time of construction.

Wild and Scenic Rivers – Determine whether the proposed project will have any impact on wild and scenic rivers. This includes the National Wild & Scenic Rivers System (WSRS) of designated and study rivers as well as the Nationwide Rivers Inventory. Coordinate with Federal agencies, as necessary.

A.1.6 Coordination with Governmental Agencies and Tribes

Garver will provide the following coordination and consultation:

1. Coordinate with the Airport and FAA concerning the Direct and Indirect APEs before coordinating with government agencies. Refer to Exhibit - Area of Potential Effect.
2. Prepare agency and Tribal consultation letters. Coordination letters and attachments will be in electronic format, with hard copies provided as needed, to FAA who will complete the coordination with federally recognized Tribes.
3. Submit an application through the Arkansas State Clearinghouse showing the APE that was developed with FAA concurrence and describing the proposed improvements.
4. Address concerns of Government Agencies and Tribes by responding promptly to requests for additional information or documentation. Consultant will not initiate conversations or correspondence with Tribes, but rather will work through FAA to provide information to Tribes. Consultant may answer questions if contacted by Tribes, but should keep FAA informed of the content of any such communications.
5. Include letters and other pertinent information from Government Agencies and Tribes in the EA including any responses.

A.1.7 Conceptual Engineering Services

Garver will review preliminary data and develop a conceptual layout for the Proposed Action elements. The ALP defines the Taxiway E extension and connected actions, and will be utilized in the alternatives screening process as the build alternative. A topographic survey will be performed to aid in development the Proposed Action conceptual layout, but shall not be used for construction. Furthermore, the conceptual layout shall not be considered final layout that will be incorporated into the construction plan set in a subsequent project.



A.1.8 NEPA Document Preparation and Coordination

Garver will prepare and submit the Draft EA to the Airport for review and address comments. The Draft EA will then be submitted to the FAA for review and their comments addressed. All Draft EA submittals to the Airport and FAA will be electronic unless otherwise requested. Interim FAA reviews shall be completed for the major EA sections.

After FAA approves the Draft EA for advertisement, the EA will be submitted to requesting agencies and advertised in the local newspaper and online on the Airports website and/or an external website developed specifically for advertising the project. Garver will coordinate with and help the Airport to advertise a "Notice of Public Hearing" for the Environmental Assessment based on the proposed development at the airport. The notice shall be published for a minimum of two weeks and include locations and times where the draft EA may be reviewed before the schedule date of the public hearing. The Consultant will provide the Airport Sponsor with two copies of the draft EA for display and review by the public. An opportunity to provide comments will be provided up to two weeks after the public hearing. The Airport is to pay for advertisement costs outside this contract.

Garver will assist the Airport in preparing for, participate in, and hold an in-person public hearing. Garver will prepare a slide presentation for the hearing and retain a court reporter for documentation of public comments or record the hearing and transcribe the recording. All public involvement documents will be included in the EA. These documents may include, but not limited to: contact letters, Notice of Public Hearing (with publication affidavit), signed hearing transcript, list of attendees, comments, and responses to comments.

Three (3) copies of the final EA will be prepared that incorporates a summary of the public meeting or hearing, comments received as a result of agency coordination, and responses to public comments for the Airport and the FAA. Provide the Airport Sponsor and FAA an electronic copy of the final EA document and supporting materials (PDF format). Note, the FAA shall keep two (2) hard copies of the final EA.

Upon receipt of a Finding of No Significant Impact (FONSI), Garver will advertise the FONSI in the same locations and websites advertising the Draft EA.

A.1.9 Quality Control

Garver will develop a project specific quality control plan. The quality control plan will include the project background and scope, stakeholder contact information, project team and roles, design criteria, project schedule, and quality control procedures.

Garver will complete a quality control review prior to any design submission to Owner and/or FAA. QC reviews will be completed by senior environmental staff and project manager. Monthly internal progress meetings will be held during EA completion to ensure adequate quality control throughout the environmental process.

A.2 DBE Program Administration

Garver will coordinate with the FAA's Office of Civil Rights in preparing an updated Disadvantaged Business Enterprise (DBE) Program and developing a three-year DBE goal for the Owner's federal projects in fiscal years 2023-2026. As part of the three-year goal development, Garver will issue public notices and facilitate the DBE Goal Consultation as required by the FAA. Garver will also prepare the Owners annual DBE report for FY2022 and FY2023. Garver will submit these documents, on the Owner's behalf, to the FAA via the FAA Civil Rights Connect website.



A.3 Project Deliverables

The following deliverables will be submitted to the parties identified below. Unless otherwise noted below, all deliverables shall be electronic.

1. Draft Environmental Assessment to the Owner and FAA.
 - a. Two hard copies to the Owner and FAA.
2. Final Environmental Assessment
 - a. Three hard copies to FAA
3. Public Meeting or Hearing presentation
 - a. One hard copy to the Owner and FAA
4. Finding of No Significant Impact will be provided to the Airport when furnished by FAA.
5. Other electronic files as requested.

A.4 Additional Services

Additional Services will be as directed by the Owner in writing for an additional fee as agreed upon by the Owner and Garver. These services are not included as part of the basic Scope of Services to be provided by the Consultant. Compensation for additional services will be in addition to compensation for above-described services and may include but are not limited to:

1. Redesign for the Owner's convenience or due to changed conditions after previous alternate direction and/or approval.
2. Deliverables beyond those listed herein.
3. Engineering, architectural, or other professional services beyond those listed herein.
4. Preparation of a Storm Water Pollution Prevention Plan (SWPPP), including updates to the Airport's Industrial SWPPP.
5. Environmental Handling and Documentation beyond what is listed herein.
6. Coordination with FEMA and preparation/submittal of a CLOMR and/or LOMR.
7. Services after construction, such as warranty follow-up, operations support, and Part 139 inspection support.
8. Coordination to obtain right-of-entry for environmental investigations.
9. Conduct an air quality analysis if anticipated activity exceeds thresholds specified in FAA Order 5050.4B.
10. Completion of a biological survey/assessment or presence/absence threatened or endangered species surveys.
11. Completion of a Wildlife Hazard Site Visit, Wildlife Hazard Assessment, and/or wildlife management plan.
12. Completion of light emissions studies/evaluations.
13. Prepare an Individual Section 303(c)/4(f) statement or evaluation if determined to be necessary following consultation with the appropriate agencies.
14. Specialized studies required by agencies beyond those listed herein.
15. Assistance associated with zoning or re-zoning property for proposed improvements.
16. Additional surveying and documentation of archaeological and historical sites as identified in this scope.
17. Engineering design beyond development of a conceptual layout for the proposed action to be used for coordination purposes of the EA.
18. Property acquisition and relocation services.
19. Mitigation and other design, bidding, and construction administration services.
20. Submittals or deliverables in addition to those listed herein.
21. Site visits in addition to those listed herein.
22. Preparation of an Environmental Due Diligence Audit (EDDA).

EXHIBIT B-06
**FAYETTEVILLE-DRAKE FIELD AIRPORT
TAXIWAY E EXTENSION**
Environmental Assessment

WORK TASK DESCRIPTION	ES-6	ES-5	ES-4	ES-3	ES-2	ES-1	E-6	E-3
	\$102.96	\$84.24	\$67.60	\$54.08	\$44.72	\$34.32	\$103.43	\$58.71
	hr	hr	hr	hr	hr	hr	hr	hr
1. Study Development								
Scoping Meeting with Lead Agency and Stakeholders		8	8				2	2
Review Current Environmental Conditions		2			2			
Review Pertinent Airport Data, Proposed Airport Improvements, Forecasts, Planning Study, NEPA Documents		2			2			
Identify Specific Issues to be Addressed in the EA		2						1
Attend Project Kick-off Initiation Meeting		2	2		2		2	2
Conceptual Layout (Proposed Action)		2	20		2			2
Subtotal - Study Development	0	18	30	0	8	0	4	7
2. Purpose and Need for the Project								
Identify Purpose/Need and Federal Requirements		1						1
Establish Proposed Time Frame/Schedule for Project		2						1
Collect Project Documentation/Relevant Information		1			1			1
Subtotal - Purpose and Need for the Project	0	4	0	0	1	0	0	3
3. Alternatives								
Develop/Describe and Evaluate Alternatives (Proposed Action, No Build and one build alternative)		8	8		8		1	24
Alternatives Analysis for Preferred Alternative		12	8		30			16
Subtotal - Alternatives	0	20	16	0	38	0	1	40
4. Affected Environment								
Site Visit to Review Presence of Environmentally Sensitive Features			8		8			
Develop Site Vicinity map, Location Map, Proposed Action Layout and Photographs					8	10		
Document Existing Environmental Conditions for Resources Identified in Section 5		8			8			
Subtotal - Affected Environment	0	8	8	0	24	10	0	0
5. Environmental Consequences & Mitigation								
Air Quality		2						
Biological Resources (incl. fish, wildlife & plants)		4			6			
Federally Listed Threatened and Endangered Species & Habitat Assessment		4			20			
Climate		2						
Coastal Resources - NA								
DOT Section 4(f) De minimis		2						
Farmlands		2			4			
Hazardous Materials, Solid Waste, and Pollution Prevention		2			4			
Historical, Architectural, Archaeological, and Cultural Resources		2			4			
Land Use		2						2
Natural Resources and Energy Supply		2						
Noise and Noise-Compatible Land Use		2						
Socioeconomics, Environmental Justice and Children's Health and Safety Risks		2		4				
Visual Effects (Light Emissions, Visual Resources / Visual Character)		2					2	2
Water Resources (Wetlands, Floodplains, Surface Waters, Groundwater, Wild and Scenic Rivers)		8			40		2	2
Subtotal - Environmental Consequences & Mitigation	0	38	0	4	78	0	4	6
6. Coordination with Government Agencies and Tribes								
Coordinate with FAA the Area of Potential Effect		4						1
Agencies		4			8			
Provide data for FAA Tribal Coordination and Review		4			4			
Respond to Agency Concerns		6	8		8			4
Include pertinent information from Agencies & Tribes in EA		4						
Subtotal - Coordination with Government Agencies and Tribes	0	22	8	0	20	0	0	5
7. NEPA Document Preparation and Coordination								
Prepare Draft EA		30						
Draft EA Internal QC Review	8						8	8
Submit Draft EA to Airport		2						2

Address Draft EA Comments from Airport		6			8			
Submit Draft EA to FAA Before Distribution/Advertising		2						2
Address Draft EA Comments from FAA		8			16			
Prepare and Submit Revised Draft EA to Airport and FAA for Concurrent Review		2						2
Distribute Draft EA for local/state/federal review		2			2			
Review/incorporate Agency Draft EA Comments		2			4			
Send Airport Information for posting on their website for Public Feedback		2		4	4			
Advertise for Notice of Public Meeting or Hearing		2		4				
Prepare, Participate in, and hold one (1) Public meeting or Hearing		10		80			10	10
Public Meeting or Hearing Synopsis and Incorporate Public Comments into EA		4		24				
Prepare Final EA, Submit to Airport and Address Comments	2	24					8	8
Submit Final EA to FAA and Address Comments		2						2
Review FONSI and Advertise		2					2	2
Subtotal - NEPA Document Preparation and Coordination	10	100	0	112	34	0	28	36
8. Project Management								
Coordination with Client		20	20				2	8
Project Management		20	20				2	4
Subtotal - Project Management	0	40	40	0	0	0	4	12

Hours	10	250	102	116	203	10	41	109
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Salary Costs	\$1,029.60	\$21,060.00	\$6,895.20	\$6,273.28	\$9,078.16	\$343.20	\$4,240.63	\$6,399.39
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SUBTOTAL - SALARIES:	\$55,319.46
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LABOR AND GENERAL

ADMINISTRATIVE OVERHEAD:	\$105,665.70
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DIRECT NON-LABOR EXPENSES

Document Printing/Reproduction/Assembly	\$52.07
Survey Supplies	\$50.00
Draft EA and FONSI Ads	\$2,000.00
GPS Equipment	\$120.00
Travel Costs	\$220.00

SUBTOTAL - DIRECT NON-LABOR EXPENSES:	\$2,442.07
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SUBTOTAL:	\$163,427.23
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SUBCONSULTANTS FEE (Cultural Resources Survey):	\$12,425.00
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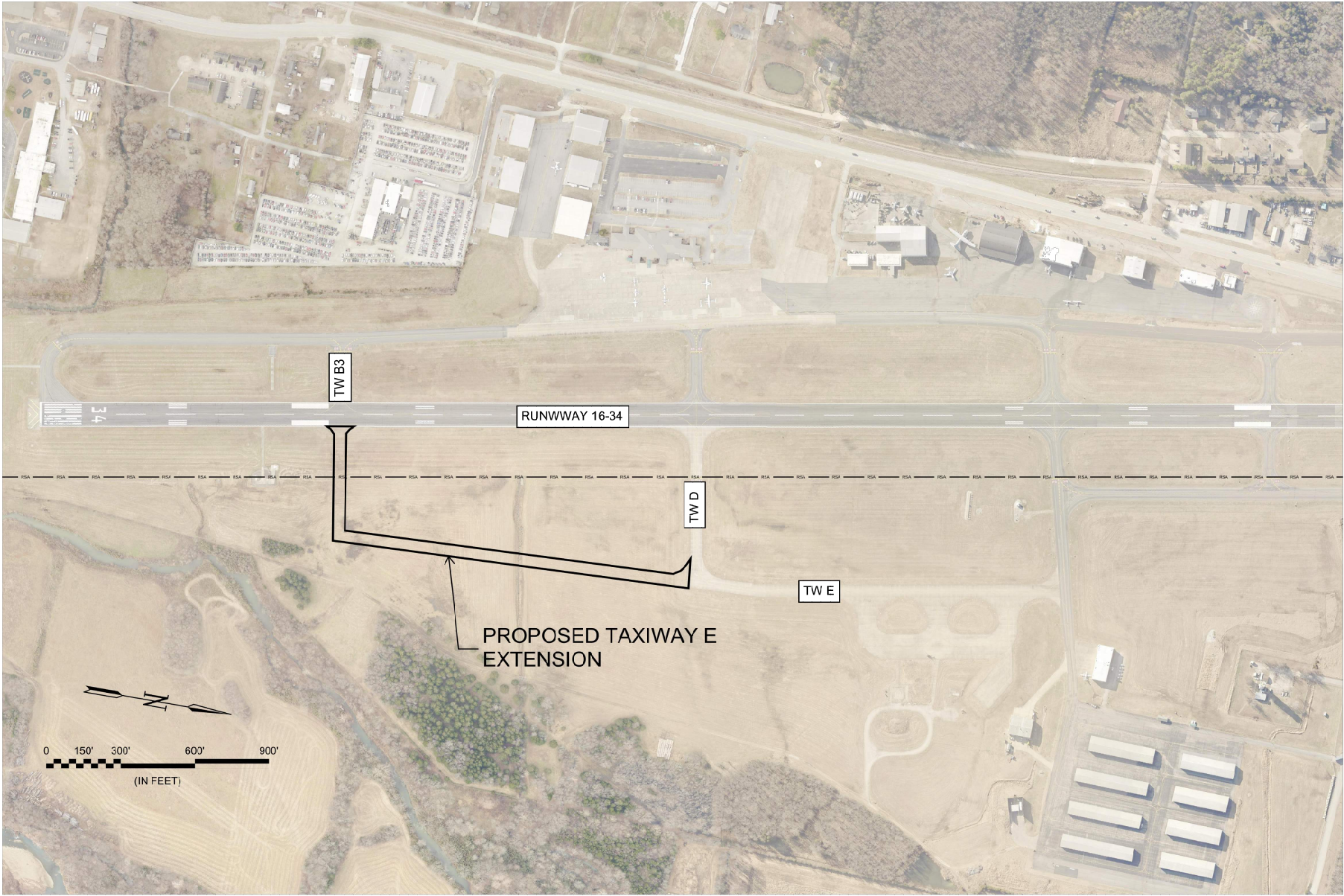
PROFESSIONAL FEE	\$24,147.77
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TOTAL FEE:	\$200,000.00
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FAYETTEVILLE-DRAKE FIELD AIRPORT TAXIWAY E EXTENSION

WORK TASK DESCRIPTION	E-5	E-4	E-2	E-1	T-3	T-2	T-1
	\$83.89	\$69.33	\$48.90	\$42.41	\$47.52	\$39.33	\$30.45
	hr	hr	hr	hr	hr	hr	hr
1. 3-Year DBE Goal Development							
DBE Kickoff Meeting	1	1		1			
FAA Coordination							
Miscellaneous Coordination							
DBE Goal Consultation							
Gather list of DBEs in the State				1			
Prepare for Consultation Meeting							
Conduct Consultation Meeting							
Prepare and Distribute Consultation Meeting Minutes							
Gather and confirm owner/DBELO information				2			
Gather Projects and Estimated Project Amounts From CIP				2			
Determine NAICS Codes for Each Project				2			
Categorize Construction and Engineering Amounts by NAICS				2			
Obtain and Categorize DBEs by NAICS				2			
Determine number of DBE Firms in the Market Area				2			
Calculate Base DBE Goal		1		1			
Gather Historical DBE Accomplishments		1		1			
Calculate Adjusted DBE Goal		1		1			
Issue Public Notice							
Submit DBE Goal to FAA Connect		1		1			
Annual Reporting							
Gather Project Information				2			
Calculate New, Ongoing, or Completed DBE Results		1		2			
Submit DBE Results to DBE Connect		1		2			
Address Revisions per QC Review		1		2			
Address FAA Review Revisions		1		2			
Develop DBE Program							
Prepare DBE Program Documents and Attachments		1		1			
Small Business Program				1			
Organizational Chart				1			
Address FAA Review Revisions		1		1			
Quality Control (QC) Review		1					
Address Revisions per QC Review		1		1			
Subtotal - 3-Year DBE Goal Development	1	13	0	33	0	0	0

TOTAL FEE: **\$8,000.00**



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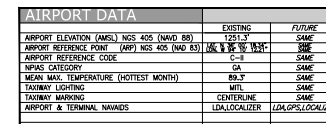
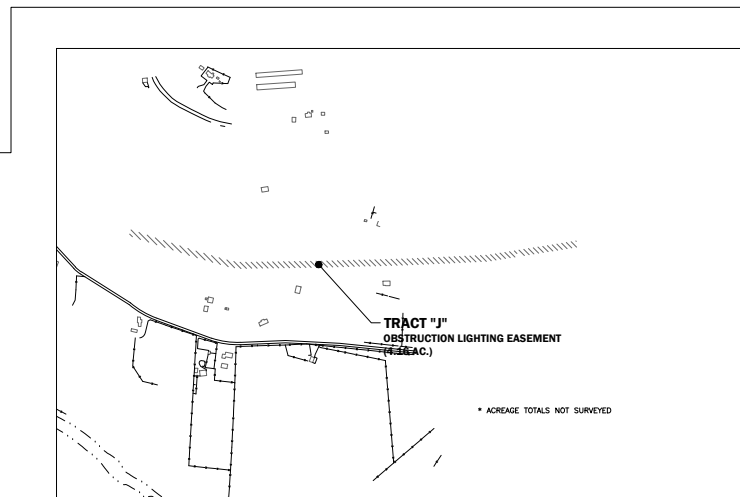
REV.	DATE	DESCRIPTION	BY

FAYETTEVILLE MUNICIPAL
 AIRPORT
 FAYETTEVILLE, ARKANSAS

TAXIWAY E EXTENSION



GARVER
 JOB NO.: 22A13212P
 DRAWN: NOV. 2022
 DRAWING NUMBER
 EXH C-07

[illegible]

REVISIONS		
NO.	DESCRIPTION	DATE
1	GENERAL REVISION	7/2011

FAYETTEVILLE - DRAKE FIELD
FAYETTEVILLE, AR

AIRFIELD PROPERTY
MAP (EXHIBIT A)

JOB NO.: XXXX
DATE: OCT. 2018
DESIGNED BY:
DRAWN BY:

BAR IS ONE INCH ON
ORIGINAL DRAWING

0  1"

IF NOT ONE INCH ON
THIS SHEET, ADJUST
SCALES ACCORDINGLY.

DRAWING NUMBER



MEETING OF MAY 16, 2023

TO: Mayor Jordan and City Council
THRU: Paul Becker, Chief Financial Officer
FROM: Waylon Abernathy, Bond Projects & Construction Dir
DATE:
SUBJECT: **Approval of Change Order #12 to RFQ 18-11 with Nabholz Construction for the Arts Corridor, Replacement Parking and Civic Plaza and approve a Budget Adjustment.**

RECOMMENDATION:

Approval of Change Order #12 to RFQ 18-11 with Nabholz Construction on the Arts Corridor project in the amount of \$2,378,349.40 for asphalt paving from Center to Spring, PD substation work in the replacement parking deck, and bid packages on the Civic Plaza. This is Phase II of the 2019 Bond project.

BACKGROUND:

The Replacement Parking Deck is to include a Parking Management System, and 2,000 square feet space or the PD Substation. The Civic Plaza project would commence after completion of the Replacement Parking Deck.

As different phases of the Master Contract near completion, per resolution 250-18, balances of Arts Corridor Improvement funds can be used either on replacement parking or Arts Corridor, and therefore balances on Purchase Orders can be appropriated accordingly.

DISCUSSION:

As the replacement parking deck nears completion, staff request approval to add the parking management system, and begin adding components for the PD Substation. Those include plumbing rough-ins and Bullet Resistant Store Front systems.

Also included in this Change Order are some bid packages for the Civic Plaza. Those include Signage and Wayfinding, Landscape and Irrigation, Site Furnishings and Custom Furnishings and Water Feature Installation.

This Change Order includes paving from Center to Spring Street, which will complete the street work from center to Spring. Spring to Dickson will occur near the completion of the Civic Plaza. This Change Order will also change the terms of the contract that will allow Nabholz to provide the procurement of the remaining bid packages with the over site of our Purchasing Division, per the State procurement requirements.

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

BUDGET/STAFF IMPACT:

This change order will use unallocated Arts Corridor, Street, and Trails bond funds, remaining balances from other Water & Sewer, Police Impact, Parking, and Sales Tax fund accounts.

PURCHASE ORDER DETAIL:

GLACCOUNT	PROJECT	SUB	Fund	Cost
2130.430.9133-5210.00	19001	7820	2130 - Parking	22,614.00
4470.140.8900-5804.00	21004	7800	4470 - Sales Tax Capital Improvement	150,000.00
4470.410.8410-5417.00	02052	7800	4470 - Sales Tax Capital Improvement	186,158.31
4702.860.7800-5809.00	46020	7800	4702 - Streets Project 2022 Bonds	513,000.00
4703.860.7800-5814.05	46030	7800	4703 - Trails Project 2022 Bonds	500,000.00
4708.860.7800-5804.00	46080	7800	4708 - Arts Corridor 2022 Bonds	593,714.00
5400.860.5600-5808.00	11011	2019.7800	5400 - Water and Sewer	307,000.00
2300.200.9300-5804.00	07001	7820	2300 - Impact Fee	105,863.09
Grand Total				2,378,349.40

ATTACHMENTS: 2023-725 SRF CO 12 Nabholz, 2023-725 BA Nabholz CO 12 Civic Plaza, FCAC PCCO 012
- Upper Ramble Civic Plaza Initial GMP - Executed

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2023-725

Approval of Change Order #12 to RFQ 18-11 with Nabholz Construction for the Arts Corridor, Replacement Parking and Civic Plaza and approve a Budget Adjustment.

A RESOLUTION TO APPROVE CHANGE ORDER NO. 12 TO THE CONTRACT WITH NABHOLZ CONSTRUCTION CORPORATION IN THE AMOUNT OF \$2,378,349.40 FOR WORK RELATED TO THE CULTURAL ARTS CORRIDOR, AND TO APPROVE A BUDGET ADJUSTMENT – 2019 CULTURAL ARTS CORRIDOR BOND PROJECT

WHEREAS, Change Order No. 12 includes asphalt paving of West Avenue from Center Street to Spring Street; work related to the Police Department substation in the replacement parking deck, and bid packages for the Civic Plaza.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves Change Order No. 12 to the Construction Manager at Risk Services Contract with Nabholz Construction Corporation, a copy of which is attached to this Resolution, in the amount of \$2,378,349.40 for asphalt paving of West Avenue from Center Street to Spring Street; work related to the Police Department substation in the replacement parking deck, and bid packages for the Civic Plaza as part of the Cultural Arts Corridor Project.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment, a copy of which is attached to this Resolution.

City of Fayetteville Staff Review Form

2023-725

Item ID

5/16/2023

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Wade Abernathy

4/28/2023

FACILITIES MANAGEMENT (140)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of Change Order #12 to RFQ 18-11 with Nabholz Construction on the Arts Corridor project in the amount of \$2,378,349.40 for asphalt paving from Center to Spring, PD substation work in the replacement parking deck, and bid packages on the Civic Plaza, and approval of a Budget Adjustment.

Budget Impact:

Various

Various

Account Number

Fund

Various

Various

Project Number

Project Title

Budgeted Item? Yes

Total Amended Budget

\$ 22,328,309.00

Expenses (Actual+Encum)

\$ 22,203,150.46

Available Budget

\$ 125,158.54

Does item have a direct cost? Yes

Item Cost

\$ 2,378,349.40

Is a Budget Adjustment attached? Yes

Budget Adjustment

\$ 2,272,487.00

Remaining Budget

\$ 19,296.14

Purchase Order Number: 2019-689,2021-763

Previous Ordinance or Resolution # 167-22

V20221130

Change Order Number: 12

Approval Date:

Original Contract Number: 2018-42

Comments:

City of Fayetteville, Arkansas - Budget Adjustment (Agenda)

Budget Year 2023	Division /Org2 FACILITIES MANAGEMENT (140) Requestor: Kevin Springer	Adjustment Number
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BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION:

Approval of Change Order #12 to RFQ 18-11 with Nabholz Construction for the Arts Corridor, Replacement Parking, and Civic Plaza Construction Contract and approve a Budget Adjustment. This is the 2019 Arts Corridor Improvements Bond Project.

	COUNCIL DATE:	5/16/2023
	ITEM ID#:	2023-725
	<i>Kevin Springer</i>	
	<i>4/28/2023 12:07 PM</i>	
	Budget Division	Date
	D - (City Council)	
	TYPE:	
	JOURNAL #:	
	GLDATE:	
RESOLUTION/ORDINANCE	CHKD/POSTED:	/

TOTAL		-					v.2023424
Account Number	Increase / (Decrease)		Project.Sub#		AT	Account Name	
	Expense	Revenue	Project	Sub.Detl			
4470.140.8900-5804.00	150,000	-	21004	7800	EX	Building Costs	
4470.140.8900-5315.00	(150,000)	-	21004	1	EX	Contract Services	
4702.860.7800-5809.00	513,000	-	46020	7800	EX	Improvements - Street	
4702.860.7999-5899.00	(513,000)	-	46020	7999	EX	Unallocated - Budget	
4708.860.7800-5804.00	593,714		46080	7800	EX	Building Costs	
4708.860.7999-5899.00	(593,714)	-	46080	7999	EX	Unallocated - Budget	
5400.860.5600-5808.00	307,000	-	11011	2019.7800	EX	Improvements - Water Line	
5400.720.5600-5808.00	(307,000)	-	11011	1	EX	Improvements - Water Line	
4703.860.7800-5814.05	500,000	-	46030	7800	EX	Improvements - Trails	
4703.860.7999-5899.00	(500,000)	-	46030	7999	EX	Unallocated - Budget	
4470.410.8410-5417.00	186,159	-	02052	7800	EX	Maintenance - Street	
4470.410.8410-5417.00	(186,159)	-	02052	1	EX	Maintenance - Street	
2130.430.9133-5210.00	22,614	-	19001	7820	EX	Minor Equipment	
2130.430.9133-5210.00	(22,614)	-	19001	1	EX	Minor Equipment	



Prime Contract Change Order

Fayetteville Cultural Arts Corridor
113 W. Mountain St.
Fayetteville, AR 72701

Project # 02-19-2526
Tel: Fax:

Nabholz Construction Corporation

Date: 4/28/2023
To Contractor:
Nabholz Construction Corporation

Architect's Project No:
Contract Date: 4/18/2018
Contract Number: 02-19-2526
Change Order Number: 012

The Contract is hereby revised by the following items:

Upper Ramble Civic Plaza Initial GMP

PCO	Description		Amount
128	Police Substation Additions	\$	105,863.09
129	Parking Management System	\$	22,000.00
130	Asphalt Paving of West Ave.	\$	186,158.31
131	Upper Ramble Civic Plaza Initial Bid GMP	\$	2,064,328.00
110	Greenway Guardrail Cable	\$	0.00
111	RFI #90 Gregg Ave. Grading	\$	0.00
112	Drinking Fountain PRV	\$	0.00
113	Tributary Headwall Guardrail Detail	\$	0.00
114	Handrail Expansion Joint Detail	\$	0.00
115	Remainder of T-Patch Credit	\$	0.00
118	Hillcrest Block Final Revision	\$	0.00
119	Greenway Work between Center St. and Meadow St.	\$	0.00
121	Removal of Four Trees	\$	0.00
122	Relocated Water Meters	\$	0.00
123	Additional Gregg Ave. Handrail	\$	0.00
125	5 N West Ave. Changes	\$	0.00
126	Modified Light Pole Bases	\$	0.00
127	Greenway Work between Center St. and Meadow St. UNDO	\$	0.00
132	FCAP PCCO #01 - CORs #1-31	\$	0.00
133	UREP PCCO #01 - CORs #1 Rev. 1 - #8	\$	0.00

This is a partial change order for the bid packages procured for the project identified as Upper Ramble Civic Plaza. Nabholz continues to seek opportunities for Value Engineering options. The following packages are included:

1. Final Cleaning
2. Signage & Wayfinding
3. Site Furnishings
4. Custom Furnishings
5. Fountain Infrastructure
6. Landscape & Irrigation

These bids were based from 100% CD drawings dated 1/11/2023 and also include the addendum 1 drawings dated 1/30/23. Reference attached drawing log of specific drawings upon which bids are based. Included within this change is 23% of the overall GC/GR's and Fee (proportional to the amount of work being purchased compared to the estimated overall amount of work).

PROJECT CONFIDENTIAL

Property of Nabholz Construction Corporation Not for Duplication or Distribution

This document includes data prepared in conjunction with the Project that is deemed trade secret or proprietary to Nabholz. This document is shared with the Project team solely for use on this Project consistent with the responsibilities of the Project team. The Recipients shall not duplicate, use, or disclose, in whole or in part, to any person, entity, or party outside the Project team without Nabholz' prior written authorization.



Prime Contract Change Order
Private Confidential

This project is scheduled for a 10 month duration with no weather days incorporated. Since this is a civil project it should be anticipated based on historical data that there will be approximately 90 days of weather impacts to the overall schedule. This work will start at the completion of the Parking Deck project. An official change order will be issued establishing the start and anticipated completion date and time.

This Prime Contract Change Order will also change the terms of the contract that will allow Nabholz to provide the procurement of the remaining bid packages with the oversight of the City's Purchasing Division, per the State procurement requirements.

The original Contract Value was.....	\$	80,000.00
Sum of changes by prior Prime Contract Change Orders.....	\$	11,150,905.63
The Contract Value prior to this Prime Contract Change Order was.....	\$	11,230,905.63
The Contract Value will be changed by this Prime Contract Change Order in the amount of.....	\$	2,378,349.40
The new Contract Value including this Prime Contract Change Order will be.....	\$	13,609,255.03
The Contract duration will be changed by.....		303 Days
The revised Substantial Completion date as of this Prime Contract Change Order is.....		9/30/2024

Nabholz Construction Corporation

City of Fayetteville

CONTRACTOR

OWNER

Address

Address

By

Kyle Stant

By

SIGNATURE

[Signature]

SIGNATURE

DATE

8/4/28/23

DATE

PROJECT CONFIDENTIAL

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Initial GMP

PROJECT NAME Civic Plaza
PROJECT LOCATION Fayetteville, AR
REVIEW DATE 4/27/2023
ARCHITECT Nelson Byrd Woltz
ESTIMATED DURATION 13 Mnth

Job Phase	Nabholz	Description	Takeoff Quantity	Grand Total Amount
1	01	Civic Space		
2	01-7423	Final Cleaning		
3		Speedy Cleaners	1.00 Isum	6,046
		01-7423 Final Cleaning	1.00 Isum	6,046
4	10-1100	Signage & Wayfinding		
5		Best Sign Group	1.00 Isum	157,474
		10-1100 Signage & Wayfinding	1.00 Isum	157,474
6	12-4000	Site Furnishings		
7		ACS Playground Adventures	1.00 Isum	265,899
		12-4000 Site Furnishings	1.00 Isum	265,899
8	12-5200	Custom Furnishings		
9		Modus	1.00 Isum	270,833
		12-5200 Custom Furnishings	1.00 Isum	270,833
10	13-3419	Fountain Infrastructure		
11		Fountain Installation	1.00 Isum	503,793
		13-3419 Fountain Infrastructure	1.00 Isum	503,793
12	32-5000	Landscaping & Irrigation		
13		Building Exteriors	1.00 Isum	529,485
		32-5000 Landscaping & Irrigation	1.00 Isum	529,485
		01 Civic Space	1.00 Isum	1,733,530

Estimate Totals

Description	Amount	Totals
Cost of Work	1,733,530	1,733,530
Building Permit NIC		
Municipal Fees		1,733,530
General Liability	17,547	
Builder's Risk	2,684	
Performance Payment Bond	10,322	
Insurance	30,553	1,764,083
Construction Contingency	30,965	
Contingency	30,965	1,795,048
GCs & GRs	126,500	
Entegrity Sustainability Consulting	31,950	
GCs/GRs	158,450	1,953,498
Preconstruction Services Fee	20,000	
Project Fee	90,830	
Contractors Fee	110,830	2,064,328
Total		2,064,328

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Current Drawings

Drawing No.	Drawing Title	Revision	Drawing Date	Received Date	Set
Civil					
C1.00	DEMOLITION PLAN	1	01/26/2023	01/30/2023	Addendum #1 (01/26/23)
C2.00	SITE PLAN AND UTILITY PLAN NORTH	1	01/26/2023	01/30/2023	Addendum #1 (01/26/23)
C2.01	SITE PLAN AND UTILITY PLAN SOUTH	1	01/26/2023	01/30/2023	Addendum #1 (01/26/23)
C3.00	GRADING PLAN NORTH	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
C3.01	GRADING PLAN SOUTH	1	01/26/2023	01/30/2023	Addendum #1 (01/26/23)
C4.00	DRAINAGE PLAN NORTH	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
C4.01	DRAINAGE PLAN SOUTH	1	01/26/2023	01/30/2023	Addendum #1 (01/26/23)
C4.02	DRAINAGE PLAN & PROFILES SHEET 1	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
C5.00	OVERALL EROSION CONTROL PLAN - PHASE 1	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
C5.01	OVERALL EROSION CONTROL PLAN - PHASE 2	1	01/26/2023	01/30/2023	Addendum #1 (01/26/23)
C5.02	EROSION CONTROL DETAILS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
C6.00	DETAIL SHEET 1	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
C6.01	DETAIL SHEET 2	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
C6.02	DETAIL SHEET 3	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
C6.03	DETAIL SHEET 4	1	01/26/2023	01/30/2023	Addendum #1 (01/26/23)
C6.04	DETAIL SHEET 5	0	01/26/2023	01/30/2023	Addendum #1 (01/26/23)
Electrical					
E3.1	ELECTRICAL DETAILS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
E3.2	ELECTRICAL DETAILS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
E5.1	ELECTRICAL SCHEDULES	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
E51.0	OVERALL ELECTRICAL SITE PLAN	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
E51.1	ELECTRICAL SITE DEMO PLAN	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
ES1.2F	ELECTRICAL SITE PLAN AREA - F	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
ES1.2G	ELECTRICAL SITE PLAN AREA - G	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
ES1.3F	ELECTRICAL SPECIAL SYSTEMS PLAN AREA - F	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
ES1.3G	ELECTRICAL SPECIAL SYSTEMS PLAN AREA - G	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
Interior					
IR-1	IRRIGATION KEY PLAN	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
IR-2	IRRIGATION PLAN - CIVIC SPACE SOUTH	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
IR-3	IRRIGATION PLAN - CIVIC SPACE NORTH	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
IR-4	IRRIGATION DETAILS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
IR-5	IRRIGATION PUMP EQUIPMENT	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
Landscape					

Drawing No.	Drawing Title	Revision	Drawing Date	Received Date	Set
L0.01	PROJECT NOTES, ASSUMPTIONS & KEY PLAN	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L1.10	MATERIALS PLAN - CIVIC SPACE SOUTH	1	01/26/2023	01/30/2023	Addendum #1 (01/26/23)
L1.11	FURNISHINGS PLAN - CIVIC SPACE SOUTH	1	01/26/2023	01/30/2023	Addendum #1 (01/26/23)
L1.12	PAVING LAYOUT PLAN - CIVIC SPACE SOUTH	1	01/26/2023	01/30/2023	Addendum #1 (01/26/23)
L1.13	SITE LAYOUT PLAN SOUTH	1	01/26/2023	01/30/2023	Addendum #1 (01/26/23)
L1.20	MATERIALS PLAN - CIVIC SPACE NORTH	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L1.21	FURNISHINGS PLAN - CIVIC SPACE NORTH	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L1.22	PAVING LAYOUT PLAN - CIVIC SPACE NORTH	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L1.23	SITE LAYOUT PLAN NORTH	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L4.00	SITE SECTIONS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L4.01	SEATWALL ELEVATIONS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L4.02	PRECAST ARC WALL ELEVATIONS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L4.03	PRECAST ARC WALL LAYOUT PLANS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L5.00	PAVING DETAILS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L5.01	PAVING DETAILS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L5.02	PAVING ENLARGEMENTS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L5.05	PAVING ENLARGEMENT DETAILS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L5.06	PAVING ENLARGEMENT DETAILS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L5.10	WALL DETAILS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L5.11	WALL DETAILS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L5.20	STAIR & HANDRAIL DETAILS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L5.21	HANDRAIL DETAILS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L5.30	SHADE STRUCTURE & UTILITY ENCLOSURE	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L5.40	SITE FURNISHINGS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L5.41	SITE FURNISHINGS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L5.42	SITE FURNISHINGS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L5.43	SITE FURNISHINGS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L5.44	SITE FURNISHINGS & FOUNDATIONS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L5.50	SPRING DETAILS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L5.51	SPRING DETAILS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L5.52	SPRING DETAILS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L5.53	SPRING DETAILS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L6.10	TREES PLANTING PLAN - CIVIC SPACE SOUTH	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L6.11	SHRUBS PLANTING PLAN - CIVIC SPACE SOUTH	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L6.12	GROUNDCOVERS PLANTING PLAN - CIVIC SPACE S	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L6.13	GROUNDCOVERS PLANTING PLAN - CIVIC SPACE SW	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L6.15	SOILS PLAN - CIVIC SPACE SOUTH	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L6.20	TREES PLANTING PLAN - CIVIC SPACE NORTH	0	01/11/2023	01/13/2023	100% CDs (01/11/23)

Drawing No.	Drawing Title	Revision	Drawing Date	Received Date	Set
L6.21	SHRUBS PLANTING PLAN - CIVIC SPACE NORTH	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L6.22	GROUNDCOVERS PLANTING PLAN - CIVIC SPACE N	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L6.23	GROUNDCOVERS PLANTING PLAN - CIVIC SPACE NW	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L6.24	GROUNDCOVERS PLANTING PLAN - SPRING PLANTERS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L6.25	SOILS PLAN - CIVIC SPACE NORTH	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L6.50	PLANTING SCHEDULES	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L6.51	PLANTING DETAILS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
L6.55	SOILS DETAILS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
Plumbing					
F1.0	WATER FEATURE PLAN / DETAILS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
Structural					
S1.00	GEN. NOTES & SPECIAL INSPECTIONS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
S2.00	SHADE STRUCTURE FRAMING PLANS & DETAILS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
S2.01	FOUNTAIN PLANS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
S2.02	FOUNTAIN PLANS & DETAILS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
S2.03	FOUNDATION DETAILS	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
SI1.00	UPPER RAMBLE SIGNAGE AND WAYFINDING	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
SI1.01	UPPER RAMBLE SIGNAGE AND WAYFINDING	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
SI1.02	UPPER RAMBLE SIGNAGE AND WAYFINDING	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
SI1.03	UPPER RAMBLE SIGNAGE AND WAYFINDING	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
SI2.00	LOWER RAMBLE SIGNAGE AND WAYFINDING	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
SI2.01	LOWER RAMBLE SIGNAGE AND WAYFINDING	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
SI2.02	LOWER RAMBLE SIGNAGE AND WAYFINDING	0	01/11/2023	01/13/2023	100% CDs (01/11/23)
Title					
T0.01	SHEET INDEX	1	01/26/2023	01/30/2023	Addendum #1 (01/26/23)
Utilities					
U2.1	PLUMBING SITE PLAN	0	01/11/2023	01/13/2023	100% CDs (01/11/23)



Nabholz Construction - HQ
3301 N 2nd Street
Rogers, Arkansas 72756
Phone: (479) 659-7800

Project: 02-22-2674 - Downtown Parking Deck
325 N. West Ave
Fayetteville, Arkansas 72701

Prime Contract Change Order Request #015: Level 7 Storefronts

TO:	CITY OF FAYETTEVILLE 113 W MOUNTAIN ST FAYETTEVILLE, Arkansas 72701	FROM:	Nabholz Construction Corporation
CHANGE ORDER REQUEST NUMBER / REVISION:	015 / 0	PRIME CONTRACT CHANGE ORDER:	None
STATUS:	Pending - In Review	CREATED BY:	Jacob Keeney (NABHOLZ CONSTRUCTION CORP/ROG)
SCHEDULE IMPACT:		DATE CREATED:	1/20/2023
EXECUTED:	No	SIGNED CHANGE ORDER RECEIVED DATE:	
		TOTAL AMOUNT:	\$102,303.62

CHANGE ORDER REQUEST TITLE: Level 7 Storefronts

CHANGE ORDER REQUEST DESCRIPTION:

CE #055 - Level 7 Storefronts

Cost to upgrade storefront glass and frames in police substation to level 7.

ATTACHMENTS:

[Fayetteville Parking Deck - Ballistic Storfront system.pdf](#) , [Bullet proof framing and glazing PD.pdf](#)

POTENTIAL CHANGE ORDERS IN THIS CHANGE ORDER REQUEST:

PCO #	Contract Company	Title	Schedule Impact	Amount
015	CITY OF FAYETTEVILLE	Level 7 Storefronts		\$102,303.62
Total:				\$102,303.62

CHANGE ORDER REQUEST LINE ITEMS:

PCO # 015: Level 7 Storefronts

#	Budget Code	Description	FS	Amount
1	08-4100.SUB ENTRANCES/STOREFRONTS.SUB CONTRACT			\$97,381.00
2	01-6216.OTH GEN LIAB & UMB.OTHER		City of Fayetteville	\$827.74
3	01-6125.OTH BUILDERS RISK INSURANCE.OTHER		City of Fayetteville	\$9.74
4	01-6120.SUB SSDI/SDI INSURANCE.SUBCONTRACT		City of Fayetteville	\$1,217.26
5	99-9999.OTH PROJECT FEE.OTHER		City of Fayetteville	\$2,434.53
6	01-6113.OTH PERFORMANCE & PAYMENT BONDS.OTHER		City of Fayetteville	\$433.35
Grand Total:				\$102,303.62

CITY OF FAYETTEVILLE
113 W MOUNTAIN ST
FAYETTEVILLE, Arkansas 72701

Nabholz Construction Corporation

SIGNATURE

DATE

SIGNATURE

DATE

Central Arkansas:
3101 Dugan Dr.
Little Rock, AR 72206
Phone: (501) 372-0595
Fax: (501) 372-0594



Northwest Arkansas:
204 Commercial Avenue
Lowell, AR 72745
Phone: (479) 756-0606
Fax: (479) 756-0609

December 21, 2022

To: Nabholz Construction
Attn: Kurt Phillips
Project: Fayetteville Downtown Parking Deck
Proposal #:

Proposal to furnish and install the following items

- **Ballistic Storefront, Doors and Glass at Police Department.**

Base Bid: \$97,381.00

If required add 1% for bonding

Terms and Conditions:

This price is good for 30 days and is based on progressive billing with payments due 30 days from billing and a maximum of 5% retainage if retainage is held by the owner.

Submitted By:

Dwayne Hart

ACE Glass Construction

Approved By: _____

Signature: _____

Title: _____

Company: _____

Level 7 No Spall Glazing

7-2003-NS / G7

Specifications:

-Ballistic Rating: Meets Or Exceeds The Following

- UL752 Level 7 Ballistic Standard
- NIJ 0108.1 Level IIIA
- EN 1062 Level BR5

-Technical Data

This Ballistic Glazing will withstand 5 rounds of .223 (5.56) in a one square foot sample, utilizing a FMJ projectile with a mass of 55 grain (3.56 gram) traveling at 3234 feet / second (986.4 meters / second) with each round delivering an impact of 731 Joules of Energy and a Momentum of 3.51 kg m/s. This Ballistic Glazing may also provide up to 30 minutes of forced entry protection.

-Nominal Thickness:

-1 5/16"; 1.31"; 33.274mm

-Weight Per Square Foot:

-12.673lb; 5.748kg

-Glazing Options

- Tinted Glass (Gray, Bronze, etc.)
- Reflective Glass
- Low E
- Wire Glass
- Privacy Glass
- IG Units Available

-Framing Options

- Aluminum Store Front
- Aluminum Curtain Wall

-Sizing Information

- Up to 70" x 130"

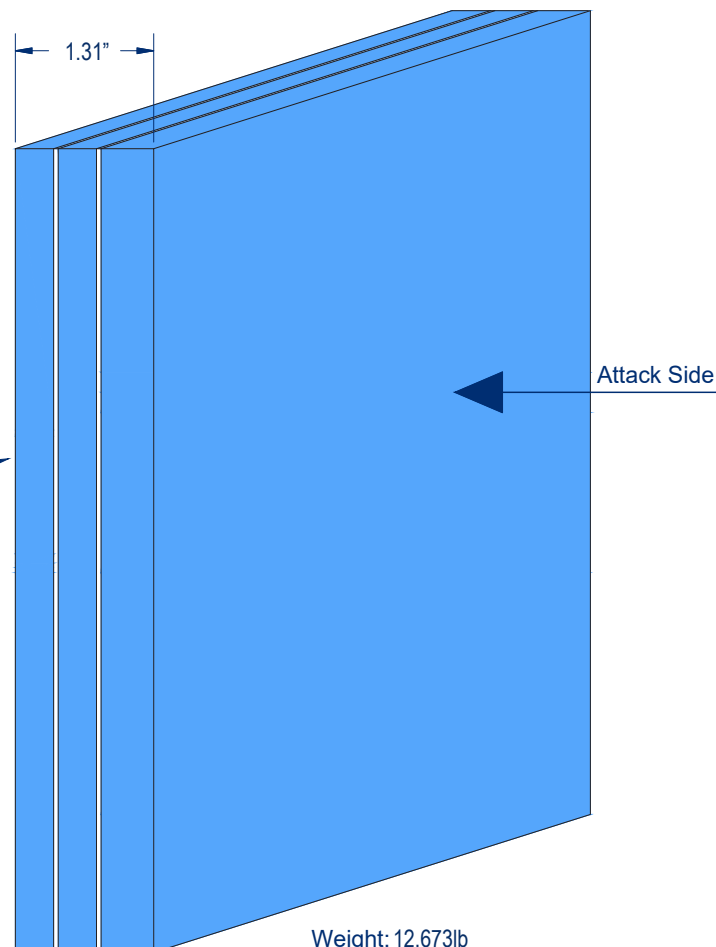
-Testing Certifications

- NTS BGA20001-1

Tested To 5 Rounds Of 5.56



Various Interlayers;
Glass, Polycarbonate,
and Polyurethane



NATIONAL TECHNICAL SYSTEMS

BALLISTIC RESISTANCE TEST

Date Received: 1/08/2020
Via: FedEx
Returned Via: FedEx

Record No.: BGA20001-2
Test Date: 01/10/20
Customer: Ballistic Glass & Armor Solutions, LLC.

Test Conditions

Temperature: 69.8 °F
Humidity: 52 %
Test Standard: UL 752, 11th Edition: December 21, 2006
ISBN 0-7629-1080-1
Material Type: Bullet-Resisting Material (Glass)
Test Reference: IAW Paragraph 17.5.1
Threat Level: Level 7
Conditioning: Room Temperature (Ambient)

Range 3

Muzzle to Screen 1: 5.00 ft.
Screen 1 - 2: 5.00 ft.
Screen 2 - Target: 5.00 ft.
Midpoint to Target: 7.50 ft.
Target to Witness: 1.50 ft.
Witness: 1/8" Corrugated Cardboard
Barrel Length: 26 in.

Sample Description	Test / Ammunition Description					Chronograph		Test Result
Manufacturer: Ballistic Glass & Armor Solutions, LLC P/N: 20-7001 Type: N/A Sample No.: 3 Size (in.): 12 x 12 Thickness (in.): 1.31 Weight (lbs.): 12.673 Model: G7N Part Name: 20-7001	Shot No.	Shot Location	Degree Obliquity	Caliber	Bullet Weight (gr.) /Type	TIME sx-5	VELOCITY ft/s	Penetration
	1	Upper Left	0°			151.9	3292	No Penetration
	2	Upper Right	0°			153.6	3255	No Penetration
	3	Lower Right	0°	5.56mm	55 / FMJ (M193)	151.3	3305	No Penetration
	4	Lower Left	0°			152.1	3287	No Penetration
	5	Center	0°			154.1	3245	No Penetration
This test was performed in accordance with the specification requirements and the results properly reflect the ballistic performance of the listed sample.					National Technical Systems, Inc. 7447 W. 33rd St. N. Wichita, KS 67205 U.S.A.		Phone 316-832-1600 Fax 316-832-1602 Email ustl@nts.com	

REMARKS / NOTES:

•See attached photos

Ammunition Description / Velocity Requirement (IAW Table 3.1 and Paragraph 4.9):

Rating: Level 7
Test Ammunition: 5.56mm Rifle, 55 gr. (3.56g) FMJ / M193 (Full Metal Copper Jacket with Lead Core)
Test Velocity: 3080 ft/s + 110% (3080 - 3388 ft/s)
Shots Required: 5

Test Sample Mounting (IAW Section 17.1, Paragraph 17.1.2):

Mounting: Sample mounted and clamped in a rigidly fixed frame

Test Criteria (IAW Section 17.1, Paragraph 17.1.1):

1) No Penetration of the projectile through the test sample

TEST RESULT:	PASS	PASS	PASS	PASS	PASS
	Shot No.1	Shot No. 2	Shot No. 3	Shot No. 4	Shot No. 5

2) No spalling of material on the protected side of the test sample to the extent that fragments embed into or damage cardboard witness

TEST RESULT:	PASS	PASS	PASS	PASS	PASS
	Shot No.1	Shot No. 2	Shot No. 3	Shot No. 4	Shot No. 5

3) No opening of sufficient size to permit insertion of the muzzle of a standard weapon designed to use the ammunition used for the test completely through the sample

TEST RESULT:	PASS	PASS	PASS	PASS	PASS
	Shot No.1	Shot No. 2	Shot No. 3	Shot No. 4	Shot No. 5

Shot Locations / Shot Spacing (IAW Section 17.5, Paragraph 17.5.1):

Shot Pattern: IAW Paragraph 17.5.1
Shot Spacing: 4.50" x 4.50" +/- 0.50" Square (114mm x 114mm +/- 12.7mm)
Shot Sequence: Upper Left, Upper Right, Lower Right, Lower Left, Center
Shot No. 1 - 4: 3.75" shot-to-edge; 4.50" shot-to-shot
Shot No. 5: 6.0" shot-to-edge; 3.25" shot-to-shot

Sample Description:

Layer 1: Glass (1.31" thick)

Post-Test Notes / Remarks:

Crawford / Diefenderfer

NATIONAL TECHNICAL SYSTEMS

BALLISTIC RESISTANCE TEST

Date Received: 02/10/19
Via: Hand Carry
Returned Via: Hand Carry

Record No.: BGA19001-14
Test Date: 02/10/19
Customer: Ballistic Glass & Armor
Solutions, LLC.

Test Conditions

Temperature: 72 °F
Humidity: 45 %
Test Standard: NIJ Standard 0108.01, September 1985
Ballistic Resistant Protective Materials
Classification: Type III (High-Powered Rifle)
Test Reference: IAW Section 4.4, Table 1.
Shots Required: 5
Conditioning: Ambient (Dry)

Range 3

Muzzle to Screen 1: 6.56 ft.
Screen 1 - 2: 3.28 ft.
Screen 2 - Target: 39.37 ft.
Midpoint to Target: 41.01 ft.
Target to Witness: 0.50 in.
Witness: 2024-T3 Aluminum

Sample Tested Description		Test / Ammunition Description					Chronograph		Test Results
Manufacturer:	Ballistic Glass & Armor	Shot No.	Shot Location	Degree Obliquity	Caliber	Bullet Weight (gr.) / Type	TIME sx-5	VELOCITY ft/s	Penetration No Penetration
Model No.:	A-6000 Steel	1	Top Left	0°	7.62x51mm	150 / FMJ	181.3	2758	No Penetration
P/N:	N/A	2	Top Right	0°			181.2	2759	No Penetration
Sample No.:	#2	3	Bottom Right	0°			181.6	2753	No Penetration
Material Type:	Steel Plate	4	Bottom Left	0°			179.8	2781	No Penetration
Size (in.):	15" x 15" x 0.26"	5	Center	0°			181.3	2758	No Penetration
Weight (lbs.):	16.32								

This test was performed in accordance with the specification requirements and the results properly reflect the ballistic performance of the listed sample.	National Technical Systems, Inc.		Phone	316-832-1600
	7447 W. 33rd St. N.		Fax	316-832-1602
	Wichita, KS 67205 U.S.A.		Email	ustl@nts.com

REMARKS / NOTES:

- Sample secured using frame and clamps.
- Mark Deaver representing the customer, was present to witness testing.

Test Weapon and Ammunition Used (IAW Section 4.4, Table 1.):

Reference: IAW Section 5.2.5
Ammunition: 7.62mm NATO, 150 gr. (9.7g) FMJ (Copper Alloy Jacketed Lead Core, U.S. Military M80)
Description: (Factory Loaded Ammunition): Remington UMC / Part No.: 23715 / Catalog No.: L308W4
Weapon: 24" .308 Winchester Barrel ICW Universal Receiver
Test Velocity: 2750 +/- 50 ft/s (838 +/- 15 m/s)

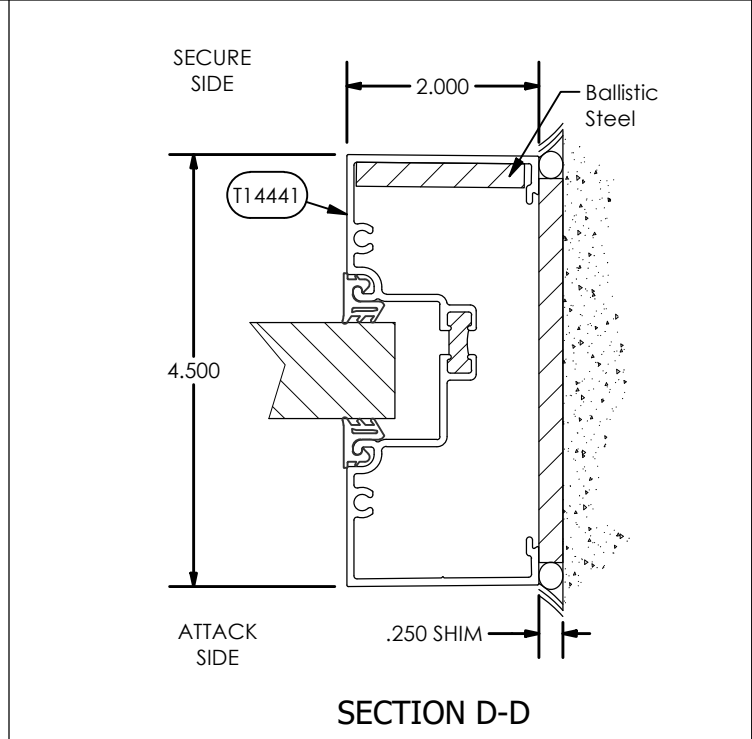
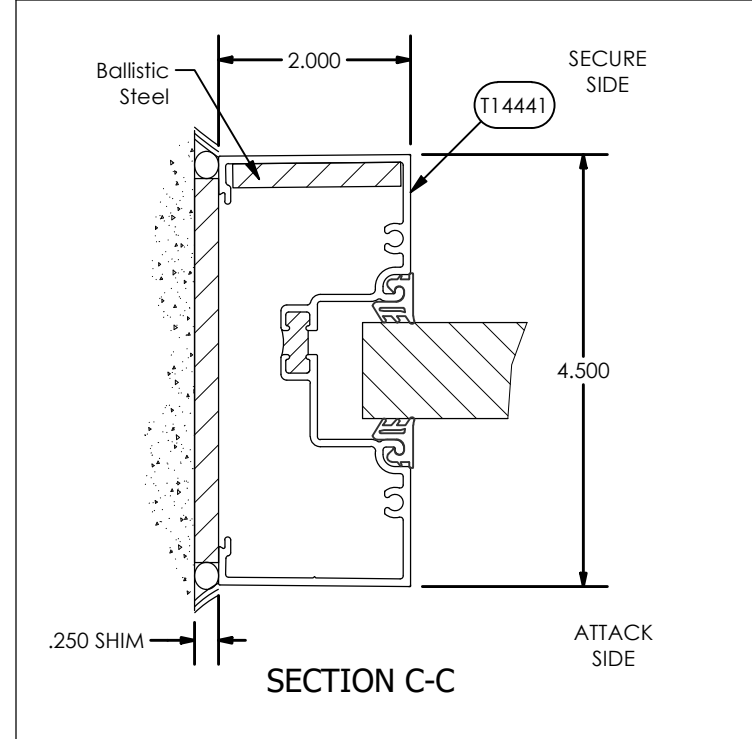
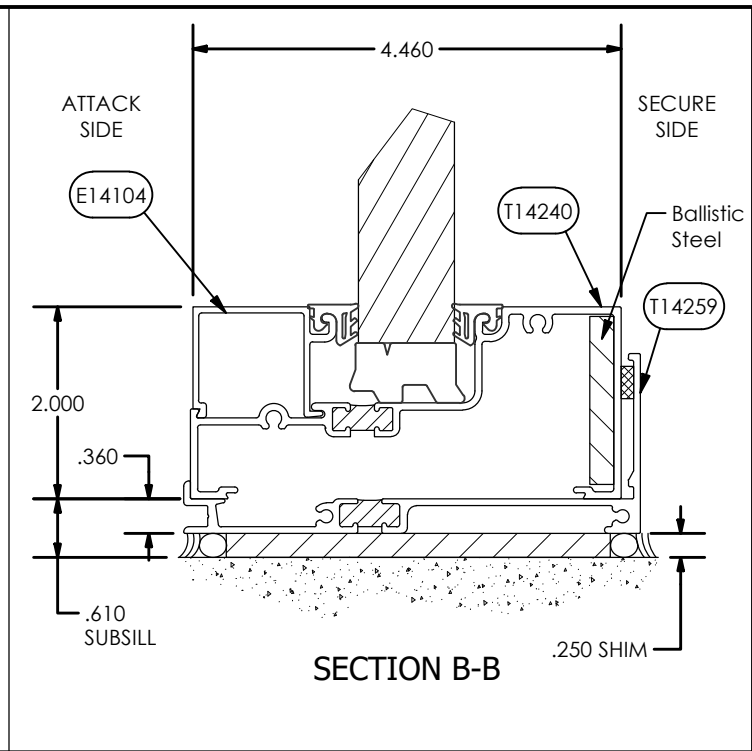
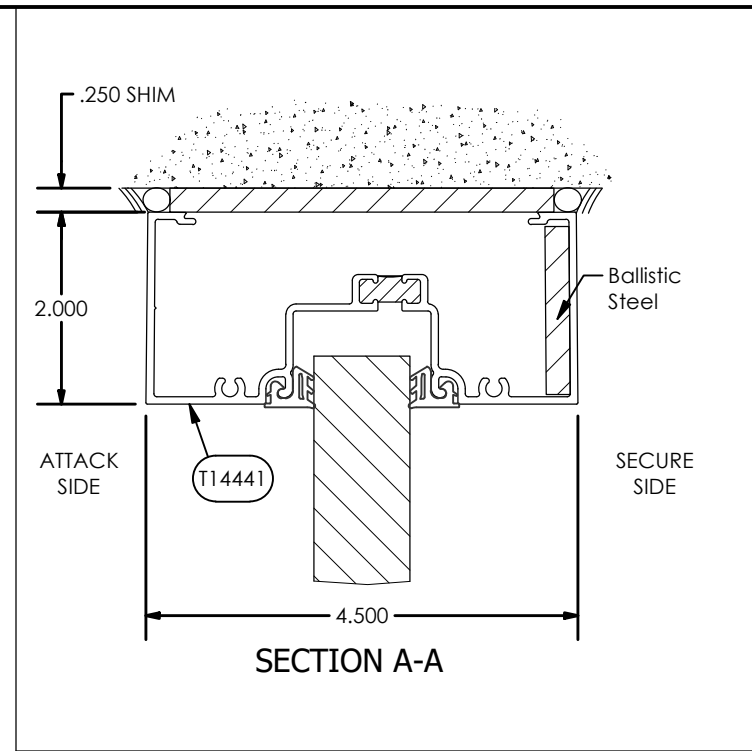
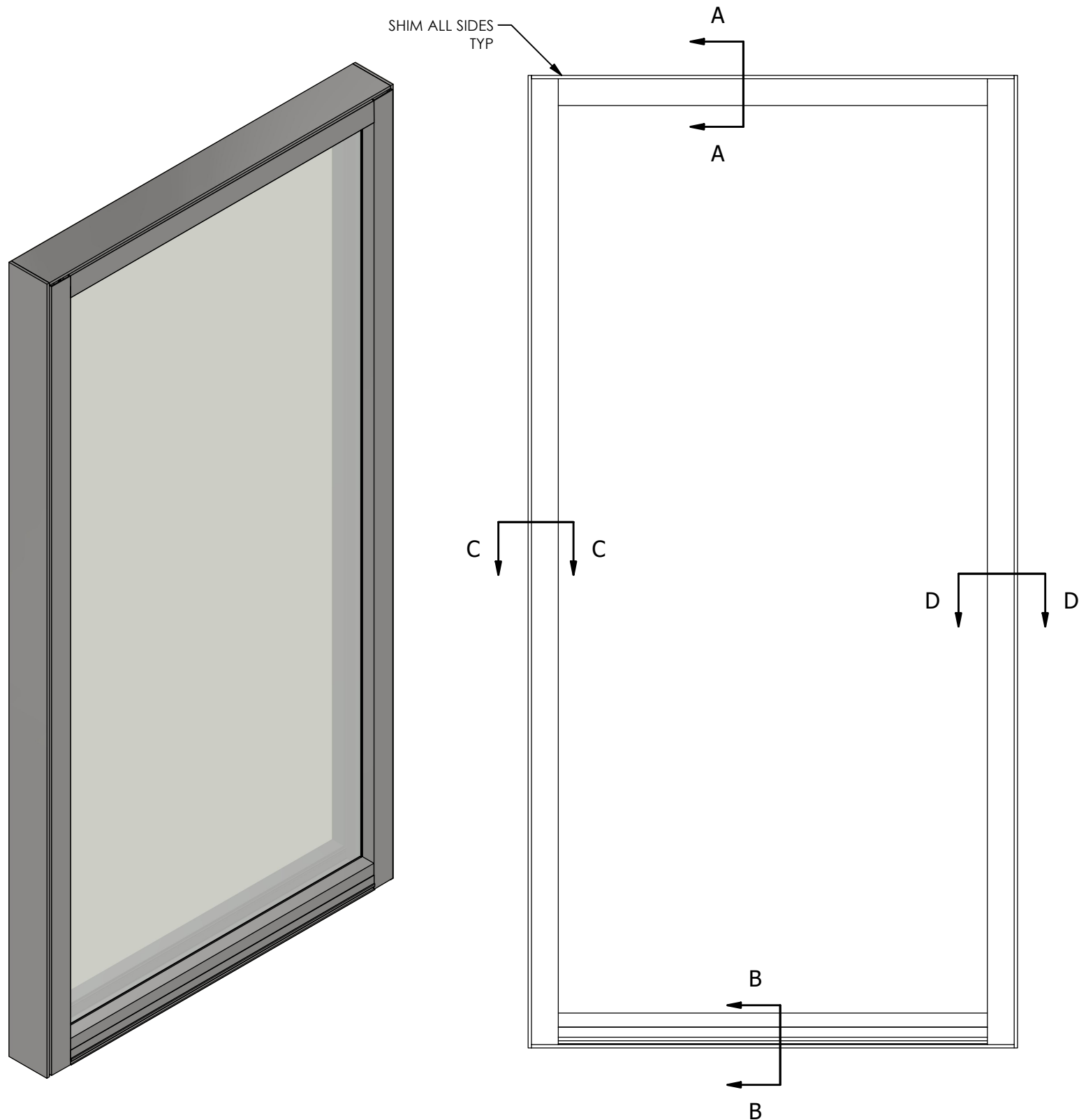
Shot Locations / Spacing:

- Minimum Requirement: 2.0" (50mm) shot-to-edge and shot-to-shot spacing per Paragraph 3.2 Fair Hit.

Shot Pattern: 5-Shot Die Pattern

Shot No. 1: Top Left 5.75" from left and top edges
Shot No. 2: Top Right 4.25" from right edge and 6.25" from top edge; 5.0" from Shot No. 1
Shot No. 3: Bottom Right 5.0" from right and bottom edges; 3.75" from Shot No. 2
Shot No. 4: Bottom Left 5.0" from bottom and left edges; 5.0" from Shot No. 1 and No. 3
Shot No. 5: Center Center of sample; 7.50" from all edges; 3.50" from Shot No. 1-4

Project Manager: Crawford	Technician(s):	
---------------------------	----------------	--



Aluminum Framing: Typical Exterior Window Detail

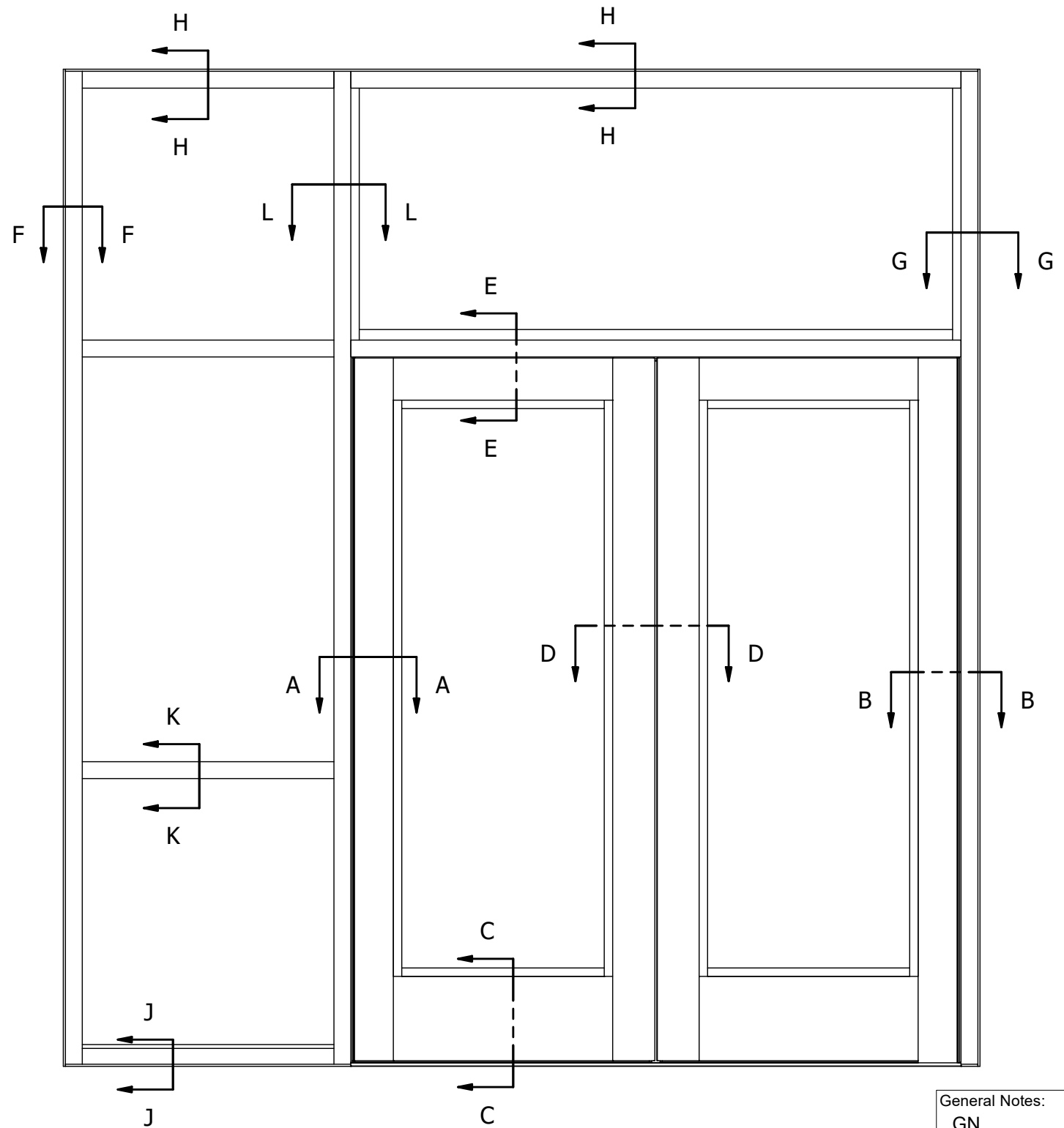
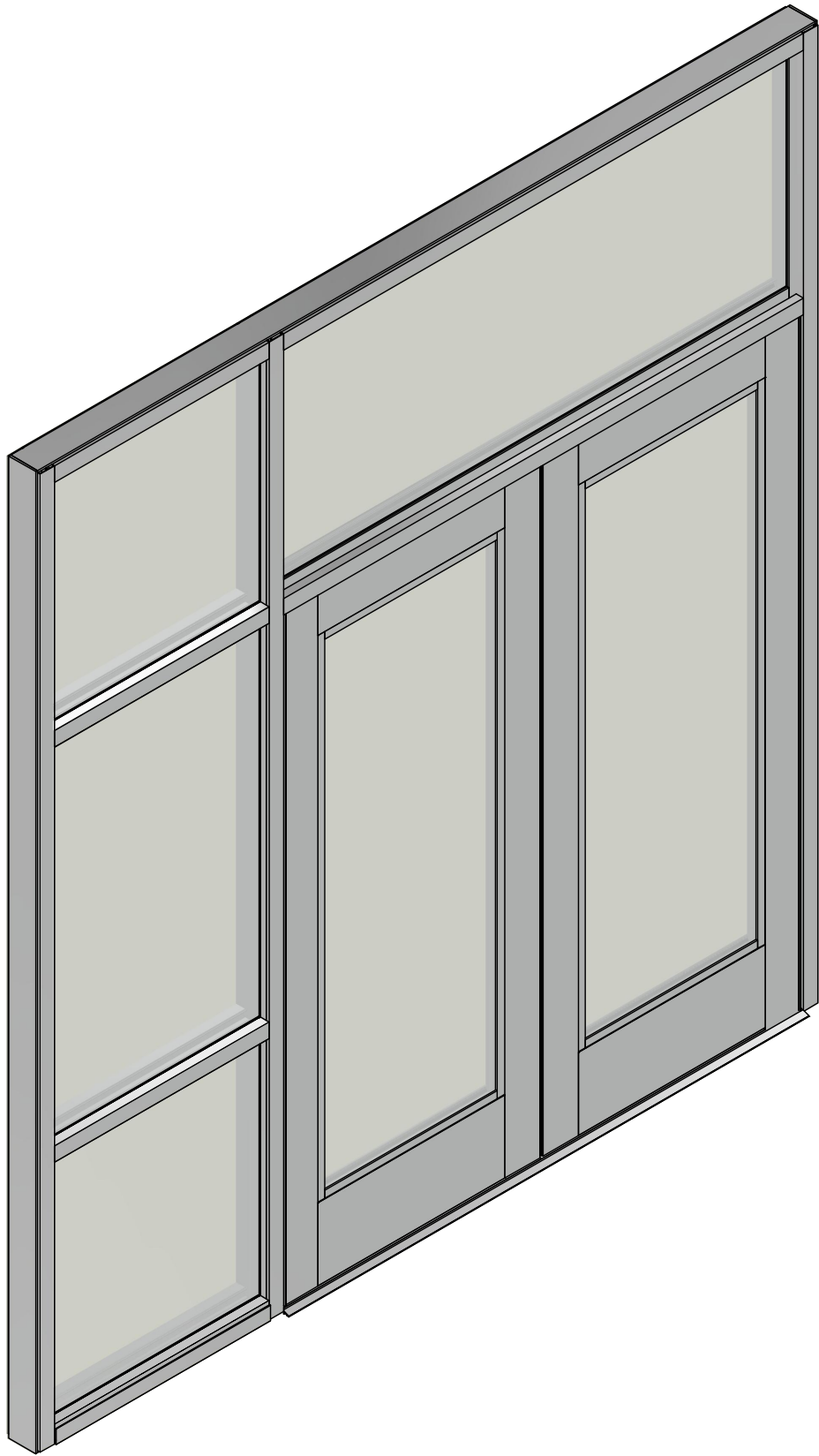
Ballisticglassandarmor.com
972-707-0105
15504 Wright Brothers Dr
Addison, Texas 75001

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FILE:

SCALE NTS	DRAWN BY CLV		REVISION#
MATERIAL A3000	SHEET # 1 OF 1	DATE 04.07.2022	REVIEWED BY

General Notes:
GN



General Notes:
GN



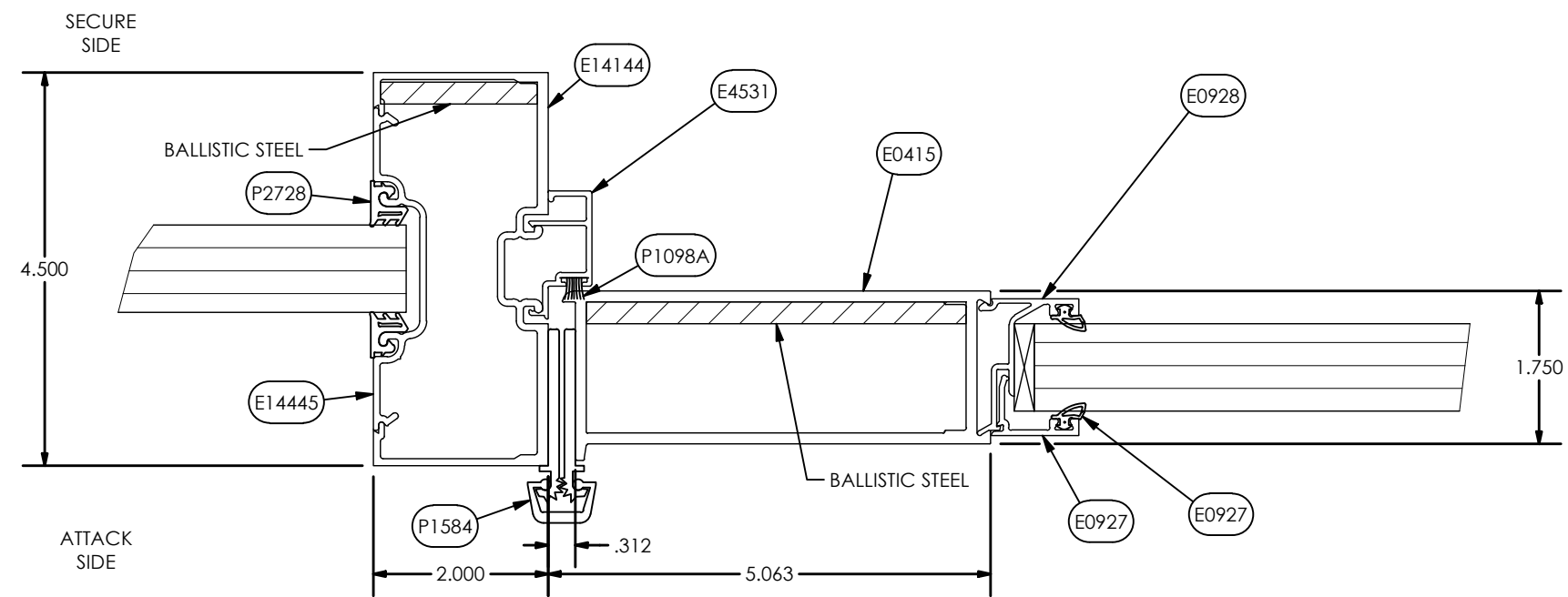
Aluminum Framing: Typical Double Door Detail

Ballisticglassandarmor.com
972-707-0105
15504 Wright Brothers Dr
Addison, Texas 75001

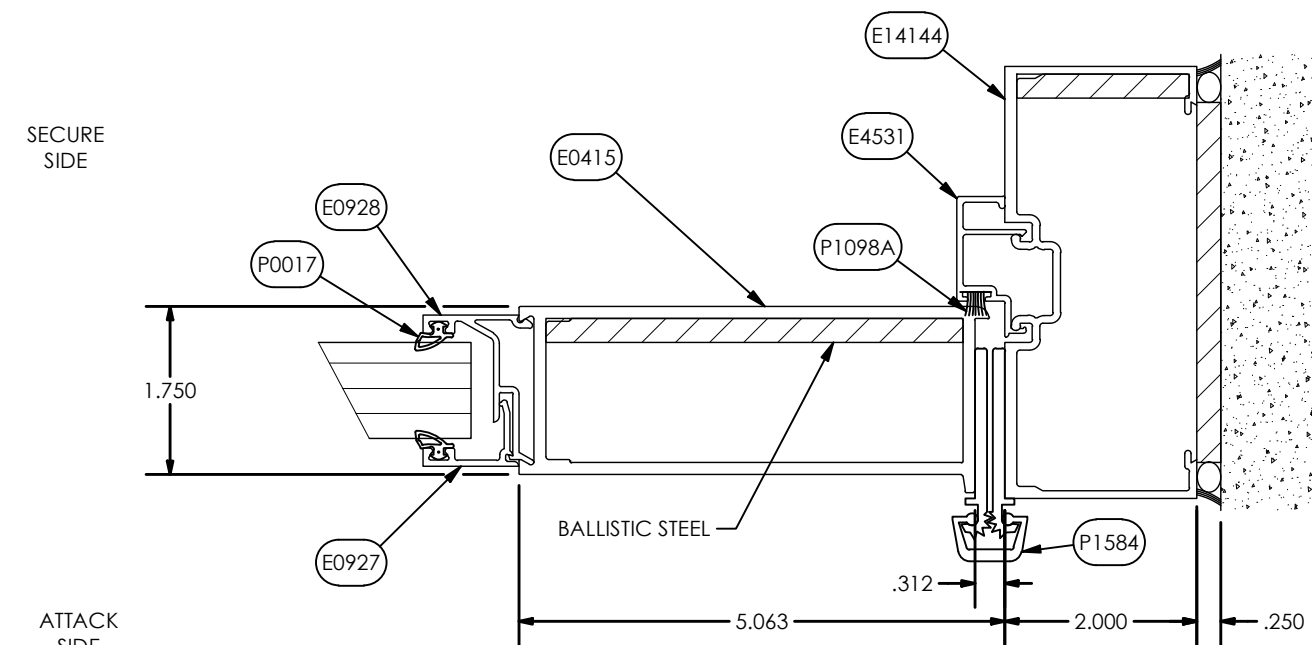
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FILE:

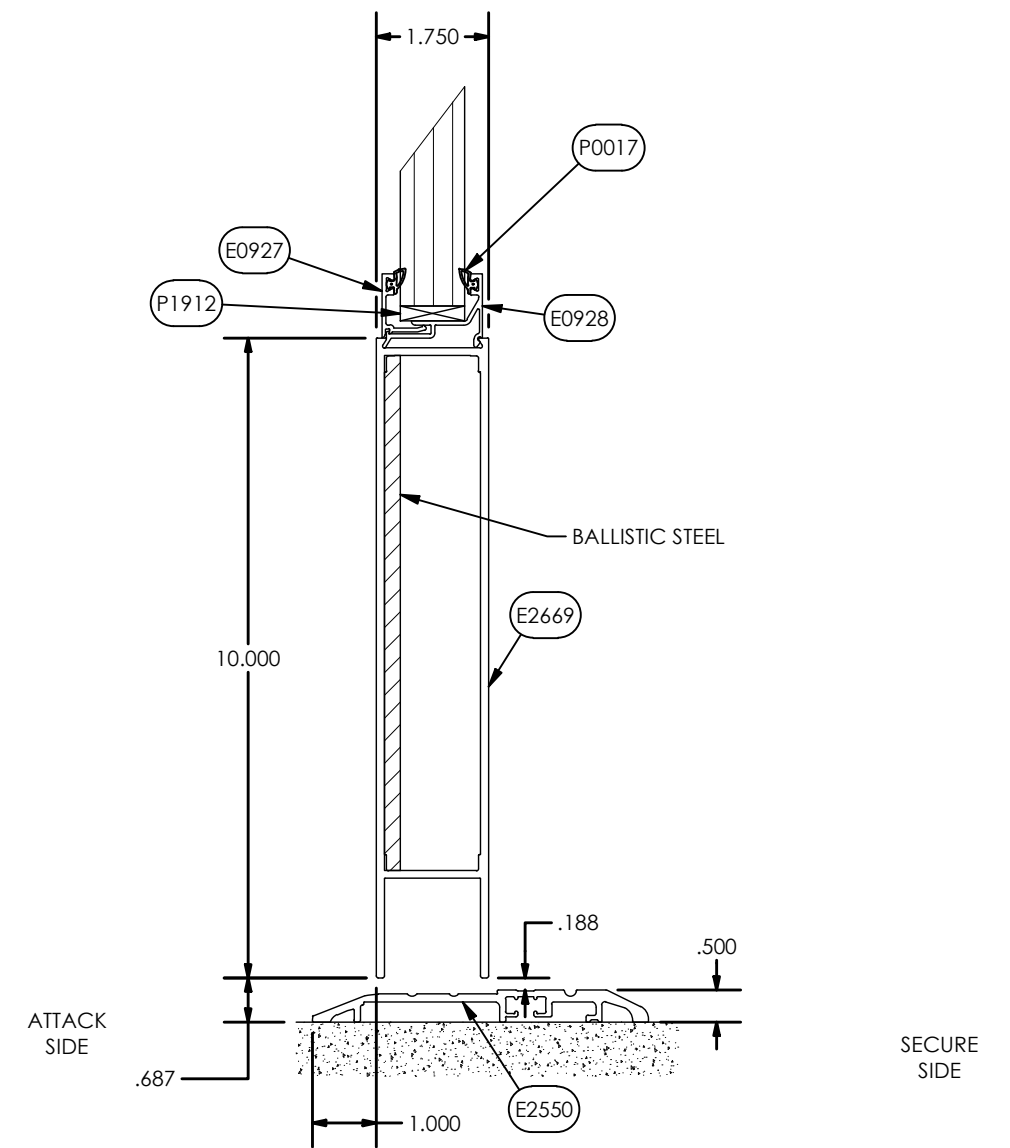
SCALE NTS	DRAWN BY CLV		REVISION#
MATERIAL A3000	SHEET # 1 OF 4	DATE 05.10.2022	REVIEWED BY



SECTION A-A

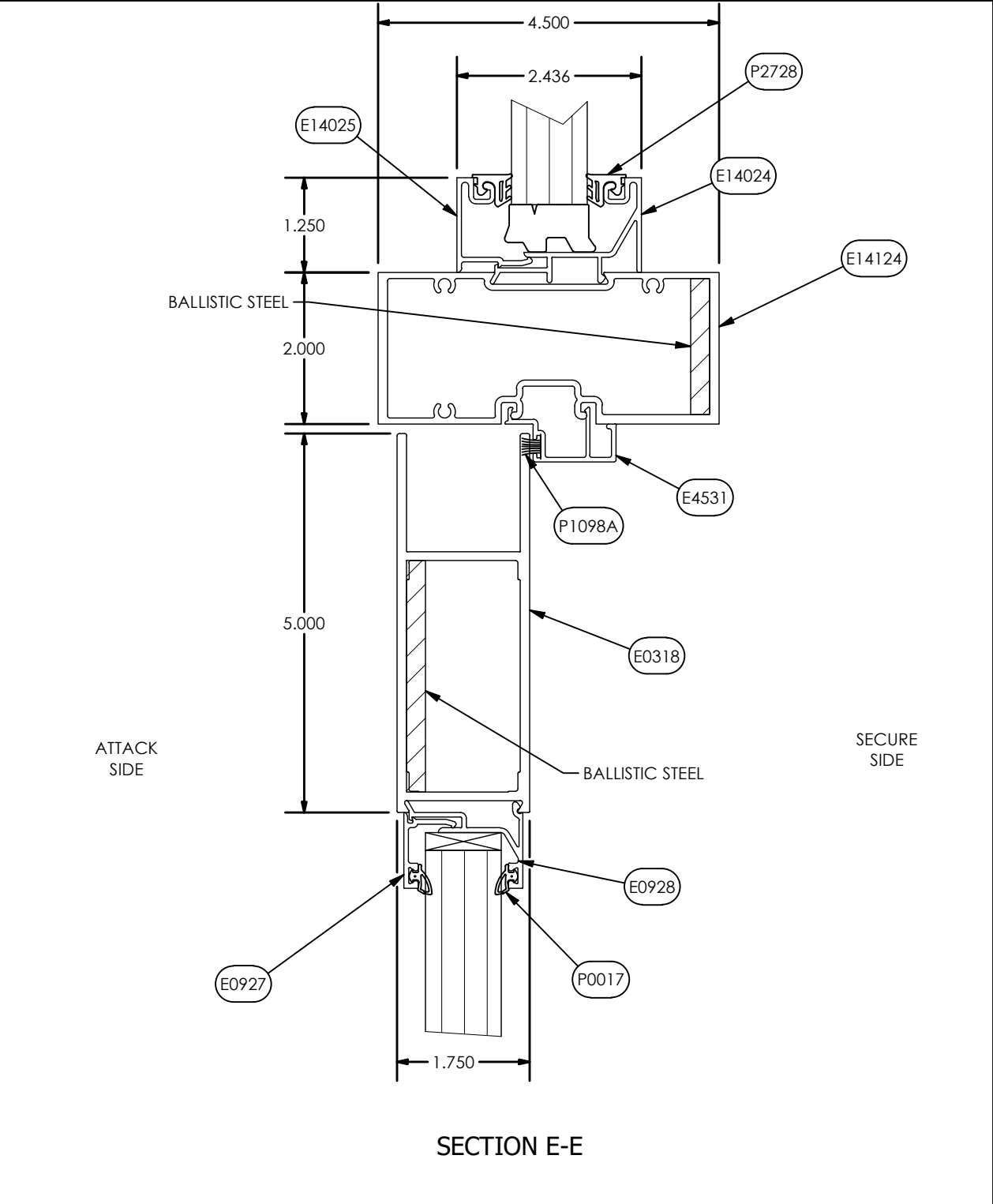
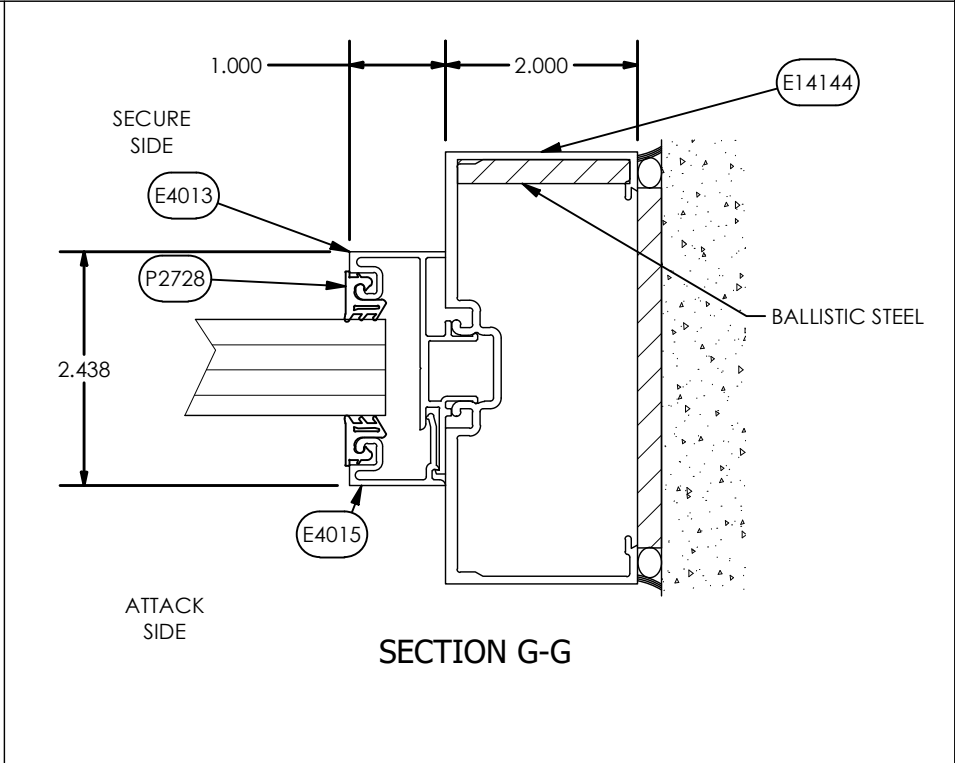
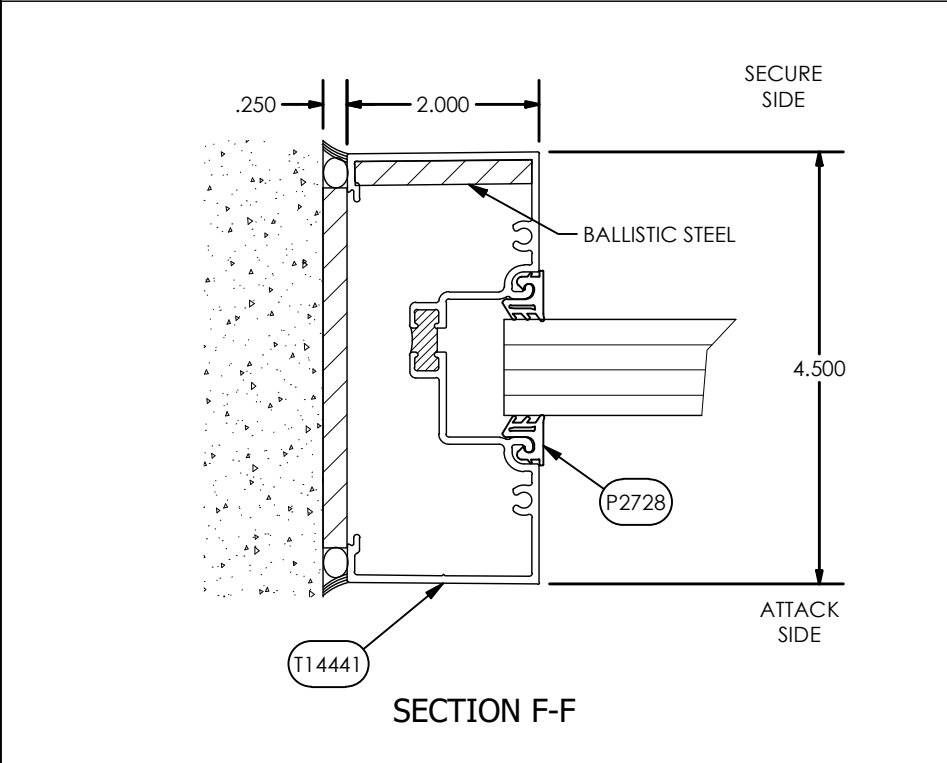
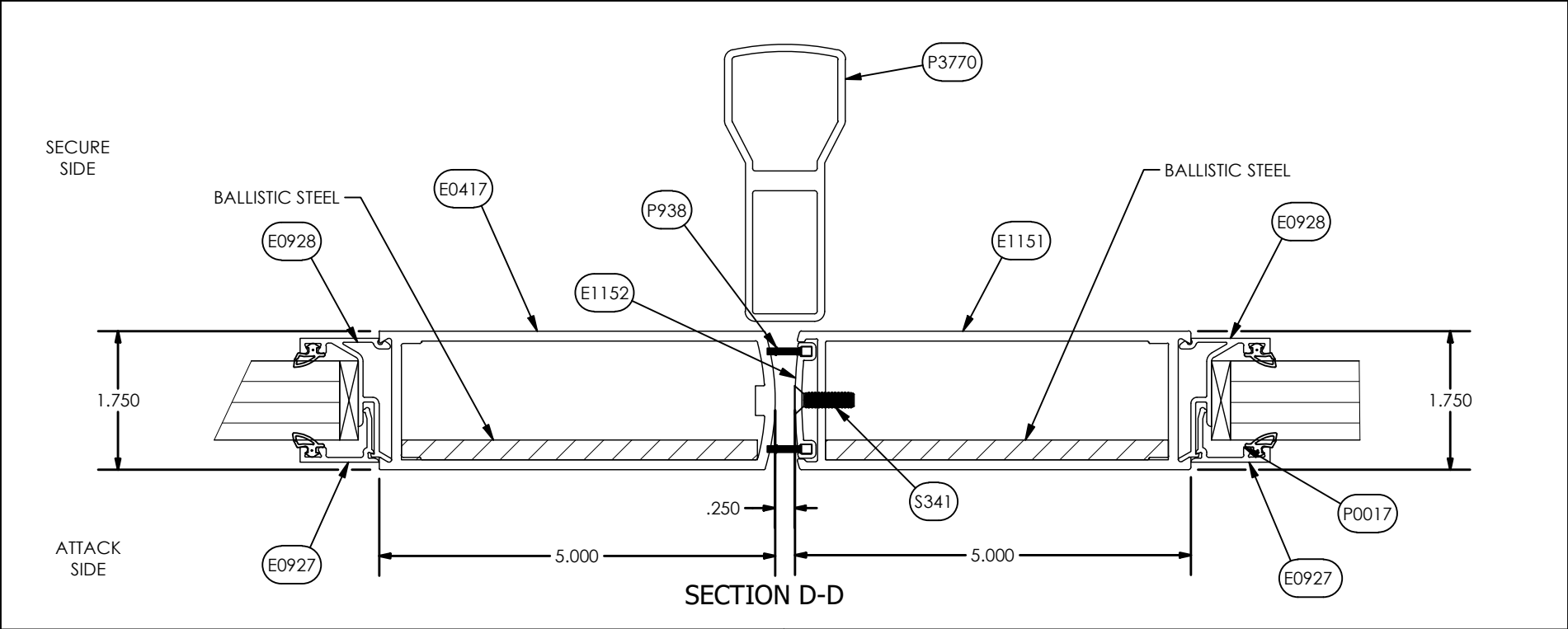


SECTION B-B



SECTION C-C

General Notes:
GN





Aluminum Framing: Typical Double Door Detail

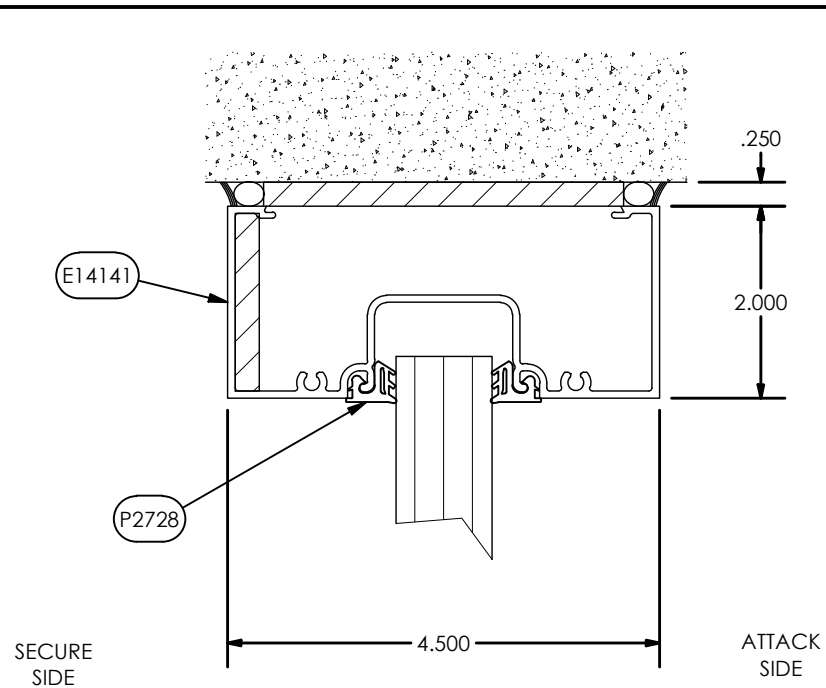
Ballisticglassandarmor.com
972-707-0105
15504 Wright Brothers Dr
Addison, Texas 75001

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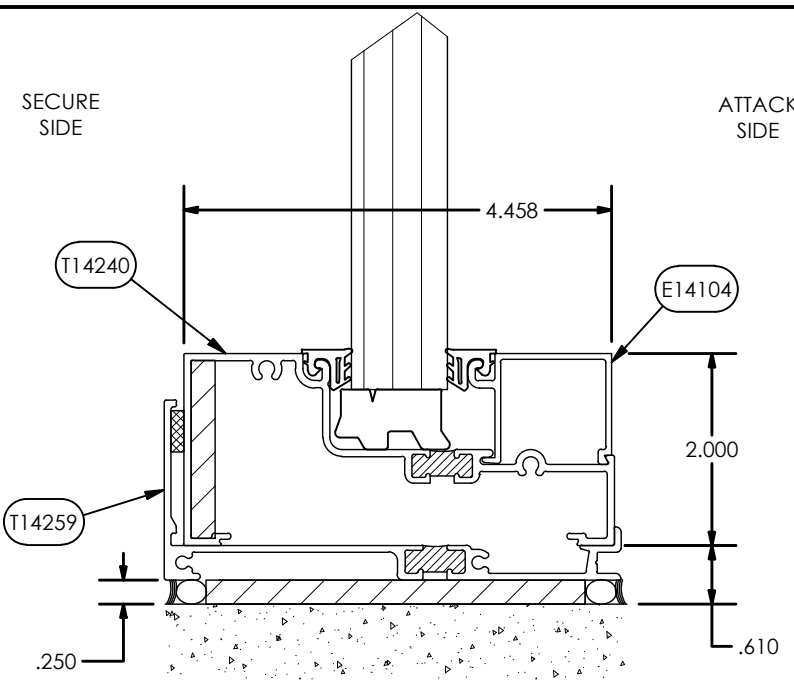
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SCALE NTS	DRAWN BY CLV		REVISION#
MATERIAL A3000	SHEET # 3 OF 4	DATE 05.10.2022	REVIEWED BY

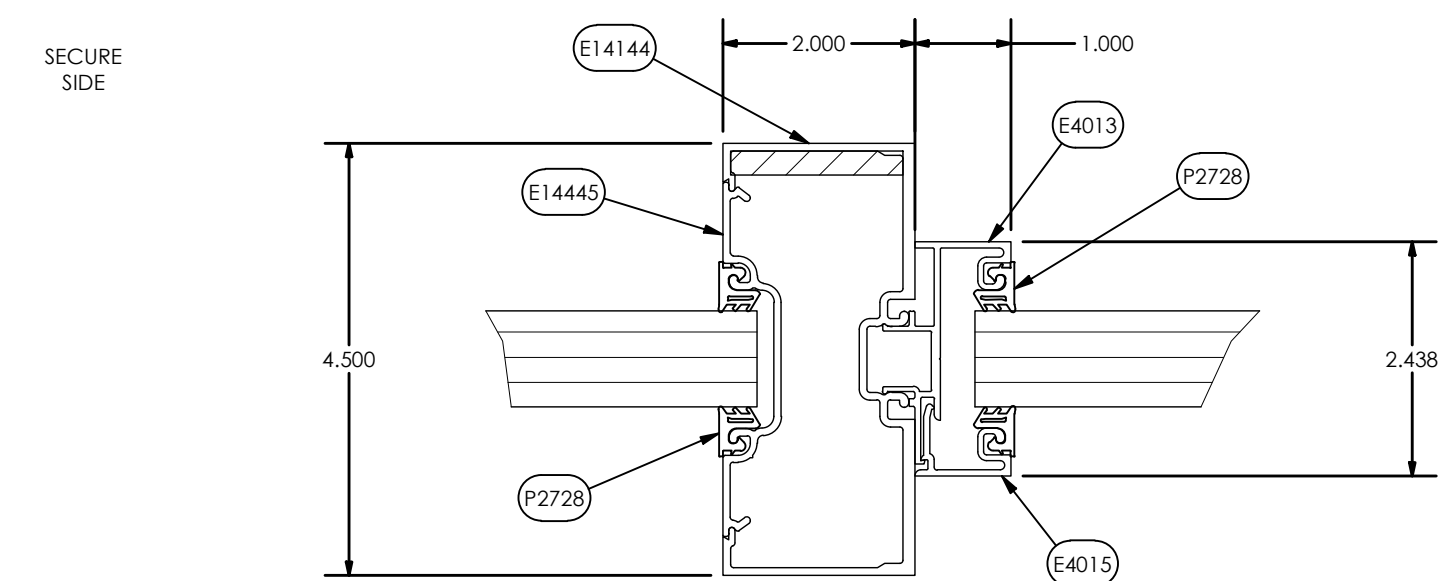
General Notes:
GN



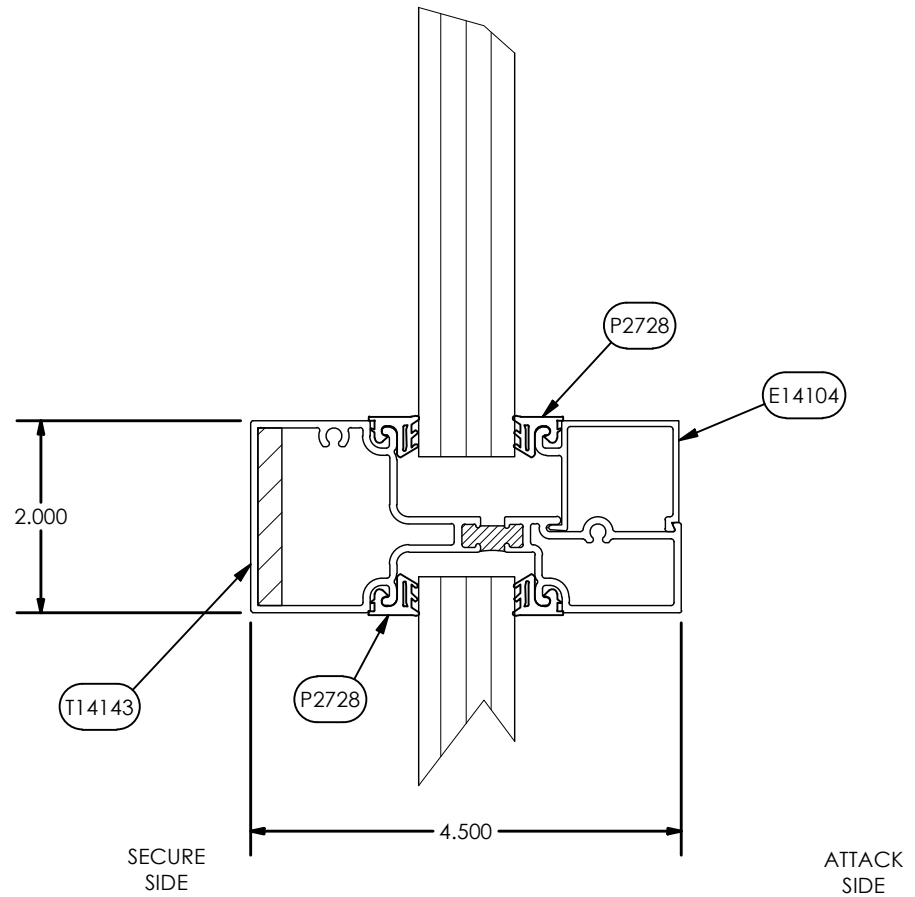
SECTION H-H



SECTION J-J



SECTION L-L



SECTION K-K

General Notes:
GN



Aluminum Framing: Typical Double Door Detail

Ballisticglassandarmor.com
972-707-0105
15504 Wright Brothers Dr
Addison, Texas 75001

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FILE:

SCALE NTS	DRAWN BY CLV		REVISION#
MATERIAL A3000	SHEET # 4 OF 4	DATE 05.10.2022	REVIEWED BY

	CHANGE ORDER REQUEST
--	-----------------------------

Grand total for PD substation plumbing rough in: \$3,559.47

574

ASI # 3

Breakout for City of just "underground plumbing police station"

MATERIAL BREAKOUT

These costs in yellow can be removed if sleeves are removed in RFI-59.

Total:
\$902

Deduct Yellow as saving if city elects to "not use" sleeves and seals	
---	--

Excavation and backfill	850
-------------------------	-----

	Section Subtotal	\$2,466.00
	Freight and Transport	

	Freight and Tax Included
--	--------------------------

New
Total:
\$1,564

EQUIPMENT BREAKOUT

Description		
	Total:	\$0.00
	Section Subtotal:	\$0.00

MANPOWER

Position	Hours	Rate		Subtotal			Per Diem	Add/Deduct	
Journeyman	25	@	\$55.00	=	\$1,375.00	+		=	\$1,375.00
		@		=	\$0.00	+		=	\$0.00
		@		=	\$0.00	+		=	\$0.00
		@		=	\$0.00	+		=	\$0.00
		@		=	\$0.00	+		=	\$0.00

Note: Include Labor burden in Hourly Rate	Section Subtotal:	\$1,375.00
--	-------------------	------------

2ND TIER SUBCONTRACTOR			
Contractor Name	Description of Work	Add/Deduct	

Contractor Name	Description of Work	Add/Deduct

Contractor Name	Description of Work	Add/Deduct	

CERTIFICATION			
----------------------	--	--	--

Company:		Request Subtotal:	\$3,841.00

Signature:		
	Fee %	12.000%

Name/Title:	Fee Amount:	\$460.92
-------------	-------------	---------------------

Date:	Total Before Bond:	\$4,301.92
	Bond %	0.000%

Bond should remain 0% unless contract specifies a bond is required.	Bond %	0.0000%
	Bond Amount:	\$0.000

Total Request is to exclude General Liability and Workers Comp.		REQUEST TOTAL:	\$4,301.92
---	--	----------------	-----------------------

Signature:			
------------	--	--	--

Signature:		Fee %	12.000%
------------	--	-------	---------

Name/Title:	Fee Amount:	\$160.02
-------------	-------------	---------------------

Name/Title:	Fee Amount:	\$100.92
Fee:	Fee:	\$1,004.00

Date:		Total Before Bond:	\$4,301.92
-------	--	--------------------	-----------------------

Bond should remain 0% unless contract specifies a bond is required	Bond %	0.000%
--	--------	--------

Bond Amount:	\$0.000
---------------------	---------

QUOTATION



MECHANICAL SUPPLY

WHOLESALE SUPPLY

122 W. Randall Rd., Springdale, AR 72764-18017
479/756-2055 Fax: 479/756-1874
200 S. Zero, Ft. Smith, AR 72901-8840
479/785-1188 Fax: 479/785-1858
535 N. Fremont, Springdale, MO 65902-3532
417/863-1303 Fax: 417/863-0508
1827 W. 10th St., Joplin, MO 64801-9998
417/385-4300 Fax: 417/385-4301

Order Number	
3232827	
Order Date	Page
4/11/2022 10:38:05	1 of 1
Location Id: 1	

Bill To:

JOHNSON MECH CONTRACTORS
513 PRAIRIE STREET
FAYETTEVILLE, AR 72701
USA

Ship To:

JOHNSON MECH CONTRACTORS
513 PRAIRIE STREET
FAYETTEVILLE, AR 72701
USA

4425287

Attn: INVOICES EMAIL

Requested By: Mr. KEITH STEELE

Customer ID: 16860

PO Number					Ship Route	Taker			
ASI #3						DMARTENS			
Quantities					Item ID Item Description	Pricing UOM		Unit Price	Extended Price
Ordered	Allocated	Remaining	UOM Unit Size	Disp.		Unit Size			
Delivery Instructions: 1									
340	0	340 FT			PVCDWV40PE60	FT		10.0224	3,407.62
			1.0		PIPE PVC DWV PE 6X20' SOLID		1.0		
Ordered As: DWVS60									
200	0	200 FT			PVCDWV40PE40	FT		5.2974	1,059.48
			1.0		PIPE PVC DWV PE 4X20' SOLID		1.0		
Ordered As: DWVS40									
20	0	20 FT			PVCDWV40PE30	FT		3.2211	64.42
			1.0		PIPE PVC DWV PE 3X20' SOLID		1.0		
Ordered As: DWVS30									
20	0	20 FT			PVCDWV40PE20	FT		1.9529	39.06
			1.0		PIPE PVC DWV PE 2X20' SOLID		1.0		
Ordered As: DWVS20									
Total Lines: 4								TOTAL:	4,570.58
								*Plus Applicable Taxes	

QUOTATION



MECHANICAL SUPPLY 122 W. Randall Rd., Springdale, AR 72784-18017
479/758-2055 Fax: 479/758-1674
200 S. Zero, Ft. Smith, AR 72901-8840
479/785-1168 Fax: 479/785-1956
WHOLESALE SUPPLY 535 N. Fremont, Springfield, MO 65802-3532
417/863-1303 Fax: 417/863-0508
1827 W. 10th St. Joplin, MO 64801-9998
417/385-4300 Fax: 417/385-4301

Order Number	
3232716	
Order Date	Page
4/11/2022 12:34:28	1 of 2
Location Id: 1	

Bill To:

JOHNSON MECH CONTRACTORS
513 PRAIRIE STREET
FAYETTEVILLE, AR 72701
USA

Ship To:

JOHNSON ME (SHOP)
513 PRAIRIE STREET
FAYETTEVILLE, AR 72701
USA

4425287

Attn: INVOICES EMAIL

Requested By: Mr. KEITH STEELE

Customer ID: 16860

PO Number					Ship Route	Taker			
FAYETTEVILLE PARKING GARAGE ASI#3						GMISENHEIMER			
Quantities					Item ID Item Description	Pricing UOM		Unit Price	Extended Price
Ordered	Allocated	Remaining	UOM Unit Size	Disp.		Unit Size			
Delivery Instructions: Q									
2	0	2 EA	1.0		PVCDWVC40 COUPLING PVC DWV HxH 4 100	EA 1.0		7.9908	15.98
12	0	12 EA	1.0		PVCDWVC60 COUPLING PVC DWV HxH 6 100	EA 1.0		26.1480	313.78
1	0	1 EA	1.0		PVC40CAPS30 CAP PVC 40 SOC 3 447-030	EA 1.0		4.4257	4.43
3	0	3 EA	1.0		PVC40CAPS20 CAP PVC 40 SOC 2 447-020	EA 1.0		1.2679	3.80
5	0	5 EA	1.0		PVC40CAPS40 CAP PVC 40 SOC 4 447-040	EA 1.0		10.0680	50.34
6	0	6 EA	1.0		PVC40CAPS60 CAP PVC 40 SOC 6 447-060	EA 1.0		24.1515	144.91
2	0	2 EA	1.0		PVCDWVRED4020 REDUCER COUP PVC DWV HxH 4X2 102	EA 1.0		13.3604	26.72
3	0	3 EA	1.0		PVCDWVY60 WYE PVC DWV HxHxH 6 600	EA 1.0		92.6651	278.00
2	0	2 EA	1.0		PVCDWV9020 90 PVC DWV HxH 2 300	EA 1.0		3.3009	6.60

QUOTATION



MECHANICAL SUPPLY

WHOLESALE SUPPLY

122 W. Randall Rd., Springdale, AR 72764-18017
 479/758-2055 Fax: 479/758-1874
 200 S. Zero, Ft. Smith, AR 72901-8840
 479/785-1188 Fax: 479/785-1856
 535 N. Fremont, Springfield, MO 65802-3532
 417/863-1343 Fax: 417/863-8508
 1827 W. 10th St. Joplin, MO 64801-9998
 417/385-4300 Fax: 417/385-4301

Order Number	
3232716	
Order Date	Page
4/11/2022 12:34:28	2 of 2
Location Id: 1	

Quantities					Item ID Item Description	Pricing UOM Unit Size	Unit Price	Extended Price
Ordered	Allocated	Remaining	UOM Unit Size	Disp.				
1	0	1 EA	1.0		PVCDWV9030 90 PVC DWV HxH 3 300	EA 1.0	9.6957	9.70
2	0	2 EA	1.0		PVCDWV9040 90 PVC DWV HxH 4 300	EA 1.0	19.1502	38.30
1	0	1 EA	1.0		PVCDWV9060 90 PVC DWV HxH 6 300	EA 1.0	67.0494	67.05
1	0	1 EA	1.0		PVCDWV4540 45 PVC DWV HxH 4 321	EA 1.0	15.9018	15.90
9	0	9 EA	1.0		PVCDWV4560 45 PVC DWV HxH 6 321	EA 1.0	58.7606	528.85
1	0	1 EA	1.0		PVCDWVY4030 WYE PVC DWV HxHxH 4X3 601	EA 1.0	26.0602	26.06
1	0	1 EA	1.0		PVCDWVY6040 WYE PVC DWV HxHxH 6X4 601	EA 1.0	74.8210	74.82
5	0	5 EA	1.0		PVCDWVY40 WYE PVC DWV HxHxH 4 600	EA 1.0	32.1015	160.51
1	0	1 EA	1.0		PVCDWVDY40 DBL WYE PVC DWV HxHxHxH 4 611	EA 1.0	74.7766	74.78
1	0	1 EA	1.0		PVCDWVY4020 WYE PVC DWV HxHxH 4X2 601	EA 1.0	19.2119	19.21

Total Lines: 19

TOTAL: 1,859.74
***Plus Applicable Taxes**



ETAIROS HVAC

1847 VANDERHORN DRIVE | MEMPHIS | TENNESSEE | 38134
PHONE: (901) 345-6100 | ETAIROSHVAC.COM

Number	005757
Date	03/17/2022
Page	1 of 1

Ship-to: TEMP
JOHNSON MECHANICAL
, TN 00000

Bill-to: 102085
Cash
Accounts Payable
3095 Stonebrook Circle
Memphis, TN 38116

Reference #	Slsp	Terms	Whse	Freight	Ship Via
	JBG John Gleason	Net 30	01	PRE/ADD	BESTWAY
Quoted By: JBG	Quoted To:	Effective:	NONE	Expires:	04/16/2022

Item	Description	Ordered	UM	Price	UM	Extension
WCSG0200	METRAFLEX 2" SLEEVE 12" LONG	6	EA	31.00	EA	186.00
WCSG0400	METRAFLEX 4" SLEEVE 12" LONG	1	EA	51.00	EA	51.00
WCSG0500	METRAFLEX 5" SLEEVE 12" LONG	1	EA	59.00	EA	59.00
WCSG0600	METRAFLEX 6" SLEEVE 12" LONG	16	EA	72.00	EA	1,152.00
WCSG0800	METRAFLEX 8" SLEEVE 12" LONG	5	EA	112.00	EA	560.00
WCSG1000	METRAFLEX 10" SLEEVE 12" LONG	15	EA	127.00	EA	1,905.00
WCSG1200	METRAFLEX 12" SLEEVE 12" LONG	3	EA	174.00	EA	522.00

Merchandise	Misc	Tax	Freight	Total
4,435.00	.00	.00	.00	4,435.00

FREIGHT CHARGES ARE NOT INCLUDED.

Customer Copy

Company: Johnson Mechanical
 JobName: Parking Garage ASI #3
 Material Set: Bid
 Labor Set: 100 (PHCC)
 Run Date: 04-08-2022 @ 08:28:18
 Sort Key: By Family/Blueprint #

 Jade Volume

Family/B	Qty	Size	Description
Pipe -	21	2	Sch 40 PVC DWV PE Pipe
Pipe -	14	3	Sch 40 PVC DWV PE Pipe
Pipe -	211	4	Sch 40 PVC DWV PE Pipe
Pipe -	314	6	Sch 40 PVC DWV PE Pipe
Fitting -	2	4	PVC DWV Coupling
Fitting -	12	6	PVC DWV Coupling
Fitting -	3	2	PVC DWV Cap
Fitting -	1	3	PVC DWV Cap
Fitting -	5	4	PVC DWV Cap
Fitting -	4	6	PVC DWV Cap
Fitting -	2	4x2	PVC DWV Reducer
Fitting -	3	6	PVC DWV Wye
Fitting -	2	2	PVC DWV 1/4 Bend
Fitting -	1	3	PVC DWV 1/4 Bend
Fitting -	2	4	PVC DWV 1/4 Bend
Fitting -	1	6	PVC DWV 1/4 Bend
Fitting -	1	4	PVC DWV 1/8 Bend
Fitting -	7	6	PVC DWV 1/8 Bend
Fitting -	1	4x3	PVC DWV Reducing Wye
Fitting -	1	6x4	PVC DWV Reducing Wye
Fitting -	5	4	PVC DWV Combo Wye
Fitting -	1	4	PVC DWV Double Combo Wye
Fitting -	1	4x2	PVC DWV Red Combo Wye
Hanger -	104	NA	cu yards Sand Backfill
Hanger -	104	NA	cu yards Excavation
Joint -	10	2	Solvent Weld Joints
Joint -	4	3	Solvent Weld Joints
Joint -	41	4	Solvent Weld Joints
Joint -	55	6	Solvent Weld Joints
Job Item -	1	NA	FLOOR CLEANOUT
Job Item -	3	2	LINK SEAL
Job Item -	1	3	LINK SEAL
Job Item -	8	4	LINK SEAL
Job Item -	10	4	Riser Clamp
Job Item -	2	NA	6 x 4 reducer
Job Item -	3	4	sleeve
Job Item -	11	5	sleeve
Job Item -	8	6	sleeve
980 (TOTAL)			

ASI#3

ARCHITECT/ENGINEER'S SUPPLEMENTAL INSTRUCTIONS

Owner:	<u>City of Fayetteville</u>	Owner's Project No.:	<u>ID 2021-0916</u>
Engineer:	<u>Olsson</u>	Engineer's Project No.:	<u>020-02750</u>
Contractor:	<u>Nabholz Construction Company</u>	Contractor's Project No.:	<u>02-19-2526-CO8</u>
Project:	<u>Fayetteville Downtown Parking Deck</u>		
Contract Name:	<u>Fayetteville Downtown Parking Deck – City Costs for Structure; Change Order 8 to Cultural Arts Corridor Contract Construction Management at Risk Contract RFQ-18-11</u>		
Date of Contract:	<u>Change Order executed by City of Fayetteville on December 14, 2021</u>		
Date of ASI# 1:	<u>April 01, 2022</u>		

This supplemental instruction outlines the proposed 'general' changes to the Contractor's scope of work. This supplemental instruction consists of all drawings, specifications, and other documents listed below. The Contractor shall prepare a quotation to complete all work listed in this supplemental instruction, providing all of the information requested below, or proceeding with the work in accordance with these instructions indicating acknowledgement with no change in the contract sum or contract time. All information listed below shall be quoted as individual line items, with either an incurred cost or credit associated with each revision listed. Lump sum pricing for this supplemental instruction will not be acceptable. Quote shall be organized to clearly state which sketch and activity is being quoted, and also if the work described will result in a credit or an additional cost to the original contract.

The Owner may choose to accept or reject this Supplemental Instruction, in whole or in part, in accordance with the Terms and Conditions of the Contract. Both the Contractor and the Owner shall process this supplemental instruction in a timely fashion.

SPECIFICATIONS

Item 1: *None this ASI.*

DRAWINGS

CIVIL

Revised Sheet C1.02A – SITE PLAN - ASI #3 dated 4/01/2022

- See ASI #3 Narrative

Revised Sheet C1.02B – UTILITY PLAN - ASI #3 dated 4/01/2022

- See ASI #3 Narrative

Revised Sheet C1.03A – GRADING PLAN - ASI #3 dated 4/01/2022

- See ASI #3 Narrative

STRUCTURAL

Revised Sheet S1.01 - GROUND TIER PLAN - ASI #3 dated 4/01/2022

- See ASI #3 Narrative

MEP

Revised Sheet P1.01 - DOMESTIC, SANITARY & STORM WATER GROUND TIER - ASI #3 dated 4/01/2022

- See ASI #3 Narrative

Revised Sheet P1.02 - DOMESTIC, SANITARY & STORM WATER TIER 2- ASI #3 dated 4/01/2022

- See ASI #3 Narrative

Revised Sheet P1.03 - DOMESTIC, SANITARY & STORM WATER TIER 3 - ASI #3 dated 4/01/2022

- See ASI #3 Narrative

Revised Sheet P1.04 - DOMESTIC, SANITARY & STORM WATER TIER 4 - ASI #3 dated 4/01/2022

- See ASI #3 Narrative

Revised Sheet P1.05 - DOMESTIC, SANITARY & STORM WATER TIER 5- ASI #3 dated 4/01/2022

- See ASI #3 Narrative

Revised Sheet P1.06 - DOMESTIC, SANITARY & STORM WATER TIER 6 - ASI #3 dated 4/01/2022

- See ASI #3 Narrative

Revised Sheet E2.01 - POWER & SYSTEMS GROUND TIER - ASI #3 dated 4/01/2022

- See ASI #3 Narrative

Revised Sheet E5.01 - DIAGRAMS - ASI #3 dated 4/01/2022

- See ASI #3 Narrative

Attachments

2022-04-01_ASI #3- DRAWINGS

2022-04-01_ASI #3- NARRATIVES

END OF SUPPLEMENTAL INSTRUCTION NO. 3

Fayetteville Downtown Parking Deck

ASI #3 - Narrative

CIVIL – Olsson

Revised Sheet: **C1.02A** – SITE PLAN

- 1) Revised locations of bike racks
- 2) Revised location of pedestrian crosswalk along West Ave.

Revised Sheet: **C1.02B** – UTILITY PLAN

- 1) Additional sanitary line south of structure to connect to MEP plans.
- 2) Displayed structural column foundations for colonnade to show interaction between utility lines and foundations.

Revised Sheet: **C1.03A** – GRADING PLAN

- 1) Revised grading for ADA ramps due to pedestrian crossing location change.

Structural – Walker

Revised Sheet: **S1.01** – GROUND TIER PLAN

- 1) Added landing with concrete wash outside of door at Grid E-9

MEP – Olsson

POLICE STATION CHANGES

Revised Sheet: **P1.01** – DOMESTIC, SANITARY & STORM WATER GROUND TIER

- 1) Added sanitary rough in piping for police station.

Revised Sheet: **E2.01** – DOMESTIC, SANITARY & STORM WATER GROUND TIER

- 1) Moved location of service entrance for police station overhead door.

CONDOMINIUM CHANGES

Revised Sheet: **P1.01** – DOMESTIC, SANITARY & STORM WATER GROUND TIER

- 1) Added sanitary rough in piping for police station.

Revised Sheet: **P1.02** – DOMESTIC, SANITARY & STORM WATER TIER 2

- 1) Changed sanitary piping to accommodate added condominiums.

Revised Sheet: **P1.03** – DOMESTIC, SANITARY & STORM WATER TIER 3

- 1) Changed sanitary piping to accommodate added condominiums

Revised Sheet: **P1.04** – DOMESTIC, SANITARY & STORM WATER TIER 4

- 2) Changed sanitary piping to accommodate added condominiums.

Revised Sheet: **P1.05** – DOMESTIC, SANITARY & STORM WATER TIER 5

- 1) Changed sanitary piping to accommodate added condominiums.

Revised Sheet: **P1.06** – DOMESTIC, SANITARY & STORM WATER TIER 6

- 1) Changed sanitary piping to accommodate added condominiums.

Revised Sheet: **E5.01** – DIAGRAMS

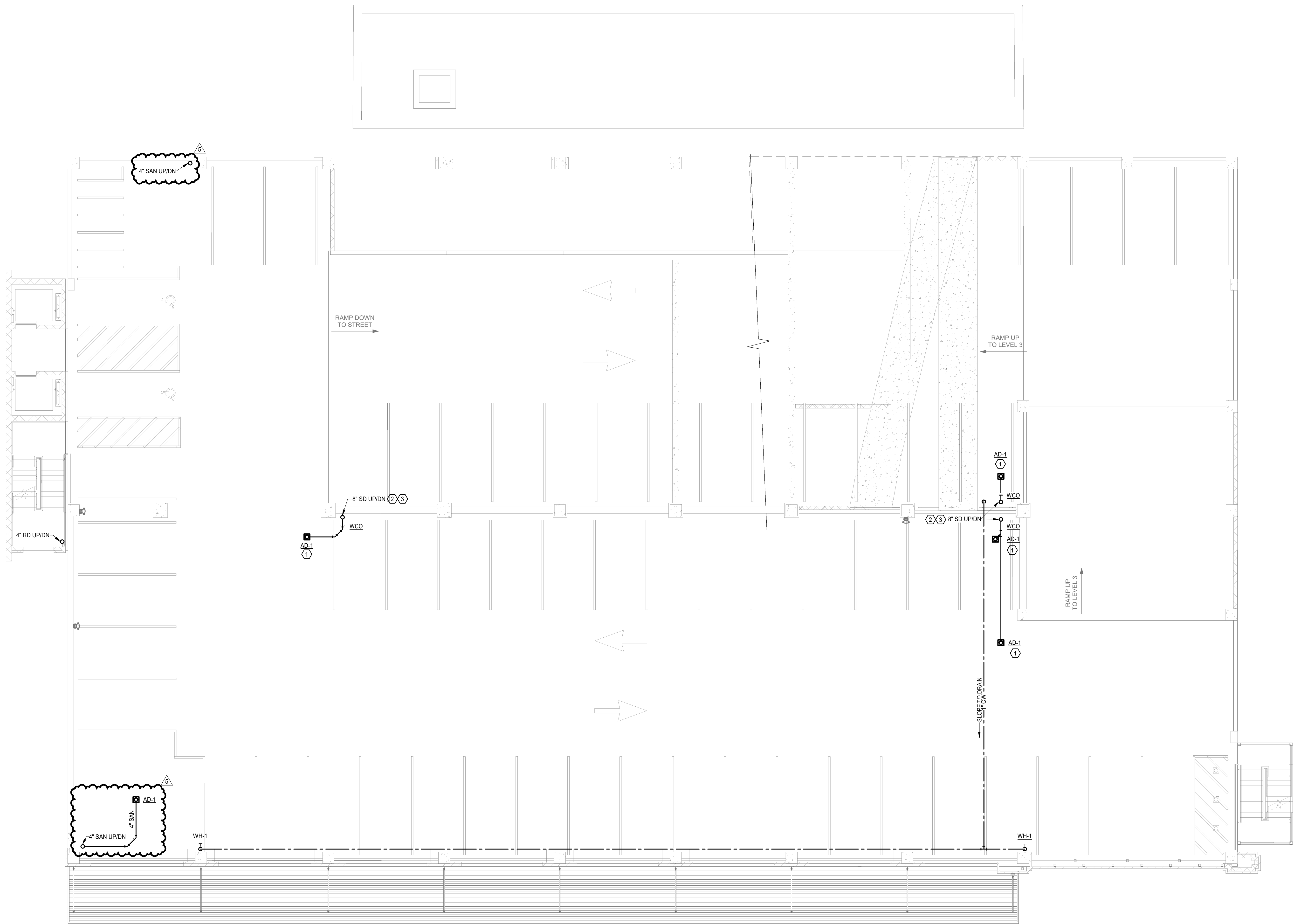
- 1) Provided meter center 'MC-2' to accommodate condominiums.
- 2) Service size to meter center 'MC-1" was updated.



1

DOMESTIC, SANITARY, & STORM WATER SECOND TIER

SCALE: 1/8" = 1'-0"



SHEET KEYNOTES

1. 8" STORM DRAINAGE PIPING UP TO AREA DRAIN. LOCATE AREA DRAIN AT LOW POINT OF SLOPED CONCRETE PER STRUCTURAL PLANS.
2. 8" VERTICAL STORM DRAINAGE CONDUCTOR DOWN TO BELOW GRADE AND UP TO LEVEL ABOVE.
3. VERTICAL PIPING SHOWN OFFSET FROM COLUMN FOR CLARITY. ALL PIPING TO BE ROUTED VERTICALLY AS CLOSE TO COLUMN AS POSSIBLE.

drawn by: NB
checked by: TB
approved by: TB
QA/QC by: KC
project no.: 020-0275
drawing no.:
date: 08/03/2021

SHEET
P1.02

DOMESTIC, SANITARY & STORM WATER TIER 2

DOWNTOWN PARKING DECK
CITY OF FAYETTEVILLE

FAYETTEVILLE, ARKANSAS

2021

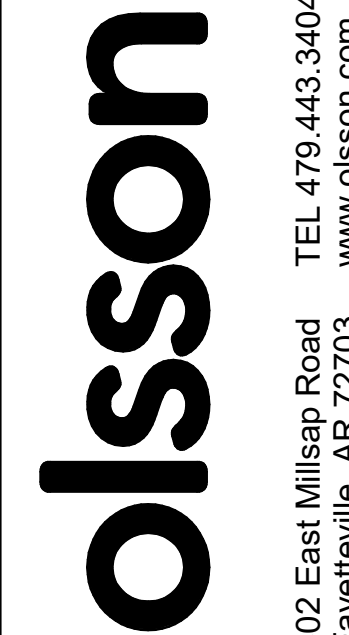
REV. NO. DATE REVISION DESCRIPTION

3	3/16/2022	AS.1 REV. 2
5	04/07/2022	AS.3

REVISIONS



MBL ARCHITECTURE



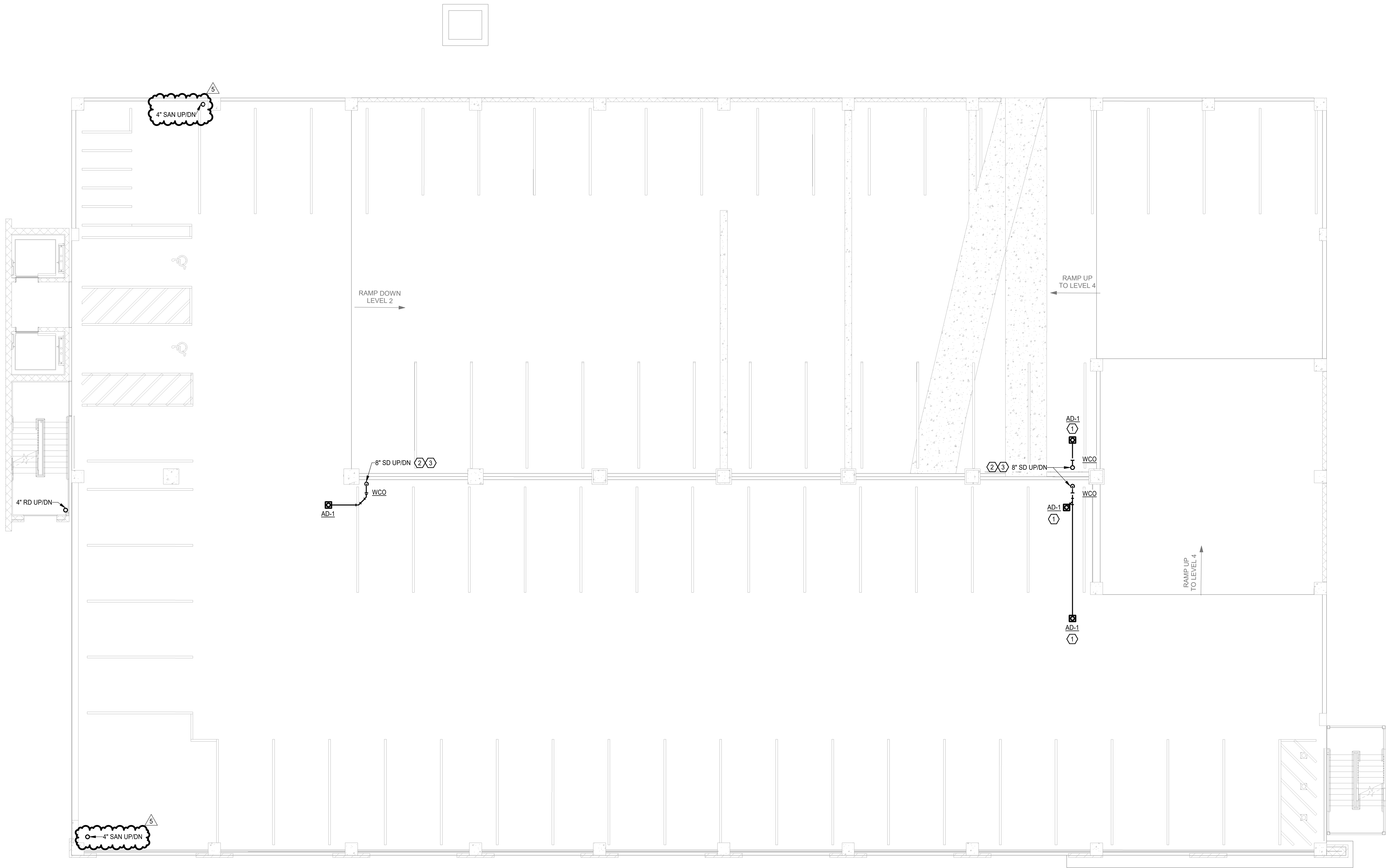
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3/10/2022 10:46:37 AM



1

DOMESTIC, SANITARY, & STORM WATER THIRD TIER

SCALE: 1/8" = 1'-0"



SHEET KEYNOTES

- 6" STORM DRAINAGE PIPING UP TO AREA DRAIN. LOCATE AREA DRAIN AT LOW POINT OF SLOPED CONCRETE PER STRUCTURAL PLANS.
- 8" VERTICAL STORM DRAINAGE CONDUCTOR DOWN TO BELOW GRADE AND UP TO LEVEL ABOVE.
- VERTICAL PIPING SHOWN OFFSET FROM COLUMN FOR CLARITY. ALL PIPING TO BE ROUTED VERTICALLY AS CLOSE TO COLUMN AS POSSIBLE.

drawn by: NB
checked by: TB
approved by: TB
QA/QC by: KC
project no.: 020-0275
drawing no.:
date: 08/03/2021

SHEET
P1.03

DOMESTIC, SANITARY & STORM WATER TIER 3

DOWNTOWN PARKING DECK
CITY OF FAYETTEVILLE

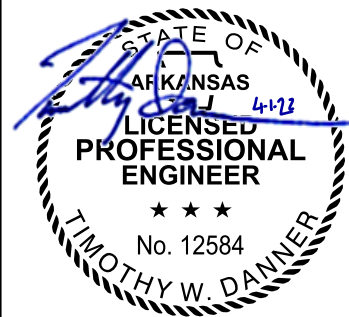
FAYETTEVILLE, ARKANSAS

2021

REV. NO. DATE REVISION DESCRIPTION

5	04/07/2022	ASB 3	

REVISIONS



WALKER
CONSULTANTS
2525 Bay Area Blvd
Suite 400
Houston, TX 77058
281.280.0068 Ph

MBL ARCHITECTURE

olsson

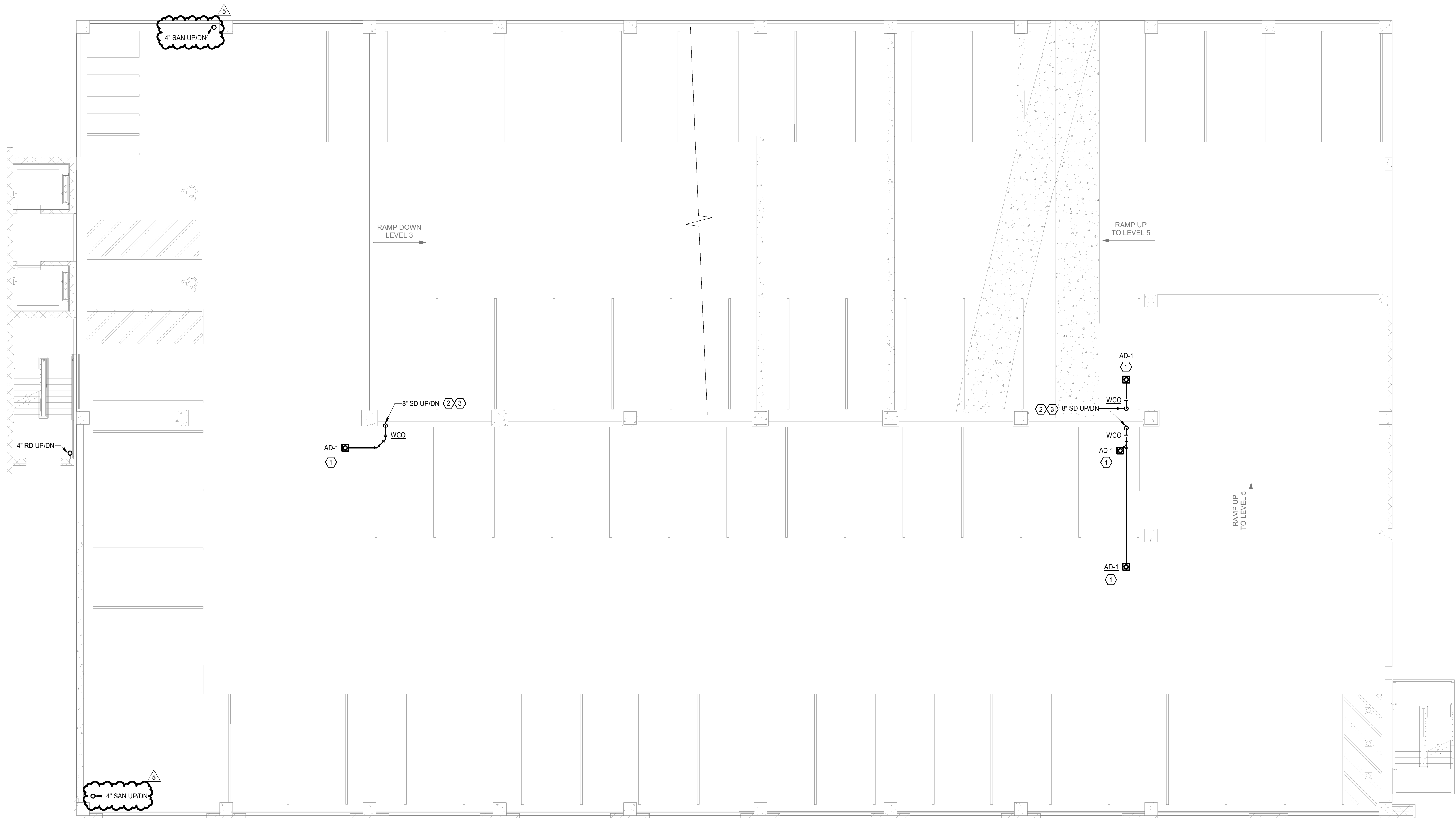
302 East Millers Road
Fayetteville, AR 72703
TEL 479-443.3404
www.olson.com



1

DOMESTIC, SANITARY, & STORM WATER FOURTH TIER

SCALE: 1/8" = 1'-0"



SHEET KEYNOTES

- 8" STORM DRAINAGE PIPING UP TO AREA DRAIN, LOCATE AREA DRAIN AT LOW POINT OF SLOPED CONCRETE PER STRUCTURAL PLANS.
- 8" VERTICAL STORM DRAINAGE CONDUCTOR DOWN TO BELOW GRADE AND UP TO LEVEL ABOVE.
- VERTICAL PIPING SHOWN OFFSET FROM COLUMN FOR CLARITY. ALL PIPING TO BE ROUTED VERTICALLY AS CLOSE TO COLUMN AS POSSIBLE.

drawn by: NB
checked by: TB
approved by: TB
QA/QC by: KC
project no.: 020-0275
drawing no.:
date: 08/03/2021

SHEET
P1.04

DOMESTIC, SANITARY & STORM WATER TIER 4

DOWNTOWN PARKING DECK
CITY OF FAYETTEVILLE

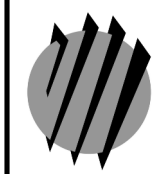
FAYETTEVILLE, ARKANSAS

2021

REV. NO. DATE REVISION DESCRIPTION

5 04/07/2022 ASB 3

REVISIONS



WALKER
CONSULTANTS
2525 Bay Area Blvd
Suite 400
Houston, TX 77058
281.280.0068 Ph

MBL ARCHITECTURE

olsson

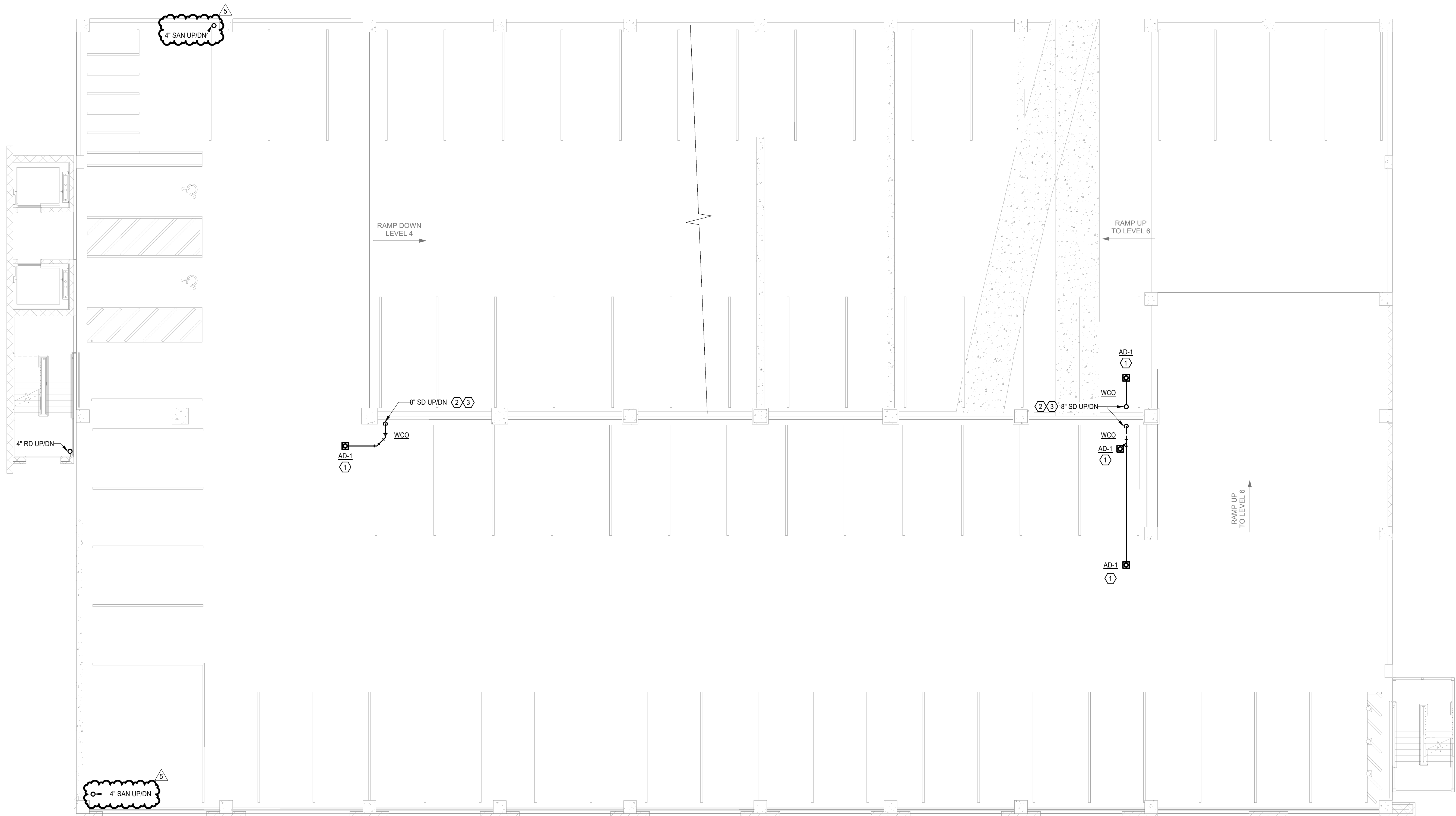
302 East Millers Road
Fayetteville, AR 72703
TEL 479-443.3404
www.olsosn.com



1

DOMESTIC, SANITARY, & STORM WATER FIFTH TIER

SCALE: 1/8" = 1'-0"



SHEET KEYNOTES

- 6" STORM DRAINAGE PIPING UP TO AREA DRAIN. LOCATE AREA DRAIN AT LOW POINT OF SLOPED CONCRETE PER STRUCTURAL PLANS.
- 8" VERTICAL STORM DRAINAGE CONDUCTOR DOWN TO BELOW GRADE AND UP TO LEVEL ABOVE.
- VERTICAL PIPING SHOWN OFFSET FROM COLUMN FOR CLARITY. ALL PIPING TO BE ROUTED VERTICALLY AS CLOSE TO COLUMN AS POSSIBLE.

drawn by: NB
checked by: TD
approved by: TD
QA/QC by: KC
project no.: 020-0275
drawing no.:
date: 08/03/2021

SHEET
P1.05

DOMESTIC, SANITARY & STORM WATER TIER 5

DOWNTOWN PARKING DECK
CITY OF FAYETTEVILLE

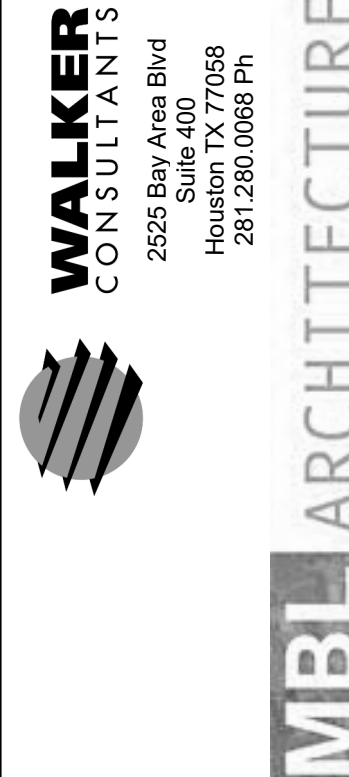
FAYETTEVILLE, ARKANSAS

2021

REV. NO. DATE REVISION DESCRIPTION

5 04/07/2022 ASB 3

REVISIONS



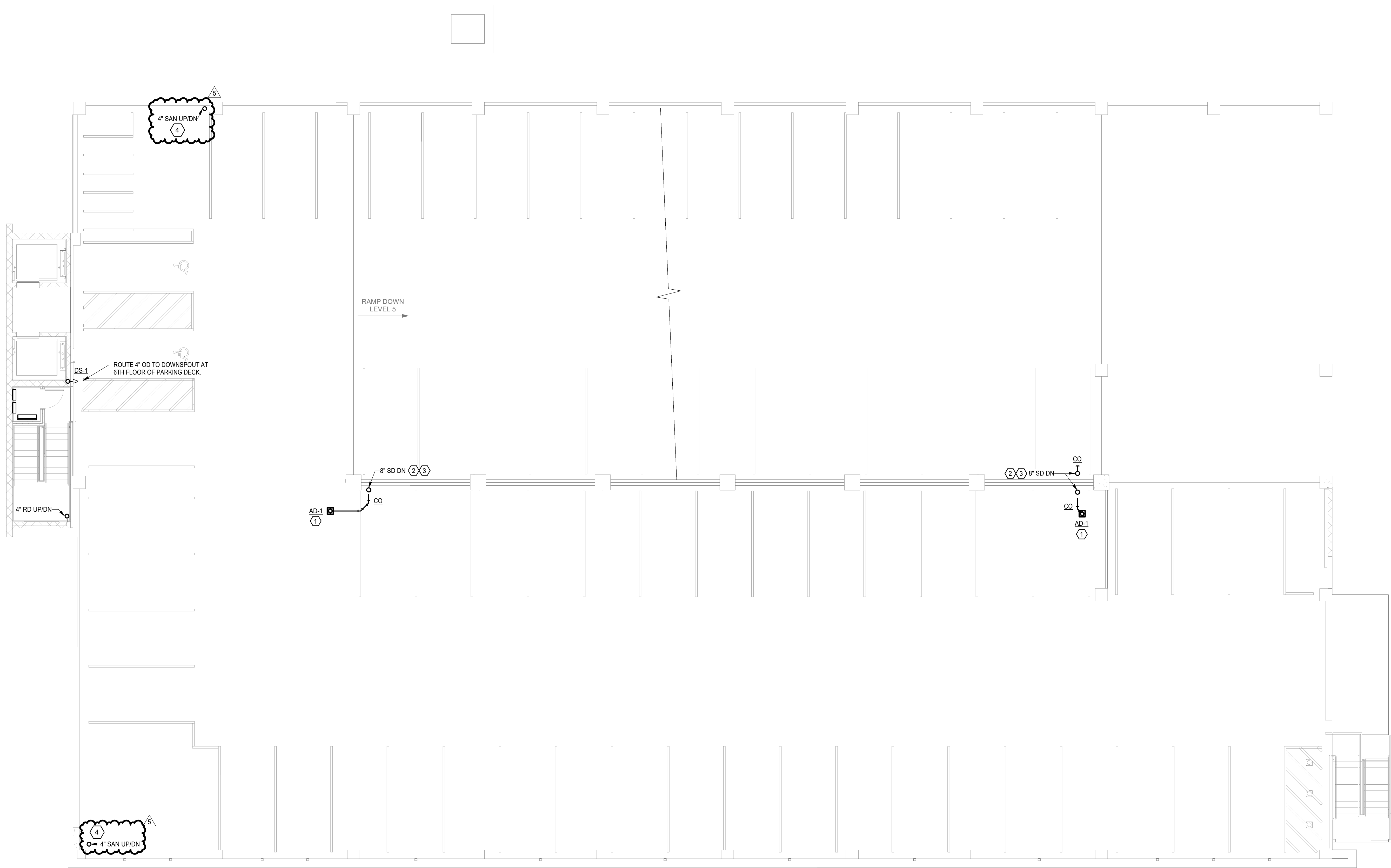
olsson
202 East Millson Road
Fayetteville, AR 72703
TEL 479-443-3404
www.olson.com



1

DOMESTIC, SANITARY, & STORM WATER TOP TIER

SCALE: 1/8" = 1'-0"



SHEET KEYNOTES

- 8" STORM DRAINAGE PIPING UP TO AREA DRAIN, LOCATE AREA DRAIN AT LOW POINT OF SLOPED CONCRETE PER STRUCTURAL PLANS.
- 8" VERTICAL STORM DRAINAGE CONDUCTOR DOWN TO BELOW GRADE AND UP TO LEVEL ABOVE.
- VERTICAL PIPING SHOWN OFFSET FROM COLUMN FOR CLARITY. ALL PIPING TO BE ROUTED VERTICALLY AS CLOSE TO COLUMN AS POSSIBLE.
- CAP 4" SANITARY STACK FOR FUTURE USE.

drawn by: NB
checked by: TB
approved by: TB
QA/QC by: KC
project no.: 020-0275
drawing no.:
date: 08/03/2021

SHEET
P1.06

DOMESTIC, SANITARY & STORM WATER TIER 6

DOWNTOWN PARKING DECK
CITY OF FAYETTEVILLE

FAYETTEVILLE, ARKANSAS

2021

REV. NO. DATE REVISION DESCRIPTION

5 04/07/2022 ASB 3

REVISIONS



WALKER
CONSULTANTS
2525 Bay Area Blvd
Suite 400
Houston, TX 77058
281.280.0068 Ph

MBL ARCHITECTURE

olsson

302 East Millers Road
Fayetteville, AR 72703
TEL 479-443.3404
www.olsosn.com

- A. REFER TO EQUIPMENT SCHEDULE FOR ADDITIONAL INFORMATION.
- B. JUNCTION BOXES UTILIZED FOR WALL MOUNTED DEVICES SUCH AS WALL SCONES, RECEPTACLES, ETC. SHALL BE RECESSED IN CONDUIT PATHWAYS PROVIDED DURING MANUFACTURE OF STRUCTURE. COORDINATE ALL LOCATIONS WITH STRUCTURAL PRIOR TO MANUFACTURE.
- C. REFER TO SECURITY PLANS FOR ADDITIONAL INFORMATION.

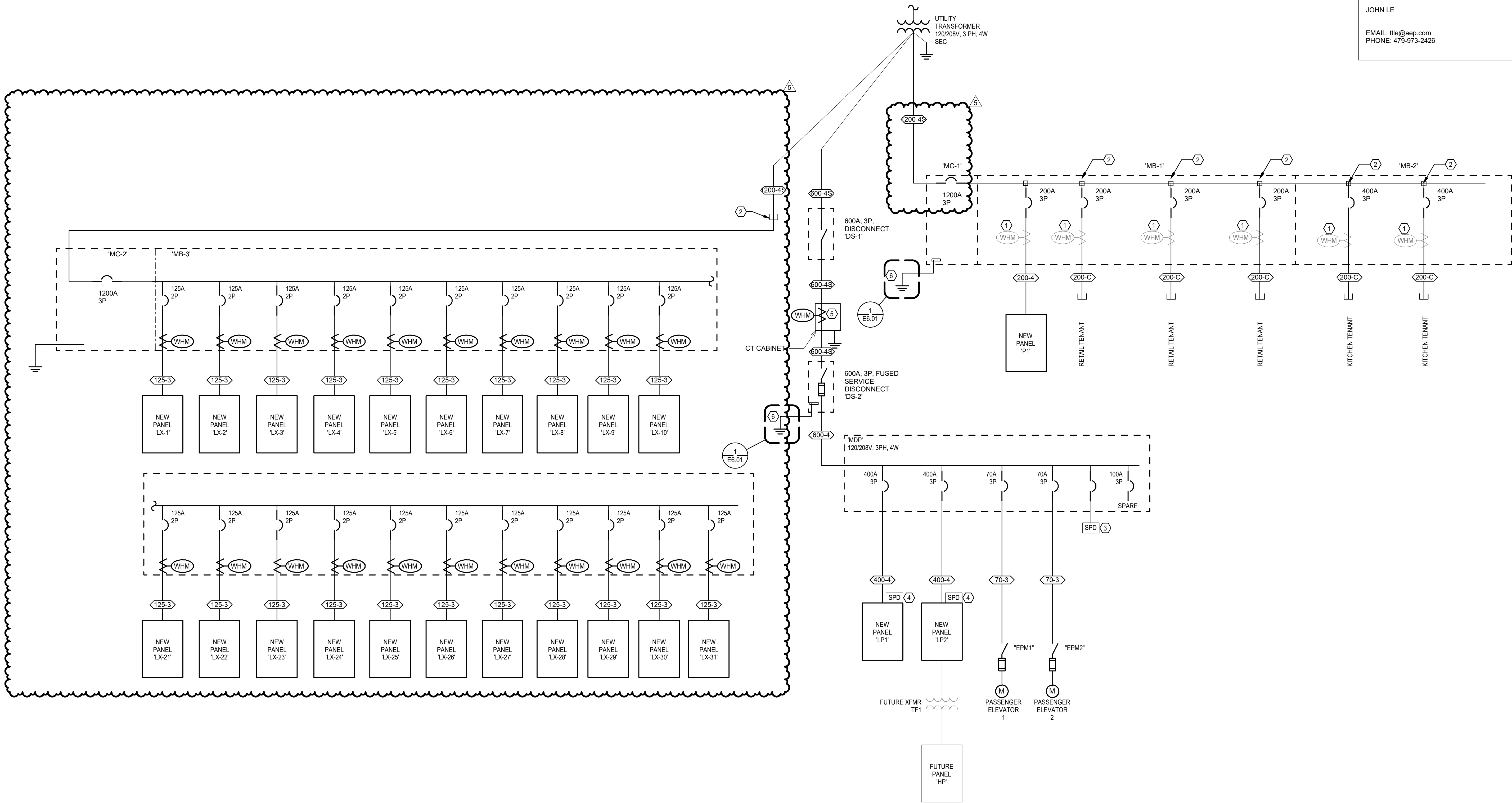
1. (1") CONDUIT FOR FIRE ALARM COMMUNICATION CABLEING. ROUTE BELOW GRADE AND TERMINATE IN AN IN-GRADE BOX 5'-0" FROM BUILDING.
2. HEAT DETECTOR AT THE BASE OF THE ELEVATOR SHAFT. ACTIVATION OF HEAT DETECTOR SHALL CAUSE A FIRE ALARM RELAY TO ACTIVATE MECHANISM IN THE POWER MODULE.
3. EMPTY CONDUIT PER ONE-LINE DIAGRAM ROUTED BELOW GRADE FROM UTILITY TRANSFORMER SECONDARY FOR FUTURE METER BANK. CAP CONDUIT WITH PULL STRINGS.
4. TELECOMMUNICATIONS GROUND BAR. REFER TO GROUND BAR DETAIL FOR ADDITIONAL INFORMATION.
5. (1") CONDUIT ROUTE TO TOP TIE FOR ELEVATOR TELECOMM CABLEING.
6. SECURITY CONDUIT NOT SHOWN. REFER TO SECURITY PLANS FOR ADDITIONAL INFORMATION.
7. SUMP PUMP CONTROL PANEL. ROUTE 2" CONDUIT TO SUMP PUMP. REFER TO SUMP PUMP DETAIL FOR ADDITIONAL INFORMATION.
8. FUTURE 208V PRIMARY. 277/480V SECONDARY TRANSFORMER FOR FUTURE LEVEL III CAR CHARGING STATIONS.
9. CONDUITS FOR CAR CHARGING STATIONS ROUTED UP TO FLOOR ABOVE. SEE LEVEL ABOVE POWER PLANS FOR ADDITIONAL INFORMATION.
10. FUTURE 252A, 480V, 3PH PANELBOARD FOR FUTURE CAR CHARGING STATIONS.
11. CONDUIT PER ONE-LINE DIAGRAM ROUTED BELOW GRADE FROM METER BANK AND STUBBED UP AT 3" A.F.F. FOR FUTURE RETAIL SPACE PANEL. CAP CONDUIT WITH PULL STRINGS. REFER TO ONE-LINE DIAGRAM FOR ADDITIONAL INFORMATION.
12. PROVIDE JUNCTION BOX ROUGH-IN WITH CONDUIT FOR LARGE SIGN POWER.
13. GROUND ROD CONNECTION FOR SERVICE ENTRANCE GROUNDING. REFER TO GROUND CONNECTION DETAIL.
14. PROVIDE (1") EMPTY CONDUIT TO EACH POTENTIAL TENANT SPACE. FIVE TOTAL, WITH PULL STRING FOR FUTURE COMMUNICATION WIRING. INSTALL OVERHEAD AND/OR UNDER STRUCTURE AS POSSIBLE. COORDINATE LOCATIONS AND REQUIREMENTS WITH ARCHITECT AND STRUCTURAL ENGINEER.



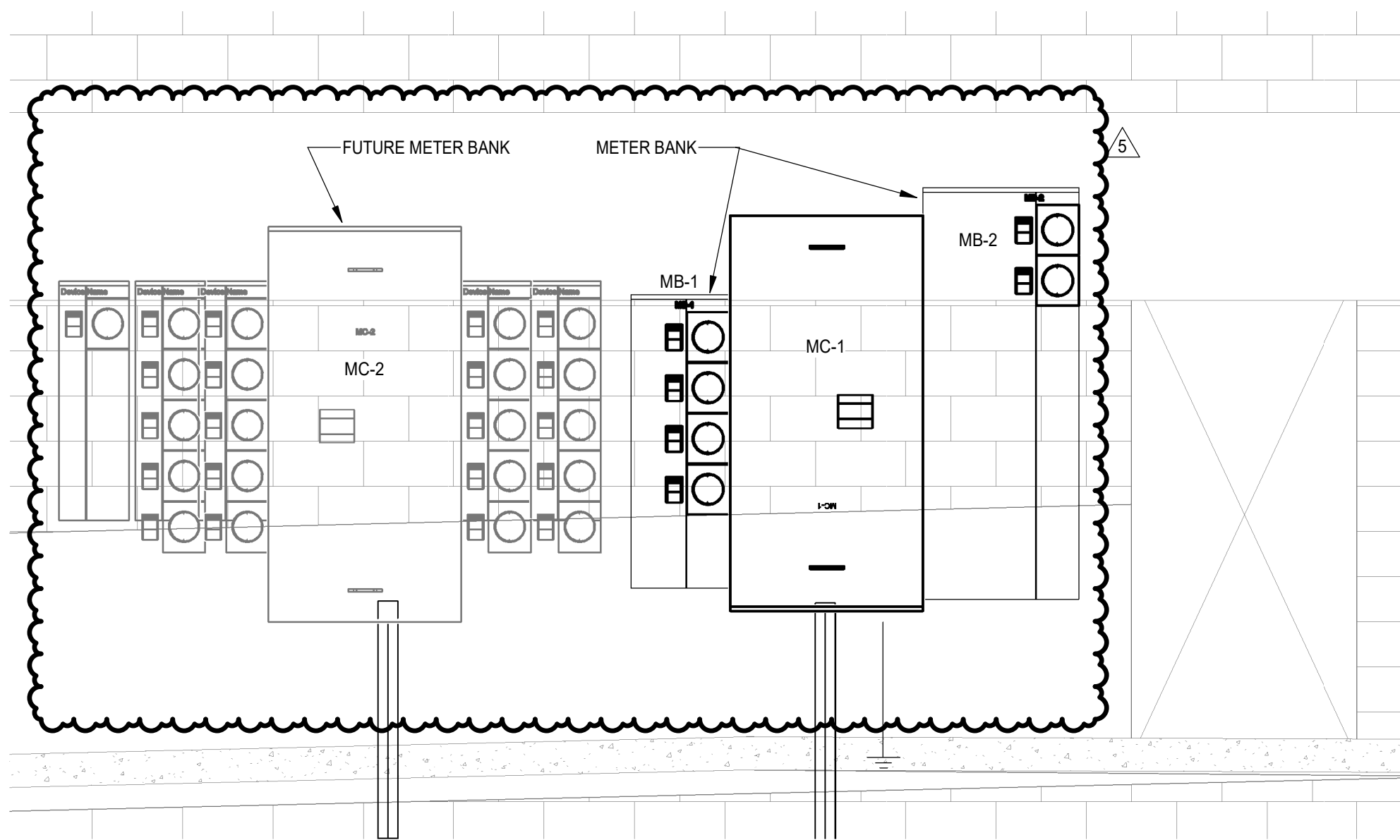
drawn by: _____	SH
checked by: _____	TO
approved by: _____	TO
QA/QC by: _____	TO
project no.: 020-0275	
drawing no.: _____	
date: 08/03/2021	

POWER & SYSTEMS GROUND TIER	REV. NO.	DATE	REVISION DESCRIPTION
	5	04/07/2022	ASI 3
DOWNTOWN PARKING DECK			
CITY OF FAYETTEVILLE			
FAYETTEVILLE, ARKANSAS	2021		REV

SHEET
E2.01

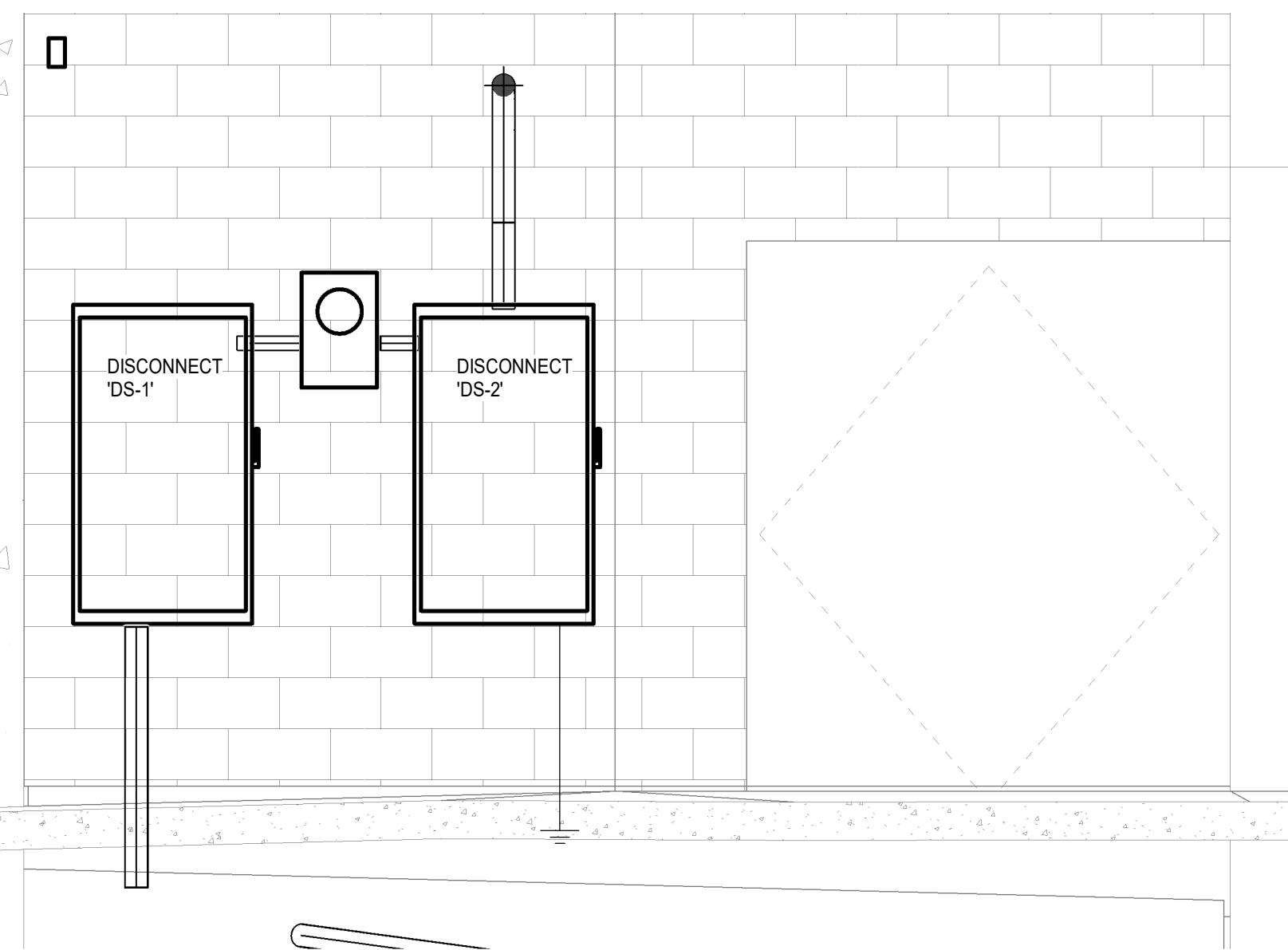


1 ONE-LINE DIAGRAM
SCALE: NOT TO SCALE



3 NORTH WALL SERVICE 2 ELEVATION
NOT TO SCALE

NOTE:
1. DETERMINE EXACT DIMENSIONS, MOUNTING HEIGHTS, AND LOCATION OF CONDUITS FOR CONNECTION TO EQUIPMENT.
2. REFER TO MANUFACTURER FOR ALL REQUIREMENTS AND EXACT SIZES OF EQUIPMENT.
3. COORDINATE ALL REQUIREMENTS WITH UTILITY COMPANY PRIOR TO INSTALLATION AND ORDERING OF EQUIPMENT.



UTILITY CONTACT:
SWEP
JOHN LE
EMAIL: title@aep.com
PHONE: 479-973-2426

GENERAL SHEET NOTES

- BREAKER COORDINATION STUDY PER SPECIFICATIONS. PROVIDE BREAKER COORDINATION STUDY PRIOR TO INSTALLATION OF EQUIPMENT.
- PROVIDE IN BID ALL COST FOR UTILITY REQUIREMENTS. INCLUDING BUT NOT LIMITED TO: TRENCHING, CONDUIT, BACKFILL, CONCRETE PAD, ETC. COORDINATE WITH UTILITY COMPANY FOR ALL REQUIREMENTS.

SHEET KEYNOTES

- METER PER UTILITY REQUIREMENTS. REFER TO METER BANK MANUFACTURER FOR ADDITIONAL INFORMATION.
- FUTURE TENANT METERS AND CIRCUIT BREAKERS IN METER BANK. CAP CONDUIT WITH PULL STRINGS. REFER TO PLANS FOR ADDITIONAL INFORMATION.
- SURGE PROTECTION DEVICE PER SPECIFICATIONS MOUNTED ABOVE PANELBOARD. KEEP CONNECTION DISTANCE AS SHORT AND STRAIGHT AS POSSIBLE. COORDINATE BREAKER AND CONDUIT SIZE WITH APPROVED SUBMITTALS. WIRING SHALL BE INSTALLED IN PVC NIPPLE.
- PROVIDE SURGE PROTECTION DEVICE (SPD) TO THE TOP OR SIDE OF THE PANELBOARD. CONDUCTORS FROM BREAKER TO THE SPD SHALL BE NO LONGER THAN 18". SHALL HAVE NO 90-DEGREE BENDS AND SHALL BE INSTALLED IN PVC NIPPLE BETWEEN PANELBOARD AND SPD.
- CT CABINET AND METER PER UTILITY REQUIREMENTS.
- ALL SERVICE GROUNDS SHALL BE BONDED TOGETHER PER GROUNDING DETAIL.

FEEDER SCHEDULE

FEEDER	NO. SETS	CONDUCTOR SIZES (AWG or kcmil)			CONDUIT SIZE
		PHASE	NEUTRAL	GROUND	
70-3	1	3 - #4	-	1 - #6	1-1/4"
125-3	1	3 - #1	-	1 - #6	1-1/2"
200-4	1	3 - #3/0	1 - #3/0	1 - #6	2-1/2"
200-C	1	-	-	-	4"
400-3	2	3 - #3/0	-	1 - #3	2-1/2"
400-4	2	3 - #3/0	1 - #3/0	1 - #3	2-1/2"
600-3	2	3 - 350 KCMIL	-	1 - #1	3"
600-4	2	3 - 350 KCMIL	1 - 350 KCMIL	1 - #1	3"

LOAD BREAKDOWN - SERVICE TO BUILDING @ 208V

SPACE	EQUIPMENT	WATTS/SF	SF	CONNECTED KW
PARKING GARAGE	DISCONNECT 'DS-2'	-	-	186
FUTURE POLICE	METER CENTER 'MC-1'	15	2204	33
FUTURE RETAIL	METER CENTER 'MC-1'	15	2204	33
FUTURE RETAIL	METER CENTER 'MC-1'	15	2204	33
FUTURE RETAIL	METER CENTER 'MC-1'	15	2204	33
FUTURE KITCHEN	METER CENTER 'MC-1'	30	2204	66
FUTURE KITCHEN	METER CENTER 'MC-1'	30	2204	66
FUTURE KITCHEN	FUTURE METER CENTER 'MC-2'	30	2204	66
FUTURE KITCHEN	FUTURE METER CENTER 'MC-2'	30	2204	66
TOTAL CONNECTED KW				582 KW

Assembly Code



Nabholz Construction - HQ
3301 N 2nd Street
Rogers, Arkansas 72756
Phone: +14796597800

Project: 02-22-2674 - Downtown Parking Deck
325 N. West Ave
Fayetteville, Arkansas 72701

Prime Contract Change Order Request #032: Parking Management System

TO:	CITY OF FAYETTEVILLE 113 W MOUNTAIN ST FAYETTEVILLE, Arkansas 72701	FROM:	Nabholz Construction Corporation
CHANGE ORDER REQUEST NUMBER / REVISION:	032 / 0	PRIME CONTRACT CHANGE ORDER:	None
STATUS:	Pending - In Review	CREATED BY:	Chad Robinson (NABHOLZ CONSTRUCTION CORP/ROG)
SCHEDULE IMPACT:		DATE CREATED:	4/13/2023
EXECUTED:	No	SIGNED CHANGE ORDER RECEIVED DATE:	
		TOTAL AMOUNT:	\$122,614.59

CHANGE ORDER REQUEST TITLE: Parking Management System

CHANGE ORDER REQUEST DESCRIPTION:

CE #064 - Parking Management System

Fayetteville City has requested that Nabholz procure the parking management system. The system has been reviewed by the City for compliance with needed functionality, performance, warranty and installation requirements.

ATTACHMENTS:

[Cost SummaryREV 4.13.23.pdf](#) , [_IPS Group Pricing Communication.pdf](#)

POTENTIAL CHANGE ORDERS IN THIS CHANGE ORDER REQUEST:

PCO #	Contract Company	Title	Schedule Impact	Amount
032	CITY OF FAYETTEVILLE	Parking Management System		\$122,614.59
Total:				\$122,614.59

CHANGE ORDER REQUEST LINE ITEMS:

PCO # 032: Parking Management System

#	Budget Code	Description	FS	Amount
1	26-1000.SUB ELECTRICAL.SUBCONTRACT	Parking Management System	City of Fayetteville	\$106,230.00
2	26-1000.SUB ELECTRICAL.SUBCONTRACT	Electrical Rough In for Signage (Allowance)	City of Fayetteville	\$5,000.00
3	26-1000.SUB ELECTRICAL.SUBCONTRACT	Shipping (Allowance)	City of Fayetteville	\$3,208.00
Subtotal:				\$114,438.00
General Liability Insurance:				\$972.72
Builders Risk Insurance:				\$11.44
SDI				11,430.48
Fee:				\$5,252.70
PP Bond:				\$509.25
Grand Total:				\$122,614.59



CITY OF FAYETTEVILLE
113 W MOUNTAIN ST
FAYETTEVILLE, Arkansas 72701

Nabholz Construction Corporation

SIGNATURE DATE

SIGNATURE DATE

PARKING MANAGEMENT SYSTEM - FAYETTEVILLE PARKING DECK - 325 N WEST AVE

Revised 4.13.23

Item	Description	Cost
1	LPR Hardware and Software – supply, install & warranty (no shipping)	\$35,019
2	Pay stations (5 ea) – supply and install (no shipping)	\$44,940
3	IP Display Signs (double-sided) – 1 @ 32X96	\$8,250
4	IP Display Signs (double-sided) – 1 @ 32X64	\$5,430
5	IP Display warranty – 3 years	\$3,154
	SUB TOTAL	\$96,793
6	Sales Tax (9.75%)	\$9,437
	SUB TOTAL	\$106,230
7	Shipping (Pay Stations)	\$2,023
8	Shipping (LPR Hardware)	\$185
9	Shipping (Allowance - Displays)	\$1,000
10	IP Display Installation (Allowance)	\$5,000
	TOTAL	\$114,438

Chad Robinson

From: Clay, Justin <jclay@fayetteville-ar.gov>
Sent: Thursday, April 13, 2023 8:21 AM
To: Chad Robinson
Cc: Abernathy, Waylon; Braxton Ratliff; Jacob Keeney; Kyle Stout
Subject: FW: IPS Group Pricing- Fayetteville, AR Parking Deck
Attachments: City of Fayetteville Arkansas_SalesQuoteqty5.pdf; IPS Bid 4.3.23csr.pdf; Cost Summary.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

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Chad,

Attached (first attachment) is a revised quote for pay stations that should bring our total down by \$10,337.09. Details below. I've also attached the reference and summary documents that you sent over earlier this week that these changes could be applied to (attachments 2-3)

New cost for Pay Stations supply and install (no shipping): **\$44,940**. Reflects a deduction in on-site install of \$3,800 reducing the total by that amount (\$48,740 - \$3,800 = \$44,940)

New cost for Pay Station Shipping: **\$2,022.91**. Reflects a deduction of \$6,537.09 in pay station shipping costs reducing the total by that amount (\$8,560 - \$6,537.09 = 2,022.91)

We're good with this number. Let me know what I can do to help with this process and get IPS what they need to submit the order.

Thanks,

Justin Clay

Parking Manager

Parking Management Division

City of Fayetteville, Arkansas

jclay@fayetteville-ar.gov

T 479.575.8277

[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)



From: Braxton Ratliff <Braxton.Ratliff@ipsgroupinc.com>
Sent: Thursday, April 13, 2023 8:04 AM
To: Clay, Justin <jclay@fayetteville-ar.gov>
Subject: RE: IPS Group Pricing- Fayetteville, AR Parking Deck

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Here is an updated quote we should get to sales orders ASAP. No taxes. And 1 IPS tech for 1 day which is the minimum. Took that to \$950 from \$4,750.

best



Braxton Ratliff | Account Manager -Midwest/East| IPS Group, Inc.
t. 859.314.4062

IPS Group, Inc.
7737 Kenamar Court
San Diego, CA 92121, USA



calendly.com/braxtonratliff/30min

From: Clay, Justin <jclay@fayetteville-ar.gov>
Sent: Thursday, April 13, 2023 8:40:34 AM
To: Braxton Ratliff <Braxton.Ratliff@ipsgroupinc.com>
Subject: RE: IPS Group Pricing- Fayetteville, AR Parking Deck

That's fair. And yes, the \$10k for IP Display install is an estimate. Is the \$6,536.70 in reduced shipping the only reduction? Any room on IPS or Vigilant on-site technicians?

Thanks,
Justin

From: Braxton Ratliff <Braxton.Ratliff@ipsgroupinc.com>
Sent: Wednesday, April 12, 2023 3:37 PM
To: Clay, Justin <jclay@fayetteville-ar.gov>
Subject: RE: IPS Group Pricing- Fayetteville, AR Parking Deck

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Looking at your summary the sales tax listed should not be applicable. So if you take out the 10k for that as well as the 6k or so difference in shipping from IPS we are at 16k. And is the 10k install for the IP Displays an estimate?

Best,



Braxton Ratliff | Account Manager -Midwest/East| IPS Group, Inc.
t. 859.314.4062

IPS Group, Inc.
7737 Kenamar Court
San Diego, CA 92121, USA



calendly.com/braxtonratliff/30min

From: [Braxton Ratliff](#)
Sent: Wednesday, April 12, 2023 12:24 PM
To: [Clay, Justin](#)
Subject: RE: IPS Group Pricing- Fayetteville, AR Parking Deck

I agree. Lets shoot to have this done by end of week.



Braxton Ratliff | Account Manager -Midwest/East| IPS Group, Inc.
t. 859.314.4062

IPS Group, Inc.
7737 Kenamar Court
San Diego, CA 92121, USA



calendly.com/braxtonratliff/30min

From: [Clay, Justin](#)
Sent: Wednesday, April 12, 2023 11:36 AM
To: [Braxton Ratliff](#)
Subject: RE: IPS Group Pricing- Fayetteville, AR Parking Deck

WARNING: The e-mail below is from an external source. Please exercise caution before opening attachments and clicking links.

And another thing we need to not lose sight of....as we finalize the pricing for this we need to be moving forward with an order. We know we're going to purchase this equipment and need to get on the production schedule and installer timeline. The deck construction may be complete as early as mid-June and parking equipment could likely be able to be installed prior to that.

Thanks,
Justin

From: Clay, Justin
Sent: Wednesday, April 12, 2023 8:18 AM
To: Braxton Ratliff <Braxton.Ratliff@ipsgroupinc.com>
Subject: RE: IPS Group Pricing- Fayetteville, AR Parking Deck

Thanks, Braxton. See attached. Obviously some product offerings changed which impacted some costs but this is the info we were provided to create our budget.

Thanks,
Justin

From: Braxton Ratliff <Braxton.Ratliff@ipsgroupinc.com>
Sent: Wednesday, April 12, 2023 8:01 AM
To: Clay, Justin <jclay@fayetteville-ar.gov>
Cc: Abernathy, Waylon <wabernathy@fayetteville-ar.gov>
Subject: RE: IPS Group Pricing- Fayetteville, AR Parking Deck

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I plugged the actual order into our Meter Shop platform and the actual shipping for 5 MSM is \$2,023.30 instead of the budgetary estimate on the quote of \$8,560.0. Where is the biggest discrepancy from the first quotes? I can go back to Mike and see what can be done.

If we need to set up a call let me know.

Best,



Braxton Ratliff | Account Manager -Midwest/East| IPS Group, Inc.
t. 859.314.4062

IPS Group, Inc.
7737 Kenamar Court
San Diego, CA 92121, USA



calendly.com/braxtonratliff/30min

From: [Clay, Justin](#)
Sent: Tuesday, April 11, 2023 12:39 PM
To: [Braxton Ratliff](#)
Cc: [Abernathy, Waylon](#)
Subject: FW: IPS Group Pricing- Fayetteville, AR Parking Deck

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Braxton,

I agree with these numbers based on what's been provided. However this puts us about \$30k over budget based on cost estimates from two years ago when this project commenced. Is there anything we can do with respect to shipping or on-site technical services? Particularly, knowing that we plan to replace our remaining Digital pay stations with IPS products later this year (and installing additional Vigilant cameras and IP Displays in our existing Spring St. Deck).

Thanks,
Justin

From: Chad Robinson <chad.robinson@nabholz.com>

Sent: Tuesday, April 11, 2023 11:17 AM

To: Clay, Justin <jclay@fayetteville-ar.gov>

Cc: Abernathy, Waylon <wabernathy@fayetteville-ar.gov>; Kyle Stout <kyle.stout@nabholz.com>; Braxton Ratliff <Braxton.Ratliff@ipsgroupinc.com>

Subject: RE: IPS Group Pricing- Fayetteville, AR Parking Deck

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Clay,

I have attached a cost summary based all the emails I have received.

Do you want the 3 year extended warranty for \$3,154? I included it in the cost summary.

I used a tax rate of 9.5%. Let me know if a different tax rate is needed.

I have not received responses from Braxton on the shipping, so be aware that this is an allowance. Since there was no shipping cost estimate for the displays, I added \$1,000 to the shipping allowance.

I also used an allowance for the installation of the displays which most likely will change since I don't know where they go or how much work is required to install them.

If you think these amounts are correct, please let me know and I will proceed with the change order to the City.

Thanks,

Chad Robinson

Project Manager

w: +1 (479) 659-7878 | m: +1 (385) 482-4530

chad.robinson@nabholz.com

From: Clay, Justin <jclay@fayetteville-ar.gov>

Sent: Tuesday, April 11, 2023 9:43 AM

To: Chad Robinson <chad.robinson@nabholz.com>; Braxton Ratliff <Braxton.Ratliff@ipsgroupinc.com>

Cc: Abernathy, Waylon <wabernathy@fayetteville-ar.gov>; Kyle Stout <kyle.stout@nabholz.com>

Subject: RE: IPS Group Pricing- Fayetteville, AR Parking Deck

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Chad – the maintenance contract is another term for the extended warranty (these are not separate items). The \$3,154 figure includes the 15% discount. Hopefully this is everything you need to move this forward but if not please let me know.

Braxton – correct me if any of that is incorrect.

Thanks all!

Justin

From: Chad Robinson <chad.robinson@nabholz.com>
Sent: Friday, April 7, 2023 8:02 AM
To: Braxton Ratliff <Braxton.Ratliff@ipsgroupinc.com>
Cc: Abernathy, Waylon <wabernathy@fayetteville-ar.gov>; Kyle Stout <kyle.stout@nabholz.com>; Clay, Justin <jclay@fayetteville-ar.gov>
Subject: RE: IPS Group Pricing- Fayetteville, AR Parking Deck

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Braxton,

Is the extended warranty different from the maintenance contract? Is the maintenance contract something the City has considered already?

Does the \$3,154 figure include the 15% discount?

Chad Robinson

Project Manager

w: +1 (479) 659-7878 | m: +1 (385) 482-4530

chad.robinson@nabholz.com

From: Braxton Ratliff <Braxton.Ratliff@ipsgroupinc.com>
Sent: Friday, April 7, 2023 7:16 AM
To: Chad Robinson <chad.robinson@nabholz.com>
Cc: Abernathy, Waylon <wabernathy@fayetteville-ar.gov>; Kyle Stout <kyle.stout@nabholz.com>; Clay, Justin <jclay@fayetteville-ar.gov>
Subject: RE: IPS Group Pricing- Fayetteville, AR Parking Deck

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Morning everyone,

Sorry for the delay I just got back in from San Diego late last night. This is warranty info I have from a previous email with Mike from IP Displays.

That said there is a one year warranty with the display. Then they can do an extended warranty for 10% of the purchase price per year and it is depot maintenance. If they go with a 3 year extended maintenance contract there is a 15% discount.

So for a 3 year extended warranty (4 years total) it would be an additional \$3,154

As far as cost for installation and who would install I would defer to **Justin** as to what was done on the previous garage. IP Displays does not do any installation and neither does IPS. I don't know what the estimated cost of installation would be.

Best,



Braxton Ratliff | Account Manager -Midwest/East| IPS Group, Inc.
t. 859.314.4062

IPS Group, Inc.
7737 Kenamar Court
San Diego, CA 92121, USA



calendly.com/braxtonratliff/30min

From: [Chad Robinson](#)

Sent: Tuesday, April 4, 2023 10:37 AM

To: [Braxton Ratliff](#)

Cc: [Abernathy, Waylon](#); [Kyle Stout](#); [Clay, Justin](#)

Subject: RE: IPS Group Pricing- Fayetteville, AR Parking Deck

WARNING: The e-mail below is from an external source. Please exercise caution before opening attachments and clicking links.

Braxton,

Thank you.

Is the total cost that Justin shows below on the right track with two double-sided signs?

Chad Robinson

Project Manager

w: +1 (479) 659-7878 | m: +1 (385) 482-4530

chad.robinson@nabholz.com

From: Braxton Ratliff <Braxton.Ratliff@ipsgroupinc.com>

Sent: Tuesday, April 4, 2023 9:28 AM

To: Chad Robinson <chad.robinson@nabholz.com>

Cc: Abernathy, Waylon <wabernathy@fayetteville-ar.gov>; Kyle Stout <kyle.stout@nabholz.com>; Clay, Justin <jclay@fayetteville-ar.gov>

Subject: RE: IPS Group Pricing- Fayetteville, AR Parking Deck

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I have reached out to IP Displays for those numbers and will get back.

Best,



Braxton Ratliff | Account Manager -Midwest/East| IPS Group, Inc.
t. 859.314.4062

IPS Group, Inc.
7737 Kenamar Court
San Diego, CA 92121, USA



calendly.com/braxtonratliff/30min

From: [Chad Robinson](#)

Sent: Tuesday, April 4, 2023 9:02 AM

To: [Braxton Ratliff](#)

Cc: [Abernathy, Waylon](#); [Kyle Stout](#); [Clay, Justin](#)

Subject: RE: IPS Group Pricing- Fayetteville, AR Parking Deck

WARNING: The e-mail below is from an external source. Please exercise caution before opening attachments and clicking links.

Braxton,

Per Justin Clay's email below, can you please provide costs for installation of the IP Display signs, IP Display warranty and sales tax? Also firm up shipping costs to make sure its covered?

Chad Robinson

Project Manager

w: +1 (479) 659-7878 | m: +1 (385) 482-4530

chad.robinson@nabholz.com

From: Clay, Justin <jclay@fayetteville-ar.gov>

Sent: Tuesday, April 4, 2023 7:46 AM

To: Chad Robinson <chad.robinson@nabholz.com>; Braxton Ratliff <Braxton.Ratliff@ipsgroupinc.com>

Cc: Abernathy, Waylon <wabernathy@fayetteville-ar.gov>; Kyle Stout <kyle.stout@nabholz.com>

Subject: RE: IPS Group Pricing- Fayetteville, AR Parking Deck

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These is how I read it:

1. LPR Hardware and Software – supply and install:	\$35,204 + sales tax
2. Pay stations (5 ea) – supply and install:	\$57,300 + sales tax
3. IP Display Signs (2 total, both double-sided) – 1 @ 32X96, 1 @ 32X64 sales tax	\$8,250 + \$5,430 = \$13,680 +
4. IP Display warranty – NO Pricing yet	\$?
5. IP Display installation – who will install?	\$?
Total	\$106,184 + sales tax

Thanks,
Justin

From: Chad Robinson <chad.robinson@nabholz.com>

Sent: Monday, April 3, 2023 4:59 PM

To: Braxton Ratliff <Braxton.Ratliff@ipsgroupinc.com>

Cc: Abernathy, Waylon <wabernathy@fayetteville-ar.gov>; Kyle Stout <kyle.stout@nabholz.com>; Clay, Justin <jclay@fayetteville-ar.gov>

Subject: RE: IPS Group Pricing- Fayetteville, AR Parking Deck

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Braxton,

Is this a complete package that needs to be kept all together? Could you please re-issue the entire package with the larger sign (32x96) quote attached? Can you also provide the cost for the extended warranty on the signs per Justin's request below? Is there a way to nail down the shipping costs so we don't have to go back to the City and ask for more money later?

I'm also not clear about the grand total cost. I need to know what amount to put in the contract Nabholz will be issuing to IPS. I think there are 3 (or maybe 4) major line items in the contract:

1. LPR Hardware and Software – supply and install:	\$35,204
2. Pay stations (5 ea) – supply and install:	\$57,300
3. IP Display Signs (4 ea) – 2 @ 32X96, 2 @ 32X64	\$12,375 + \$8,145=\$20,520
4. IP Display warranty – NO Pricing yet	\$?
Total	\$113,024

Thanks,

Chad Robinson

Project Manager
w: +1 (479) 659-7878 | m: +1 (385) 482-4530
chad.robinson@nabholz.com

From: Braxton Ratliff <Braxton.Ratliff@ipsgroupinc.com>
Sent: Monday, April 3, 2023 3:32 PM
To: Clay, Justin <jclay@fayetteville-ar.gov>
Cc: Chad Robinson <chad.robinson@nabholz.com>; Abernathy, Waylon <wabernathy@fayetteville-ar.gov>
Subject: RE: IPS Group Pricing- Fayetteville, AR Parking Deck

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Apologies. 32x96 attached.

Best.



Braxton Ratliff | Account Manager -Midwest/East| IPS Group, Inc.
t. 859.314.4062

IPS Group, Inc.
7737 Kenamar Court
San Diego, CA 92121, USA



calendly.com/braxtonratliff/30min

From: [Clay, Justin](#)
Sent: Monday, April 3, 2023 3:19 PM
To: [Braxton Ratliff](#)
Cc: [Chad Robinson](#); [Abernathy, Waylon](#)
Subject: FW: IPS Group Pricing- Fayetteville, AR Parking Deck

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Hey Braxton,

I think this mostly covers what we're looking for. One question: on the IP Display signage, I believe we wanted to quote the 32x96 size for the sign to be placed at the entrance to the parking garage. The 32x64 sign is auxiliary signage for placement at a nearby intersection. Both of the quotes in the attached are for 32x64. And yes, we would like pricing on the IP Display warranty as well.

Justin Clay

Parking Manager
Parking Management Division
City of Fayetteville, Arkansas
jclay@fayetteville-ar.gov
T 479.575.8277
[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)



From: Chad Robinson <chad.robinson@nabholz.com>
Sent: Monday, April 3, 2023 2:06 PM
To: Clay, Justin <jclay@fayetteville-ar.gov>
Subject: FW: IPS Group Pricing- Fayetteville, AR Parking Deck

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Here's the quote I received today

Chad Robinson

Project Manager
w: +1 (479) 659-7878 | m: +1 (385) 482-4530
chad.robinson@nabholz.com

From: Braxton Ratliff <Braxton.Ratliff@ipsgroupinc.com>
Sent: Monday, April 3, 2023 12:08 PM
To: Chad Robinson <chad.robinson@nabholz.com>
Subject: IPS Group Pricing- Fayetteville, AR Parking Deck

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Chad,

Attached is pricing for the Dickson Street Garage. I really appreciate your patience! This includes the **LPR hardware** along with the **IPS Pay stations** as well as the **IP Displays signage**. I think Justin was still deciding on the BNA feature of the Pay stations (page 2 item # 767-617) and I think there was discussion on adding warranty to the IP Displays signage but I have not got an update.

Please reach out if you need anything. I will be traveling today so I will be a little limited on response time.

Best,



Braxton Ratliff | Account Manager -Midwest/East| IPS Group, Inc.
t. 859.314.4062

IPS Group, Inc.
7737 Kenamar Court
San Diego, CA 92121, USA



calendly.com/braxtonratliff/30min

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Nabholz Construction - HQ
3301 N 2nd Street
Rogers, Arkansas 72756
Phone: +14796597800

Project: 02-22-2708 - FAC-CIVIC PLAZA- EARLY SITE
251 N West Avenue
Fayetteville, Arkansas 72701

Prime Contract Change Order Request #007: Asphalt Paving of West Ave

TO:	CITY OF FAYETTEVILLE 113 W MOUNTAIN ST FAYETTEVILLE, Arkansas 72701	FROM:	Nabholz Construction Corporation
CHANGE ORDER REQUEST NUMBER / REVISION:	007 / 0	PRIME CONTRACT CHANGE ORDER:	None
STATUS:	Pending - In Review	CREATED BY:	Chad Robinson (NABHOLZ CONSTRUCTION CORP/ROG)
SCHEDULE IMPACT:	15 days	DATE CREATED:	4/14/2023
EXECUTED:	No	SIGNED CHANGE ORDER RECEIVED DATE:	
		TOTAL AMOUNT:	\$186,158.31

CHANGE ORDER REQUEST TITLE: Asphalt Paving of West Ave

CHANGE ORDER REQUEST DESCRIPTION:

CE #012 - Asphalt Paving of West Ave

Fayetteville City has asked Nabholz to provide asphalt paving of West Ave from Center Street to the edge of the Spring Street intersection. Includes the intersections at Center Street and Meadow St.

ATTACHMENTS:

[Garrett Ex Quote with DrawingsREV.pdf](#)

POTENTIAL CHANGE ORDERS IN THIS CHANGE ORDER REQUEST:

PCO #	Contract Company	Title	Schedule Impact	Amount
007	CITY OF FAYETTEVILLE	CE #012 - Asphalt Paving of We	15 days	\$186,158.31
Total:				\$186,158.31

CHANGE ORDER REQUEST LINE ITEMS:

PCO # 007: CE #012 - Asphalt Paving of We

#	Budget Code	Description	Amount
1	31-1000.SUB EARTHWORK.SUBCONTRACT	Asphalt Paving of West Ave	\$173,670.00
Subtotal:			\$173,670.00
SDI:			\$2,170.88
Builders Risk Insurance:			\$17.37
General Liability Insurance:			\$1,476.20
Project Fee:			\$7,971.45
Performance & Payment Bonds:			\$852.41
Grand Total:			\$186,158.31

CITY OF FAYETTEVILLE
113 W MOUNTAIN ST
FAYETTEVILLE, Arkansas 72701

Nabholz Construction Corporation

SIGNATURE

DATE

SIGNATURE

DATE

GARRETTX

BEST ON EARTH

To:	Nabholz Construction Co. Inc.	Contact:	Tyler Wisenhunt
Address:	612 Garland Street Conway, AR 72032	Phone:	501-217-5500
		Fax:	501-327-8231
Project Name:	FCAC Phase 2 Milling And Asphalt Revised April 11th	Bid Number:	
Project Location:	W. West Ave & W. Center, Fayetteville, AR	Bid Date:	4/11/2023

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
01	Email #1. One Mobilization For Milling Crew. Orange Areas: Sheet C2.1 = 551 SY. Sheet C1.06 = 112 SY. C1.01 = 67 SY. 3" Milling Only.	730.00 SY 663 SY		\$26.00	\$18,980.00 \$17,238
02	Email #2 Base Work. One Mobilization For Base Crew. Add 1" Of Base. Sheet C1.05 = 365 SY. Sheet C1.06 = 881 SY.	1,246.00	SY	\$18.00	\$22,428.00
03	Email #2 Asphalt Work. One Mobilization For Asphalt Crew. 3" Binder. Sheet C1.05 = 365 SY. Sheet C1.06 = 881 SY.	1,246.00	SY	\$34.00	\$42,364.00
04	Email #3. One Mobilization For Asphalt Crew. Sheet C2.1 Is 850 SY 3" Surface. Sheet C1.01 67 SY 3" Surface. Sheet C1.06 = 881 SY 3" Surface. Sheet C1.05 = 560 SY 3" Binder & 3" Surface.	2,358.00 SY 2291 SY		\$40.00	\$94,320.00 \$91,640

Total Bid Price: ~~\$178,092.00~~
\$173,670.00

Notes:

- BID DOES NOT INCLUDE: Testing, Permits, Paint Striping, Signage, Saw Cutting, Traffic Control, Performance & Payment Bond, Maintenance Bond or Letter of Credit, Fine Grading of existing material.

- This proposal is valid for 15 days only without a signed copy of this proposal.
- The dirt subgrade must be within +/- a .10 tenth of plan subgrade. That is .05 low to .05 high.
- All Utility crossings in pavement areas to be backfilled completely with class 7 base and compacted to 95% compaction.
- This proposal was made from a plan prepared by Nelson Byrd Woltz / HSA Engineering, dated Sept 18, 2020.
- The Owner and or General Contractor to provide, the electronic file with control pints and all four corners of the project staked with elevations.
- Due to the volatility in the asphalt market, prices are subject to renegotiation at time of placement, i.e. the installation & production of the unit prices quoted will increase/decrease based on price date of shipment & availability of performance grade asphalt (Oil):
- One year warranty covers all structural issues that are the result of inferior material or workmanship by Garrett Excavation. Warranty explicitly doesn't cover aesthetic issues associated with the asphalt's appearance (including but not limited to fading, coloration differences, and texture).
- The asphalt in this proposal is made with an approved Arkansas State Highway Superpave.
- GGE is not to be held responsible for any ponding when the slopes are 2% or less.
- One initial mobilization, any additional mobilizations will be billed at \$4,000.00 each.
- Garrett Excavation is not responsible for any material shortage, delivery, delay, or labor shortages that increase price. Garrett Excavation shall notify Contractor in writing the increases resulting from such shortages or delays and Garrett Excavation shall be compensated for the increased cost.
- Pricing is based on streets being closed for construction.
- Pricing is based on all items being done by 3rd quarter 2023.

Payment Terms:

Note: Owner must furnish Grant Garrett Excavating, Inc. dba Decco Excavation an Irrevocable Bank Letter of Credit for the estimated total value of this quote prior to initial mobilization.

Note: Final payment for each item will be based on the total calculated tickets/tons and/or units completed in-place.

ACCEPTED:

The above prices, specifications and conditions are satisfactory and are hereby accepted.

Buyer: _____

Signature: _____

Date of Acceptance: _____

CONFIRMED:

Grant Garrett Excavating, Inc.

Authorized Signature: _____

Estimator: Cindy Jones
cindy.jones@deccoex.com

Areas Covered in Item #1

#1

In an effort to make this as easy as possible and the last pricing exercise I am going to send you these in separate emails. Attached is the milling needed,

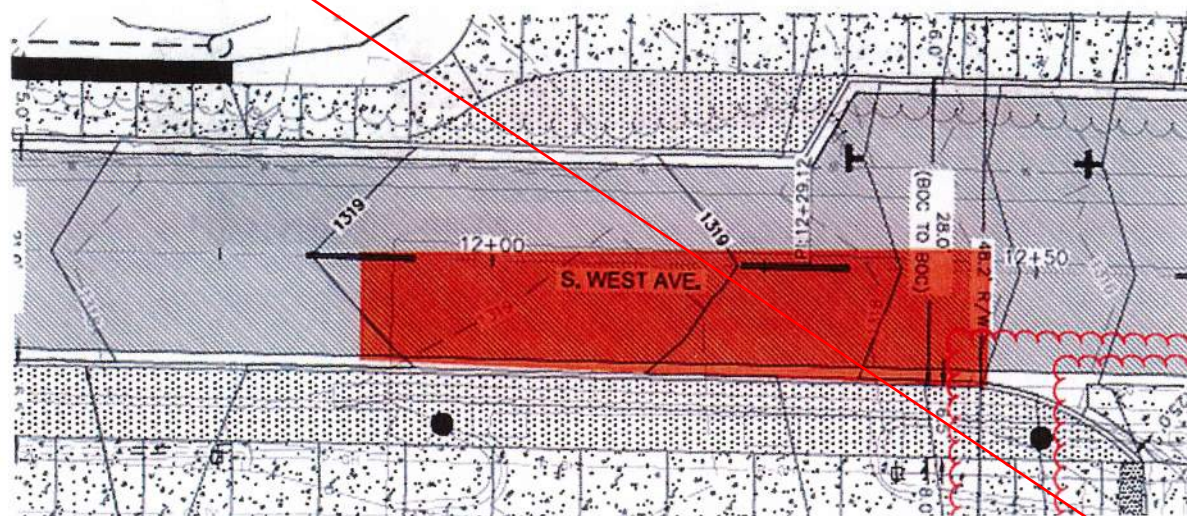
Please price the attached as 1 mobilization and a 3" Mill. ~~1. complete cut at curb and gutter on West side of ST. 2. undercut to dry material at wet area at 5 N West AVE.~~

Provide the number as 1 price not by area.

ALL AREAS MILL ONLY. NO
PAVEMENT INSTALLED IN THIS
MOBILIZATION

C1.01

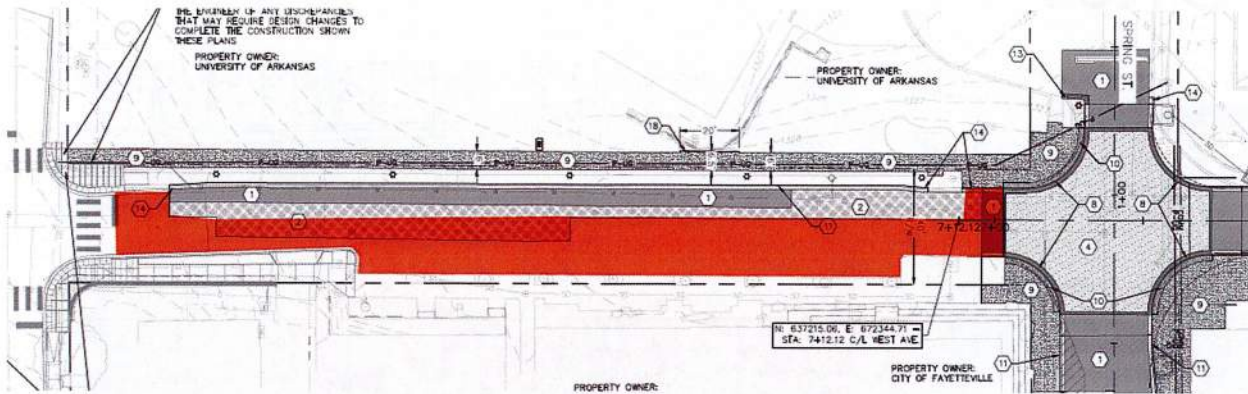
67.54



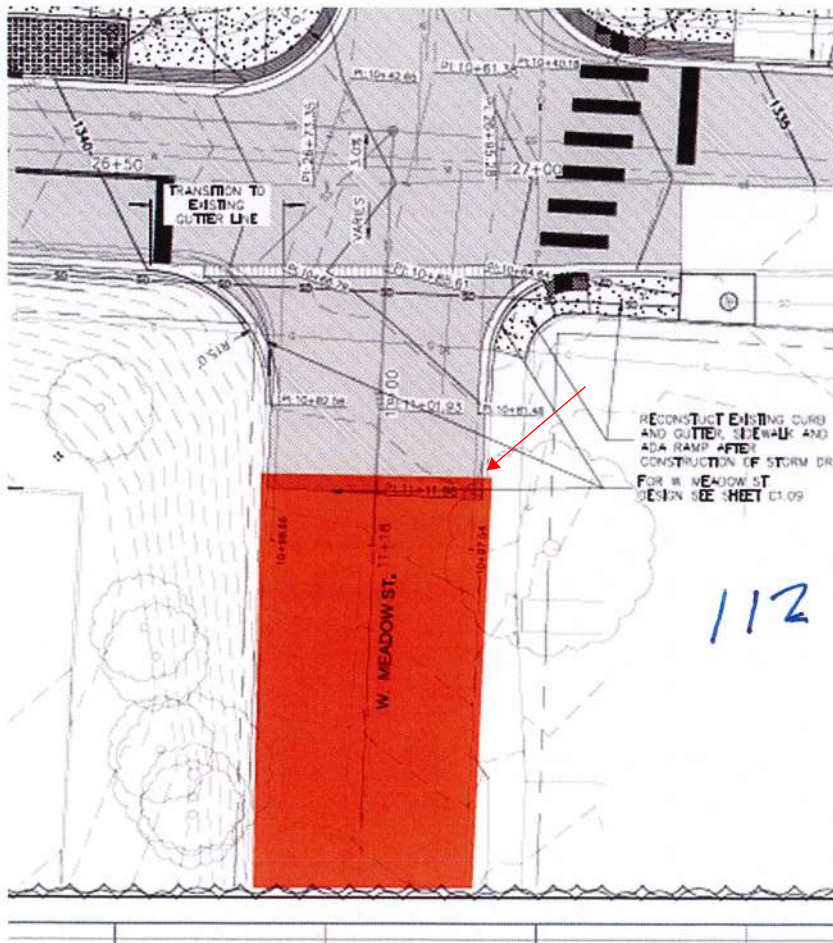
55) SY

ALL AREAS MILL ONLY. NO
PAVEMENT INSTALLED IN THIS
MOBILIZATION

C2.1



C1.06



Areas Covered in Item #2

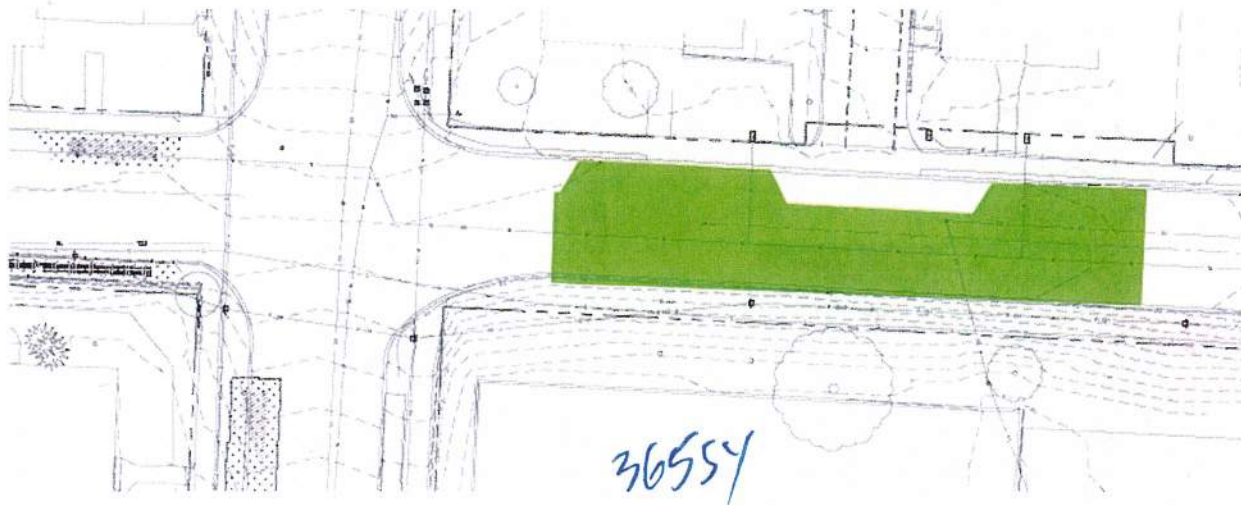
#2

Please price 1 mobilization for binder installation.

Include mobilization to install and grade 1" of base

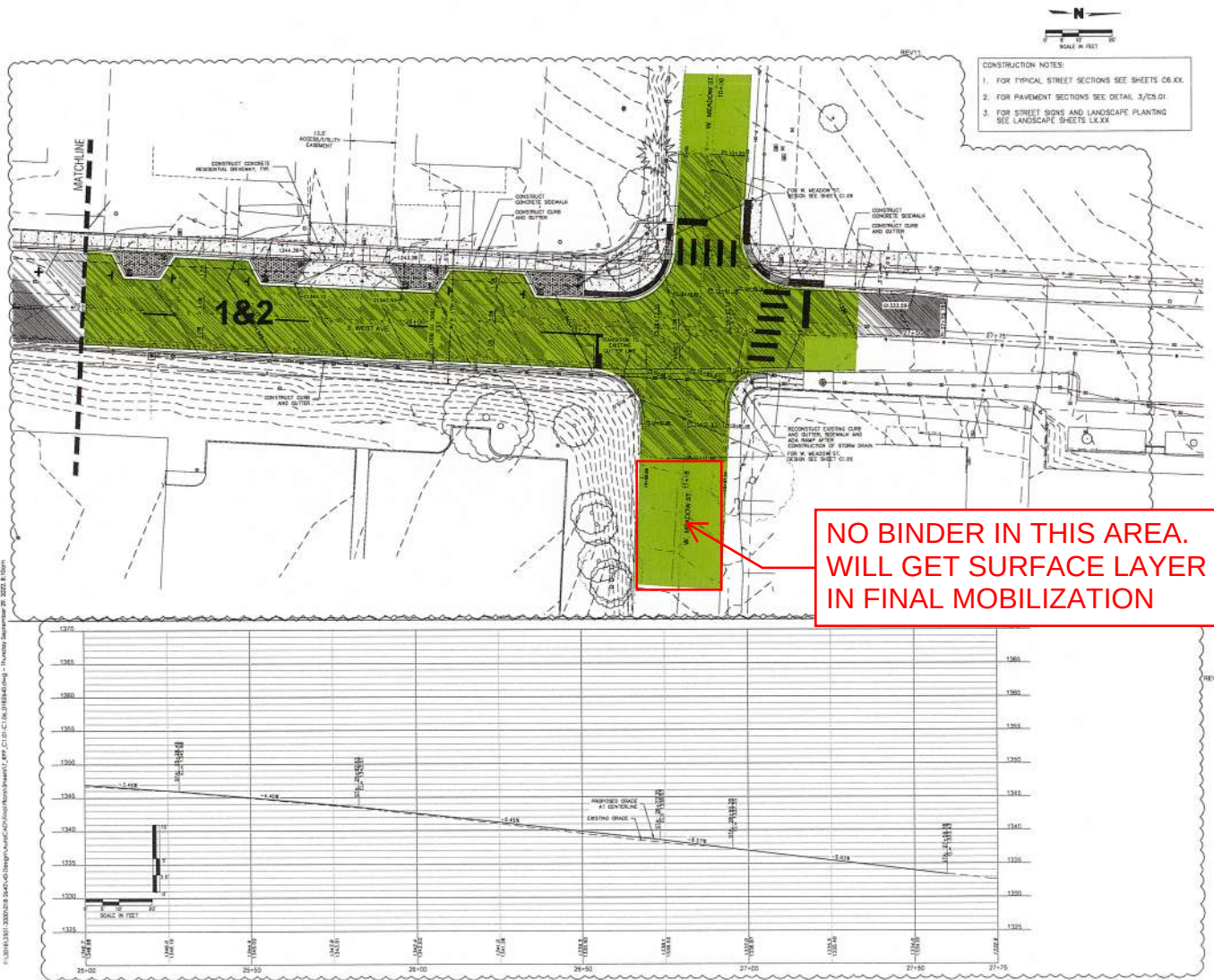
SEPARATE LINE
ITEM FOR 1" BASE
INSTALLATION

C105



total binder sy?
Bluebeam = 881 SY

960 SY



NELSON
BYRD
WOLTZ
LANDSCAPE
ARCHITECTS

310 East Market Street
Charlottesville
VA 22902
T 434.264.1388
F 434.264.4188
www.nbw.com

flintlock
environmental engineers

olsson

Nisch Engineering

TILLET
LANDSCAPE
ARCHITECTS

NSA
ENGINEERING

Hines Inc

NO.	Date	Revisions
1	11-30-18	SD PRELIM
2	02-05-19	FOR C.D.
3	08-20-19	FOR C.D.
4	09-05-19	FOR C.D.
5	04-03-20	FOR C.D.
6	04-24-20	FOR C.D.
7	08-18-20	REVISED (M&M)
8	01-05-21	REVISED
9	11-15-21	REVISED
10	04-04-22	WEST REDSIGN
11	08-25-22	WEST REDSIGN

Cultural Arts
Corridor
Fayetteville,
Arkansas

100% CONSTRUCTION DOCUMENTS

PROJECT NO. F41214
DRAWN BY: GYNDENCKE
CHECKED BY: GND

S. WEST AVENUE
PLAN AND PROFILE

DATE: SEPTEMBER 18, 2020
SCALE:

C1.06

Areas Covered in Item #3

Attached is last one for now.

#3

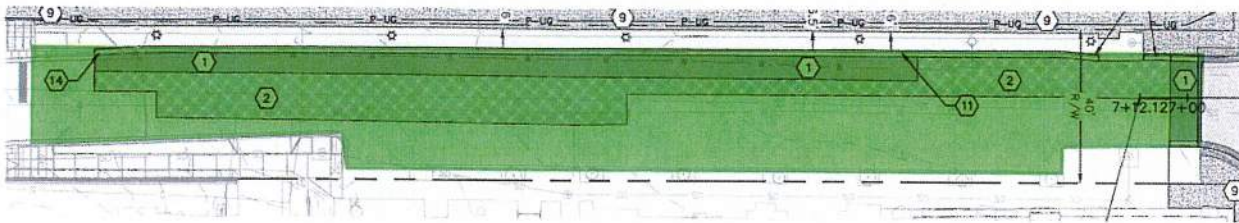
Price mobilization for binder and surface in orange and surface in green.

Section will be 3" binder and 3" surface. No pricing for base installation will be required.

C2.1

C2.1

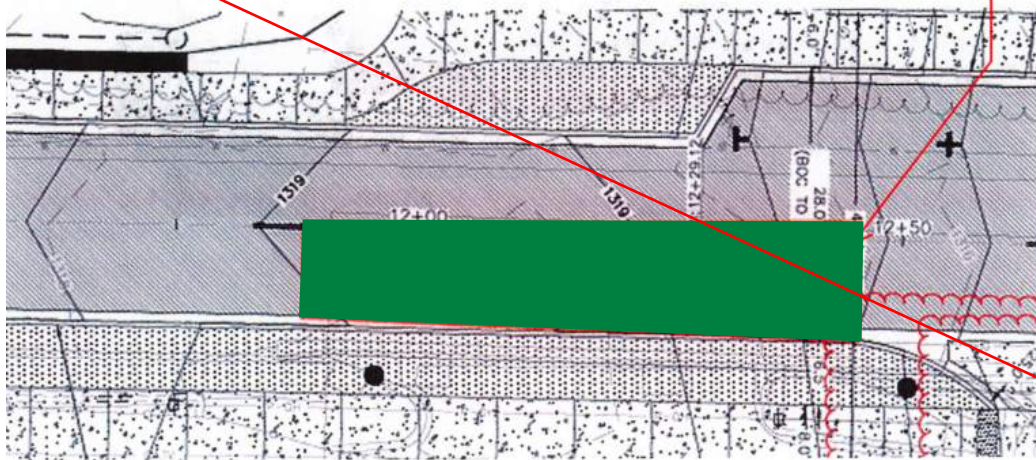
850^{SY} SURFACE



C1.01

67^{SY}

overlay at same time
as surface layer on
other areas



C1.06 960^{SY} SURFACE



NELSON
BYRD
WOLTZ
LANDSCAPE
ARCHITECTS

310 East Market Street
Charlottesville
VA 22902
T 434.984.1359
F 434.984.4158
www.nbw.com

flintlock

olsson

Nitch Engineering

TILLET
LANDSCAPE
ARCHITECTS

HSA
ENGINEERING

Hines Inc

NO.	Date	Revised/By
1	11-20-16	SD PRELIM
2	01-25-17	725 C2
3	08-24-17	1025 C2
4	03-07-20	1025 C2
5	04-23-20	1025 C2
6	04-24-20	1025 C2
7	05-18-20	SD/PL/CD/1
8	01-18-21	BN/SD
9	12-15-21	BN/TS
10	04-24-22	WEST REDESIGN
11	08-25-22	WEST REDESIGN

Cultural Arts
Corridor
FIGHTING
ATKINS

1025 CONSTRUCTION DOCUMENTS

PROJECT NO. FUL/1814
DRAWN BY: BENJAMIN
CHECKED BY: CND

S. WEST AVENUE
PLAN AND PROF

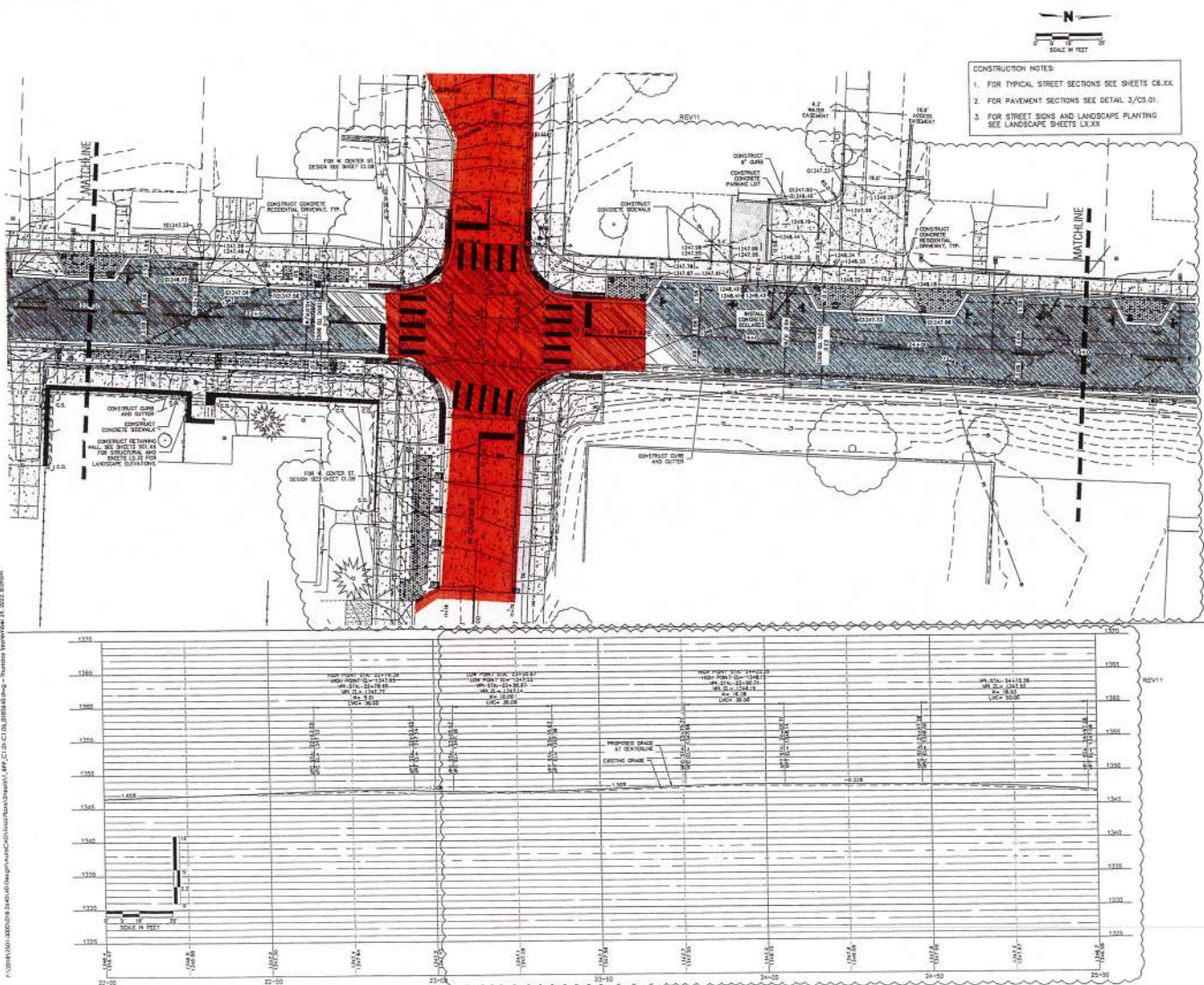
DATE: SEPTEMBER 16, 2023
SCALE:

C1.06

C1.05

BINDER & SURFACE

560 SY



NELSON
BYRD
WOLTZ
LANDSCAPE
ARCHITECTS

310 East Market Street
 Charlottesville
 VA 22902
 T 434.984.1508
 F 434.984.4108
 WWW.NBW.COM

flintlock

olsson

Nitch Engineering

TILLET
ARCHITECTS

USA ENGINEERING

Hines Inc

NO	Date	Revised/Revised
1	11-30-18	10% PRELIM
2	07-09-19	10% CD
3	08-20-19	10% CD
4	02-07-20	10% CD
5	04-03-20	10% CD
6	04-24-20	10% CD
7	05-18-20	REVISED
8	05-18-21	REVISED
9	12-15-21	REVISED
10	04-04-22	WEST REDDISH
11	06-26-22	WEST REDDISH



Cultural Arts
Corridor
2020-2025
AUGUST 2021

10% CONSTRUCTION OCCUPANCY

PROJECT NO. PAL-014
 DRAWN BY: BENTON/CA
 CHECKED BY: CJD

S. WEST AVENUE
 PLAN AND PROF

DATE: 08/20/2020 10:30 AM
 SCALE: 1"=40'

C1.05



Nabholz Construction - HQ
3301 N 2nd Street
Rogers, Arkansas 72756
Phone: +14796597800

PCCO #001

Project: 02-22-2674 - Downtown Parking Deck
325 N. West Ave
Fayetteville, Arkansas 72701

Prime Contract Change Order #001: FCAP CORs #1-31

TO:	CITY OF FAYETTEVILLE 113 W MOUNTAIN ST FAYETTEVILLE, Arkansas 72701	FROM:	Nabholz Construction Corporation
DATE CREATED:	4/27/2023	CREATED BY:	Jacob Keeney (NABHOLZ CONSTRUCTION CORP/ROG)
CONTRACT STATUS:	Pending - In Review	REVISION:	0
DUE DATE:	05/05/2023	REVIEW DATE:	
SCHEDULE IMPACT:	55 days	EXECUTED:	No
REVISED SUBSTANTIAL COMPLETION DATE:	08/15/2023	SIGNED CHANGE ORDER RECEIVED DATE:	
CONTRACT FOR:	1:City of Fayetteville Contract	TOTAL AMOUNT:	\$0.00

DESCRIPTION:

All approved CORs to date from COR #1 to COR #32 less CORs #2 (void), #3 (void), #15 (see FCAC PCCO #12), #24 (rejected), and #32 (see FCAC PCCO #12).

ATTACHMENTS:

CHANGE ORDER REQUESTS IN THIS CHANGE ORDER:

COR #	Title	Schedule Impact	Amount
001	CE #002/014/020		\$0.00
005	Area Drain Omitted		\$0.00
006	Added Floor Drain in Mech Room		\$0.00
007	Ground Tier Wall along CL C		\$0.00
008	CE #015 - ASI-002		\$0.00
009	Added Camera and Cabling		\$0.00
010	Offsite Steel Storage & Deliv.		\$0.00
011	Pier Depth Cost Adjustment		\$0.00
012	Footings under IT Room Wall		\$0.00
013	Elevator Pit Depth Change		\$0.00
014	Gas Line Stop At Meter		\$0.00
016	Concrete Paving Around S-100		\$0.00
017	ASI-004		\$0.00
018	Standpipe Added Back Post-VE		\$0.00
019	Electrical/Comms Changes Though ASI #4		\$0.00
020	Larger Transformer Pad		\$0.00
021	Contaminated Soil Removal/Replacement	55 days	\$0.00
022	Cast In Place Grated Inlet Tops		\$0.00
023	Removing Sprinkler System		\$0.00
025	ASI #3		\$0.00
026	ASI-001 Revision 2		\$0.00
027	Traffic Coating Change		\$0.00
028	Anchoring of Bent Plate Jambs at Storefronts		\$0.00
029	RFI #129: Water & Sewer Services		\$0.00



030	Canopy Support Steel		\$0.00
031	Barrier Cable Supplemental Bollards		\$0.00
Total:			\$0.00

POTENTIAL CHANGE ORDERS IN THIS CHANGE ORDER:

PCO #	Title	Schedule Impact	Amount
001	CE #002/014/020		\$0.00
005	Ground Tier Wall along CL C		\$0.00
006	CE #048 - Area Drain Omitted from Plumbing Drawings		\$0.00
007	CE #049 - Added Floor Drain in Mechanical Room		\$0.00
008	CE #015 - ASI-002		\$0.00
009	Additional Camera on NE Corner		\$0.00
010	Offsite Steel Storage and Delivery		\$0.00
011	Pier Depth Cost Adjustment		\$0.00
012	Footings under IT Room Wall		\$0.00
013	Elevator Pit Depth Change		\$0.00
014	Gas Line Stop At Meter		\$0.00
016	Concrete Paving Around S-100		\$0.00
017	ASI-004		\$0.00
018	Standpipe Added Back Post-VE		\$0.00
020	Electrical/Comms Changes Though ASI #4		\$0.00
021	Larger Transformer Pad		\$0.00
022	Contaminated Soil Removal/Replacement	55 days	\$0.00
023	Cast In Place Grated Inlet Tops		\$0.00
024	Removing Sprinkler Pipe/Heads on Level 1		\$0.00
025	ASI #3		\$0.00
026	ASI-001 Revision 2		\$0.00
027	Traffic Coating Change		\$0.00
028	Anchoring of Bent Plate Jambs at Storefronts		\$0.00
029	RFI #129: Water & Sewer Services		\$0.00
030	Canopy Support Steel		\$0.00
031	Barrier Cable Supplemental Bollards		\$0.00
Total:			\$0.00

The original (Contract Sum)	\$11,629,483.00
Net change by previously authorized Change Orders	\$974,918.21
The contract sum prior to this Change Order was	\$12,604,401.21
The contract sum would be changed by this Change Order in the amount of	\$0.00
The new contract sum including this Change Order will be	\$12,604,401.21
The contract time will be increased by this Change Order by 55 days.	
The Revised Substantial Completion Date will be	8/15/2023

CITY OF FAYETTEVILLE
113 W MOUNTAIN ST
FAYETTEVILLE, Arkansas 72701

Nabholz Construction Corporation

SIGNATURE _____ DATE _____
Printed Name _____
Title _____

SIGNATURE _____ DATE _____
Printed Name _____
Title _____



Nabholz Construction - HQ
3301 N 2nd Street
Rogers, Arkansas 72756
Phone: +14796597800

PCCO #001

Project: 02-22-2708 - FAC-CIVIC PLAZA- EARLY SITE
251 N West Avenue
Fayetteville, Arkansas 72701

Prime Contract Change Order #001: UREP CORs #1 Rev. 1 - #8

TO:	CITY OF FAYETTEVILLE 113 W MOUNTAIN ST FAYETTEVILLE, Arkansas 72701	FROM:	Nabholz Construction Corporation
DATE CREATED:	4/27/2023	CREATED BY:	Jacob Keeney (NABHOLZ CONSTRUCTION CORP/ROG)
CONTRACT STATUS:	Pending - In Review	REVISION:	0
DUE DATE:	05/05/2023	REVIEW DATE:	
SCHEDULE IMPACT:	72 days	EXECUTED:	No
REVISED SUBSTANTIAL COMPLETION DATE:	08/08/2023	SIGNED CHANGE ORDER RECEIVED DATE:	
CONTRACT FOR:	02-22-2708:City of Fayetteville Contract	TOTAL AMOUNT:	\$0.00

DESCRIPTION:

All approved CORs to date from COR #1 Rev. 1 to COR #8 less CORs #1 Rev. 0 (void) and #7 (see FCAC PCCO #12).

72 additional days are being requested to account for the delay in start date for this work. The original contractual start date was 9/6/22, and the actual start date was 12/12/22.

ATTACHMENTS:

CHANGE ORDER REQUESTS IN THIS CHANGE ORDER:

COR #	Title	Schedule Impact	Amount
001	Regrade Greenway Rev. 1		\$0.00
002	Overhead Utility Relocations		\$0.00
003	French Drain At Back of Curb - Hillcrest Block		\$0.00
004	Greenway Retaining		\$0.00
005	Greenway Center St. Connection Gravel		\$0.00
006	CE #007 - Post-GMP VE Results		\$0.00
008	AEP Re-route Power: Meadow St. to Spring St.		\$0.00
Total:			\$0.00

POTENTIAL CHANGE ORDERS IN THIS CHANGE ORDER:

PCO #	Title	Schedule Impact	Amount
001	Regrade Greenway Rev. 1		\$0.00
002	Overhead Utility Relocations		\$0.00
003	French Drain At Back of Curb - Hillcrest Block		\$0.00
004	Greenway Retaining		\$0.00
005	Greenway Center St. Connection Gravel		\$0.00
006	CE #007 - Post-GMP VE Results		\$0.00
008	AEP Re-route Power: Meadow St. to Spring St.		\$0.00
Total:			\$0.00



The original (Contract Sum)	\$4,234,952.00
Net change by previously authorized Change Orders	(\$224,918.21)
The contract sum prior to this Change Order was	\$4,010,033.79
The contract sum would be changed by this Change Order in the amount of	\$0.00
The new contract sum including this Change Order will be	\$4,010,033.79
The contract time will be increased by this Change Order by 72 days.	
The Revised Substantial Completion Date will be	8/8/2023

CITY OF FAYETTEVILLE
113 W MOUNTAIN ST
FAYETTEVILLE, Arkansas 72701

Nabholz Construction Corporation

SIGNATURE _____ DATE _____
Printed Name _____
Title _____

SIGNATURE _____ DATE _____
Printed Name _____
Title _____



MEETING OF MAY 16, 2023

TO: Mayor Jordan and City Council

THRU: Susan Norton, Chief of Staff

FROM: Steven Dotson, Internal Auditor

DATE:

SUBJECT: **Staff recommends that Council consider approval of the American Rescue Plan Act Nonprofit Assistance applications for funding.**

RECOMMENDATION:

To consider for approval the attached American Rescue Plan Act Nonprofit Assistance applications for funding, using American Rescue Plan Act funds.

BACKGROUND:

City Council voted unanimously on February 21, 2023 through Resolution 46-23 to approve an economic assistance program for non-profit corporations operating and serving residents in Fayetteville. This program was intended to assist qualifying nonprofits that experienced negative economic impact directly related to the COVID-19 pandemic from the March 3, 2020 – March 2, 2021 time period. \$1,000,000.00 was appropriated to fund this economic assistance program.

DISCUSSION:

This program was requested by Council to assist qualifying nonprofits that experienced negative economic impact directly related to the COVID-19 pandemic. As indicated on page 23 of the US Department of the Treasury Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule, ARPA recipients (the City) can identify nonprofits impacted by the pandemic and provide economic assistance. For example, ARPA recipients (the City) could consider the following negative impacts experienced by nonprofits (1) decreased revenue, (2) financial insecurity, (3) increased costs, (4) capacity to weather financial hardship, and (5) challenges covering payroll, rent or mortgage, and other operating costs. Assistance to nonprofits that experienced negative economic impacts includes grants to mitigate financial hardship as an enumerated use of ARPA funds.

BUDGET/STAFF IMPACT:

This request would be funded with the American Rescue Plan local recovery grant received by the City for \$1,000,000.00.

ATTACHMENTS: 2023-724 SRF ARPA Nonprofit, 2023-724 BA ARPA Nonprofit, ARPA Nonprofit Assistance Applications File, Revised - ARPA Nonprofit Assistance Application

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2023-724

Staff recommends that Council consider approval of the American Rescue Plan Act Nonprofit Assistance applications for funding.

A RESOLUTION TO APPROVE SEVENTEEN AMERICAN RESCUE PLAN ACT NONPROFIT ASSISTANCE APPLICATIONS IN THE TOTAL AMOUNT OF \$1,000,000.00 TO PROVIDE ECONOMIC ASSISTANCE TO NONPROFIT ORGANIZATIONS UTILIZING AMERICAN RESCUE PLAN ACT FUNDS

WHEREAS, the Coronavirus State and Local Fiscal Recovery Funds Final Rule allows the City to identify and use American Rescue Plan Act Funds to assist nonprofit corporations that have experienced negative economic impact directly related to the COVID-19 pandemic; and

WHEREAS, on February 21, 2023, the City Council passed Resolution 46-23 authorizing an economic assistance program for nonprofit corporations operating and serving residents in Fayetteville to provide economic assistance to applicants that experienced negative economic impact directly related to the COVID-19 pandemic during the period of March 3, 2020 through March 2, 2021; and

WHEREAS, City staff have determined that seventeen local non-profit organizations qualified for assistance.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the American Rescue Plan Act Nonprofit Assistance Applications attached to this Resolution and authorizes Mayor Jordan to make economic assistance payments totaling \$1,000,000.00 utilizing American Rescue Plan Act funds to the following nonprofit corporations:

Mount Sequoyah Center Inc.	\$60,580.93
Rockin Baker Academy	\$49,120.12
Sheep Dog Impact Assistance	\$100,000.00
Northwest Arkansas Community Creative Center	\$100,000.00
Theatre Squared Inc	\$100,000.00
Symphony of Northwest Arkansas	\$76,455.56
Botanical Garden Society of the Ozarks	\$100,000.00
Northwest Arkansas Jazz Society	\$18,690.00
Fayetteville Art Alliance dba Art Ventures	\$100,000.00
Apple Seeds	\$24,430.00

7Hills Homeless Center	\$85,608.76
Cobblestone Farms	\$46,968.85
Washington County Historical Society	\$20,885.38
Arts Live Theatre Inc	\$18,748.99
OMNI Center for Peace, Justice, and Ecology	\$20,566.05
Credit Counseling of Arkansas, Inc	\$58,269.63
Habitat for Humanity of Washington County, Arkansas	\$19,675.73

City of Fayetteville Staff Review Form

2023-724

Item ID

5/16/2023

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Steve Dotson

4/27/2023

Non-Departmental (800)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends that Council consider for approval the attached American Rescue Plan Act Nonprofit Assistance Applications in the amount of \$1,000,000.00 to provide funding from the American Rescue Plan Act for economic assistance to nonprofit organizations, and approval of a budget adjustment.

Budget Impact:

2246.800.9715-5315.00

2246-American Rescue Plan Act

Account Number

Fund

20023.2021

ARPA Economic Assistance Requests

Project Number

Project Title

Budgeted Item? Yes

Total Amended Budget

\$ 7,946,052.00

Expenses (Actual+Encum)

\$ 3,551,520.00

Available Budget

\$ 4,394,532.00

Does item have a direct cost? Yes

Item Cost

\$ 1,000,000.00

Is a Budget Adjustment attached? Yes

Budget Adjustment

\$ 1,000,000.00

Remaining Budget

\$ 4,394,532.00

V20221130

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:

Budget Year	Division	Adjustment Number
2023	Non-Departmental (800)	
	Requestor: Steve Dotson	

Staff recommends that Council consider for approval the attached American Rescue Plan Act Nonprofit Assistance Applications in the amount of \$1,000,000.00 to provide funding from the American Rescue Plan Act for economic assistance to nonprofit organizations.

	COUNCIL DATE:	5/16/2023
	ITEM ID#:	2023-724
	Holly Black	
	4/27/2023 10:25 AM	
	Budget Division	Date
	TYPE:	D - (City Council)
	JOURNAL #:	
	GLDATE:	
	CHKD/POSTED:	/
RESOLUTION/ORDINANCE		

Page 338 of 1484

Applicant	Qualifying amount of reimbursement
Mount Sequoyah Center Inc.	\$60,580.93
Rockin Baker Academy	\$49,120.12
Sheep Dog Impact Assistance	\$100,000.00
Northwest Arkansas Community Creative Center	\$100,000.00
Theatre Squared Inc	\$100,000.00
Symphony of Northwest Arkansas	\$76,455.56
Botanical Garden Society of the Ozarks	\$100,000.00
Northwest Arkansas Jazz Society	\$18,690.00
Fayetteville Art Alliance dba Art Ventures	\$100,000.00
Apple Seeds	\$24,430.00
7Hills Homeless Center	\$85,608.76
Cobblestone Farms	\$46,968.85
Washington County Historical Society	\$20,885.38
Arts Live Theatre Inc	\$18,748.99
OMNI Center for Peace, Justice, and Ecology	\$20,566.05
Credit Counseling of Arkansas, Inc	\$58,269.63
Habitat for Humanity of Washington County, Arkansas	\$19,675.73
	\$1,000,000.00



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Mount Sequoyah Center Inc.
Requested Amt: \$77,802.20

COVID-19 claimed impacts for Nonprofit organizations can include:

Decreased Revenue (e.g. Donations and Fees)

Financial Insecurity

Increased Costs (e.g., uncompensated increases in service need)

Capacity to weather financial hardship

Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the Mount Sequoyah Center Inc., application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and increased costs (uncompensated increase in service need) during 2020-2021 as a result of the pandemic, and additional costs related to sanitizing their facility against COVID-19.

Supported amount of reimbursement per applicant documentation: \$60,580.93



AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 02/25/2022

Year of Nonprofit Incorporation 1922

Organization Name Mount Sequoyah Center, Inc.

Organization Email emily.gentry@mountsequoyah.org; haley@mountsequoyah.org

Mailing Address 150 N Skyline Dr, Fayetteville, AR 72701

Physical Address (if different) _____

Organization Phone Number 479-443-4531

Website www.mountsequoyah.org

EIN 71-0268583

SAM Unique Entity ID Number FBHBPXLRW5V7
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Emily Gentry

Phone 479-443-4531

Email emily.gentry@mountsequoyah.org

Primary Contact Name Emily Gentry

Title Executive Director

Phone 479-443-4531

Email emily.gentry@mountsequoyah.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

The mission statement of the organization is, "Mount Sequoyah is a welcoming space to celebrate and connect with people, land, and spirit."

List and describe the services the organization provides to Fayetteville residents:

Mount Sequoyah provides a wide range of services to Fayetteville residents. Childcare for kids ages five to twelve years old is provided in the form of summer and off-season day camps while children are out of school through Camp Sequoyah. Family swim memberships, children's swim lessons, and recreational swim team instruction for youth and adults are all offered at the Mount Sequoyah pool.

The Creative Spaces program provides low-cost studio space to artists and creatives as well as a variety of programs and events that support the creative economy in Fayetteville. Additionally, the Creative Spaces program maintains a gallery space and a ceramics studio on Mount Sequoyah's campus, and sculptures and murals are available to see throughout the grounds.

Fayetteville residents can reserve meeting and event space at Mount Sequoyah or rent overnight lodging rooms. The organization's property is listed on the state and federal register of historic spaces as a historic district.

There are almost 30 acres of green space with walking paths, recreation facilities, and more. Area residents can play on the tennis courts, get a membership to Clubhaus Fitness, or just come walk their dogs. Mount Sequoyah also maintains the historic cross with the beautiful view of downtown Fayetteville and the University of Arkansas.

Additionally, the organization creates and hosts its own events and programs throughout the year like the FYRE after-school arts program for LGBTQ youth, the CAFE Novice program for Veterans, the Chamber Music on the Mountain festival, and so much more.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

Mount Sequoyah truly offers something for everyone, so our target beneficiaries include seniors, youth, families, veterans, etc. There are scholarship programs for both the camp and swim programs, and all studio space offered through the Creative Spaces program is being rented at a rate that is significantly lower than the market rate. The organization recently received funding to create an after-school arts program for LGBTQ students, and the CAFE Novice program targeted veterans teaching them new creative writing and culinary skills. The grounds are available for area residents to walk pets or to engage with art installations. There really is something for every demographic and socioeconomic status.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

The COVID-19 public health emergency resulted in a significant decrease in meeting, event, and overnight lodging reservations because people were being encouraged to stay home and not to gather together. This meant that events like family reunions and weddings were not happening and vital income that supports other programs was not coming in.

The camp program was also severely limited in 2020. Camp capacity decreased from 100 campers to only 40, and those 40 campers had to be divided into four different buildings (meaning that cleaning and staffing costs were all substantially higher). Kids had to wear masks whenever they were inside, and we had staff cleaning and sanitizing more frequently meaning cleaning and personal protective equipment costs were higher than usual. Camp Sequoyah did pivot to provide a virtual facilitation program during the school year to help working parents make sure that their kids were getting their homework and class requirements completed during the day.

The pool and swim programs were cut in half because of requirements imposed on pools by the department of health. We had lots of families wanting to participate, but not as much available space at the pool.

Our organization did see an increase in people out walking, running, biking and and just playing outdoors in general. We saw families getting together on our grounds enjoying the rocking chairs or walking paths.

Staff continually worked to keep offering programs to help generate necessary income for the organization. The team offered to go meal service, outdoor, socially distanced concerts, a completely outdoor art installation, and much more. Mount Sequoyah provided housing for University of Arkansas students needing to quarantine due to contracting COVID-19, and Peace at Home reached housed some overflow families in rooms for a short time. Basically, the staff at Mount Sequoyah did all that they could during this time period often working twice as hard to serve half as many people.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

From March 3, 2020 to March 2, 2021, Mount Sequoyah sustained a 78% decrease in individuals and groups coming to campus for weddings, conferences, and personal retreats compared to March 3, 2019 to March 2, 2020. This resulted in \$723,500 less in revenue attributed to outside groups because of pandemic restrictions.

Income for day camp decreased by about 17% or \$22,700 despite opening a year-round pandemic school facilitation program in the fall of 2020. Although there was high demand for childcare services, governmental ordinances intended to keep groups safe kept our camps smaller than pre-pandemic camps.

Even with aid from the Paycheck Protection Program, Arkansas Business Interruption Grant, and other sources of pandemic funding, Mount Sequoyah still made \$529,000 less in income than in the same period in 2019.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

If provided, this funding would make a tremendous difference to address the negative economic impact sustained by the organization as described above. Even after aid from other sources, Mount Sequoyah still made less in income than in the same period in 2019. If funding is provided, Mount Sequoyah will be able to directly offset the expenses incurred paying staff to continue working to offer programming, clean facilities, maintain the buildings and grounds, and so much more. Because of safety concerns and government restrictions, continuing operations often meant working more to be able to serve even less individuals. Recouping some of this negative impact would help sustain the organization into the years to come, so that Mount Sequoyah can continue to serve Fayetteville residents with programs, events, and facilities.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

Mount Sequoyah has addressed the financial impacts of COVID-19 in a variety of ways. Initially, many of the staff were let go due to the substantial loss of income. Thanks to Paycheck Protection funds, Mount Sequoyah was able to bring staff back during 2020 and continue limited operations. However, we have been slow to bring back some positions or expand staffing much due to the financial impacts of COVID-19.

In 2020, the staff transformed outdated lodging spaces into art studio space to be able to bring in consistent monthly income and serve the art community in Fayetteville. By expanding artist studio spaces Mount Sequoyah better utilized unoccupied spaces on site and provided isolated office space for creatives to create their work.

Mount Sequoyah also applied for COVID related assistance and grants as well as making appeals directly to community supporters and donors. Successful grant funding resulted in a number of programs being created even during financially stressful times.

Mount Sequoyah welcomed a new renter in Clubhaus fitness during the pandemic to help increase revenue as well as the number of people using the facility.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

The COVID-19 health emergency resulted in a decrease in overall staffing (at least before PPP funds were received), and Mount Sequoyah had to make sure to keep staff and patrons as safe as possible. Constantly researching best practices and safest protocols with the CDC and other health entities was trying on our small staff.

We saw a decrease in volunteers - especially large groups and those needing to travel to Mount Sequoyah to help. Volunteers are a particularly important component of maintaining the grounds at Mount Sequoyah, so having fewer volunteers meant that less grounds work was able to be accomplished.

Camp Sequoyah was not able to utilize any outside organization partners as in previous years which meant that campers were not exposed to as many outside learning opportunities, and more programming had to be created and implemented internally.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:
N/A

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

Paycheck Protection Program 04/14/2020-09/19/2020 Salaries and Utilities \$224,100.00
Arkansas Ready for Business Grant 5/28/2020 - 12/31/2020 Personal Protective Equipment and Advertising \$15,500.00
Arkansas Business Interruption Grant 03/01/2020-09/30/2020 Business Insurance \$21,658.65
Employee Retention Credit Q1 2021 Tax Credits For Salaries \$11,047.99
Employee Retention Credit Q2 2020 Tax Credits For Salaries \$11,937.55
Employee Retention Credit Q4 2020 Tax Credits For Salaries \$13,677.04
Economic Injury Disaster Loan 9/22/2020 Upkeep of buildings \$150,000.00

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: [City of Fayetteville Qualified Census Tracts](#)? ☐ YES ☒ NO

If Yes, please list:

N/A

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

N/A

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 11000

Total residents: 5000

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

We wish to cover payroll from periods not covered by Paycheck Protection Program or Employee Retention Credits.

We are seeking reimbursement for these costs because our staff are what enable our organization to serve Fayetteville residents through the variety of events, activities, and services that we offer. During March 3, 2020 through March 2, 2021 the staff of Mount Sequoyah continued offering programming despite limitations imposed to keep citizens safe. Camp and swim programs were still offered in a limited capacity. Available artist studio space was expanded. Outdoor, socially distanced concerts were offered. To go meals were prepared and extra food was donated to the Friendly Fridge at St. Paul's Church. Lodging rooms were made available for University students who contracted COVID-19 and needed a place to stay quarantined away from roommates. We did all of this and much more, and it would not have been possible without staff.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021? ☒ YES ☐ NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

77,802.20

Total requested (must match total documented expenses below): _____

Date	Vendor	Expense Description	Amount
03/15/2020	Employees	Payroll	29,897.65
03/31/2020	Employees	Payroll	22,400.56
09/30/2020	Employees	Payroll	25,503.99

Total 77,802.20

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.

Emily Gentry

Digitally signed by Emily Gentry
DN: cn=Emily Gentry, o, ou,
email=emily.gentry@mountseuoyah.org, c=US
Date: 2023.02.26 19:06:00 -06'00'

2/27/2023

Authorized Signature

Date

Emily Gentry, President & CEO

Printed Name and Title

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov

Applications and supporting documentation are due by 5:00 PM on March 10, 2023

For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Rockin Baker Academy
Requested Amt: \$49,120.12

COVID-19 claimed impacts for Nonprofit organizations can include:

Decreased Revenue (e.g. Donations and Fees)

Financial Insecurity

Increased Costs (e.g., uncompensated increases in service need)

Capacity to weather financial hardship

Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and decreased revenues during 2020-2021 as a result of the pandemic.

Supported amount of reimbursement per applicant documentation: \$49,120.12



AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 2/27/2023

Year of Nonprofit Incorporation 01/24/2016

Organization Name Rockin' Baker Academy

Organization Email hello@rockinbaker.org

Mailing Address 3761 N Mall Avenue Ste 4, Fayetteville AR 72703

Physical Address (if different) _____

Organization Phone Number 479-313-6767

Website https://www.rockinbaker.org/

EIN 81-1302899

SAM Unique Entity ID Number FG9TQEUNMG59

(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Daymara Baker

Phone 479-871-4082

Email hello@rockinbaker.org

Primary Contact Name Daymara Baker

Title CEO/Founder

Phone 479-871-4082

Email hello@rockinbaker.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

Rockin' Baker's mission is to help neurodiverse adults and adolescents gain confidence and independence to transition into permanent employment through meaningful work that contributes to the health of our community. Rockin' Baker is committed to pay over minimum wage independently of their capabilities rather than the lower amount allowed by the law.

Note: Rockin' Baker Inc. is a Benefit Corporation offering commercial and wholesale high quality artisan bread products to leading hospitality groups and restaurants in Northwest Arkansas, produced by an extraordinary team: young adults on the autism spectrum. The bakery provides a hands-on training ground for Rockin' Baker Academy, its non-profit 501 c 3 entity that raises funds to support the training program, a significant line item in our corporate budget. This entity duality has allowed the B-Corp to apply and secure loans to remodel the space and purchase all the equipment needed to open the bakery on November 11, 2016, and the nonprofit entity to apply for grants to corporate and private foundations.

List and describe the services the organization provides to Fayetteville residents:

Rockin' Baker is a dynamic on-the-job culinary training and placement program. We teach bakery trade skills as well as social and life skills. This segment of our population faces an 85% unemployment rate. Our life-changing commercial bakery is operated 100% by neurodivergents producing high quality artisan breads to leading restaurants and other outlets in NWA.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

Neurodiverse individuals ranging from 18 to mid 30 years-old.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

The spread of Omicron in our region led to a significant drop in sales from our wholesale accounts. The decrease in revenue forced Rockin' Baker to reconsider its participation in schools field trips to the bakery. Productivity drops by the distraction caused by visitors touring the facility. While these field trips are important to the organization's mission of acting as a role model where other individuals on the autism spectrum can see themselves represented, when the revenue drops, the organization must focus on minimizing distractions to increase productivity to reduce any additional financial impact.

Due to lack of additional funding to support its donation program, Rockin' Baker didn't have any other option but to pause the majority of the production for food banks and schools after summer 2021. Until then, the organization donated over 140,000 fresh-made rolls, providing food relief weekly to over 395 food insecure families, 225 individuals and 20 seniors. This is a major achievement for such a small bakery.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

The organization generates earned income through the sales of artisan bread to the public and many leading restaurants in NWA with the ultimate goal of depending less on grants and donations. This model moves towards being a market-based solution to the problem underemployment of the neurodiverse population. However, significant financial gaps remain. The business has seen sales impacted by the COVID-19 health crisis due to restaurant closures that led to dropping wholesale sales. The inflation has significantly impacted production costs due to supply chain disruptions and Russian/Ukraine war (wheat prices).

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

This grant will continue helping Rockin' Baker keep its neurodiverse workforce employed above minimum wage while educating the community at large on the benefits of hiring and training neurodivergents in Fayetteville.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19? The organization continues engaging in aggressively pursuing new accounts beyond the traditional hospitality industry by targeting CSAs, retirement complexes and corporate cafeterias.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

During the various COVID variant surges, Rockin' Baker limited the participation of volunteers to minimize the risk of having any of its cadet bakers infected by the virus. This situation caused the organization to spend more on labor costs to complete the needed tasks to continue its commercial operations. The organization also incurred in overtime costs when two (2) of the cadet bakers contracted COVID-19. There was an eminent need to keep our cadets safe and healthy by minimizing their exposure to new people in such a small place, causing overtime cost from those covering the gaps created by the absences.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

PPP1 = \$22,548.10 (4/10/20-6/30/20, \$20,645.89 payroll, \$1,815 rent April, \$19.19 water April, \$68.02 phone April)-See tab PPP1 in excel file

AR Ready for Business \$3,500 (4/28/20-8/11/20, ingredients, PPE supplies, etc) see tab

AR Business Interruption Grant \$12,251.00 (2020Q3 payroll applied to Daymara Baker)

PPP2 \$28,603 (1/21/21-3/26/21 payroll) see PPP2 tab

City of Fayetteville ARPA 2b \$40,988.856 3/3/21-3/3/22

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: [City of Fayetteville Qualified Census Tracts](#) ? ☐ YES ☒ NO

If Yes, please list:

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 58,000

Total residents: 80,000

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

Rocking Baker never closed its baking operations, even when its wholesale accounts were forced to shut down. The organization found creative ways to keep some of its cadet bakers employed while producing solely for food banks and schools. When restaurants starting to open back up, Rockin' Baker balanced the production of wholesale and donation, until funding stopped coming in to continue supporting its donation program called Rise Up Together. At the end of summer 2021, this small bakery had distributed over 140,000 fresh-made rolls to our neighbors in Fayetteville. Per our partnering organizations Tri Cycle Farms and Seeds that Feed, our program provided food relief to over 395 food insecure families, 225 individuals and 20 seniors every single week.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?



YES



NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

49,120.106

Total requested (must match total documented expenses below): _____

Date	Vendor	Expense Description	Amount
3/3/20-3/2-21	Rockin' Baker	Payroll (see excel file for details)	30,439.55
3/3/20-3/2/21	Creekside Center	rent & CAM (see excel file for details)	13,255.85
3/3/20-3/2/21	Swepco	electricity (utilities), see excel files for details	3,180.90
3/3/20-3/2/21	Shelter	various insurance, see excel files for details	1,387.34
3/3/20-3/2/21	Cintas	disinfectants/cleaning supplies, see excel file for details	532.94
3/3/20-3/2/21	Black Energy	gas (utilities), see excel file for details	323.54

Total 49,120.106

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.


Authorized Signature

Daymara Baker, CEO/Founder

Printed Name and Title

2/27/2023

Date

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023
For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Sheep Dog Impact Assistance
Requested Amt: \$109,480.21

COVID-19 claimed impacts for Nonprofit organizations can include:

Decreased Revenue (e.g. Donations and Fees)

Financial Insecurity

Increased Costs (e.g., uncompensated increases in service need)

Capacity to weather financial hardship

Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship, decrease in donation revenue, and increased demand for services during 2020-2021 as a result of the pandemic.

Supported amount of reimbursement per applicant documentation: \$100,000.00



AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 2/27/2023

Year of Nonprofit Incorporation 2010

Organization Name Sheep Dog Impact Assistance

Organization Email BWest@SheepDogIA.org

Mailing Address 4940 Maple Grove Dr, Fayetteville, AR 72764

Physical Address (if different) _____

Organization Phone Number 417-812-6035

Website www.SheepDogIA.org

EIN 26-4521779

SAM Unique Entity ID Number CMM1LMT1L6L4
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Lance Nutt

Phone 479-466-9713

Email Lance@SheepDogIA.org

Primary Contact Name Bridgette West

Title Development Director

Phone 479-685-7640

Email BWest@SheepDogIA.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

Through our Get Off The Couch™ programming, Sheep Dog Impact Assistance (SDIA) is the national nonprofit providing charitable services benefitting the overall well-being of our nation's Veterans and First Responders through Outdoor Adventures (physical activity), Warrior PATHH training (mental wellness) and Continued Service/Disaster Response (volunteerism) programs.

List and describe the services the organization provides to Fayetteville residents:

Through our Get Off The Couch™ programming, Sheep Dog Impact Assistance (SDIA) is the national nonprofit providing charitable services benefitting the overall well-being of our nation's Veterans and First Responders through Outdoor Adventures (physical activity), Warrior PATHH training (mental wellness) and Continued Service/Disaster Response (volunteerism) programs.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

SDIA primarily serves veterans, first responders, and their families. Our nation's heroes have an innate desire to serve, and their service gives meaning and purpose to their lives. After an injury or shift/tour of duty ends, that meaning and purpose is often lost. Post-traumatic stress, injuries, depression, addiction, and isolation plague our Sheep Dogs to the point of thinking about and/or attempting suicide. Through our Get Off The Couch™ programming, Sheep Dogs who have suffered similar traumas & experiences gather together for camaraderie and opportunities to continue serving, which helps prevent suicides in our Veteran and First Responder communities.

When Sheep Dogs #GetOffTheCouch together, their attitude and perspective are drastically improved, and many find healing and a renewed sense of purpose and belonging.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

During the COVID-19 Pandemic, SDIA was faced with a significant decrease in donation revenue as well as a significant increase in demand for our programs. The isolation encouraged by social distancing practices to slow the spread of COVID-19 proved to be severely detrimental to the mental health of our nation's veterans and first responders. Because of this, SDIA utilized smaller, more frequent Outdoor Adventures to encourage mental wellness for these Sheep Dogs while adhering to social distancing practices. SDIA also partnered with the NWA COVID-19 Task Force to assist with the collection and distribution of PPE to police and fire stations in Washington and Benton Counties, created and distributed cloth masks, and assisted with food and medication deliveries to vulnerable populations in Washington and Benton Counties.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

During the COVID-19 Pandemic, SDIA was faced with a significant decrease in donation revenue as well as a significant increase in demand for our programs. In 2020, SDIA reported a loss of nearly \$70,000 on our 2020 990 after reporting a surplus of nearly \$60,000 on our 2019 990. This significant change in economic standing was caused by a decrease of \$31,982 in revenue and an increase of \$94,954 in expenses because of the increase in demand for our programs. SDIA was unable to hold our largest annual fundraising event with an average profit of \$100,000 in 2020 and 2021.

The increase in expenses can be attributed to the additional 47,459 people assisted by SDIA in 2020 which was a 2300% increase over the number of people served by SDIA in 2019.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

This funding would allow SDIA to begin filling the gap between the decrease in earnings and increase in expenses during the COVID-19 Pandemic. This funding would also allow SDIA to sustain the growth in the number of people we serve each year that began during the COVID-19 pandemic.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19? SDIA has addressed the financial impacts we have experienced due to the COVID-19 pandemic by increasing our strategic partnerships with other nonprofit organizations like the Avalon Action Alliance, Carry the Load, Boulder Crest Foundation, Walmart SERVES, and Veterans United Foundation. SDIA also utilized withdrawals from our endowment campaign in order to be able to continue serving veterans and first responders.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

Due to the COVID-19 pandemic, SDIA had less ability to utilize volunteers to assist with the operations of our nonprofit. SDIA also saw several instances of "sunk costs" in which we organized travel and activities for participants to participate in Outdoor Adventures who ended up testing positive or needing to quarantine very close to the time of the event and were thus unable to attend.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

SDIA received a Paycheck Protection Program loan in May 2020 to assist with payroll for SDIA employees. SDIA is not asking for reimbursement of payroll expenses in this application.

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: [City of Fayetteville Qualified Census Tracts](#)? ☒ YES ☐ NO

If Yes, please list:

SDIA has operated in all Qualified Census Tracts illustrated on this map.

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 500+

Total residents: 48,343

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

During the COVID-19 Pandemic, SDIA utilized smaller, more frequent Outdoor Adventures (OAs) to encourage mental wellness for these Sheep Dogs while adhering to social distancing practices. Due to the nature of the trauma many Sheep Dogs experience, the isolation encouraged by COVID-19 protocols were significantly detrimental to their mental health. Participating in OAs gives them the camaraderie and peer support they were missing. SDIA also partnered with the NWA COVID-19 Task Force to assist with the collection and distribution of PPE to police and fire stations in Washington and Benton Counties, created and distributed cloth masks, and assisted with food and medication

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?



YES



NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

\$100,000

Total requested (must match total documented expenses below): _____

Date	Vendor	Expense Description	Amount
		See "Fayetteville ARPA Expense	Breakdown"

\$109,480.21

Total

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.



Authorized Signature

2/27/23

Date

Lance Nutt, CEO & Founder

Printed Name and Title

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov

Applications and supporting documentation are due by 5:00 PM on March 10, 2023

For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



1200 West Walnut Street, Suite 2310 | Rogers, AR 72756

April 26, 2023

To Whom It May Concern:

This is my signed attestation that Sheep Dog Impact Assistance (SDIA) has conducted services from the following address during 2020 and 2021:

4940 Maple Grove

Fayetteville, AR 72764

The primary use for this satellite office was coordinating and conducting services for Fayetteville residents who are veterans and first responders in relation to our Disaster Response program. During the COVID-19 pandemic, SDIA activated our Disaster Response program to provide support and resources to communities affected by the COVID-19 pandemic. This support included but was not limited to: acting as a "hub" for the NWA COVID-19 task force which was responsible for collecting and distributing PPE to first responder agencies in Fayetteville, delivering face masks and other supplies to first responder agencies and hospitals in Fayetteville, and providing assistance accessing groceries and medical supplies for vulnerable populations.

SDIA has served over 1000 Fayetteville citizens through these efforts and currently has over 400 members and volunteers registered from the Fayetteville area. We are proud to serve the community of Fayetteville through all three of our programs: Outdoor Adventures (recreational therapy), Warrior PATHH (mental wellness), and Continued Service/Disaster Response (volunteerism).

Best Regards,

A handwritten signature in black ink, appearing to read 'Lance Nutt', with a long horizontal line extending to the right.

Lance Nutt

SgtMaj, USMCR (Ret.)

SDIA CEO & Founder

HELPING OTHERS IS A WAY OF LIFE

SHEEPDOGIA.ORG

Sheep Dog Impact Assistance is a 501c3 Nonprofit Organization | Tax ID # 26-4521779



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Northwest Arkansas Community Creative Center
Requested Amt: \$135,208.00

COVID-19 claimed impacts for Nonprofit organizations can include:

Decreased Revenue (e.g. Donations and Fees)

Financial Insecurity

Increased Costs (e.g., uncompensated increases in service need)

Capacity to weather financial hardship

Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and decreased revenue during 2020-2021 as a result of the pandemic, and additional costs related to sanitizing their facility against COVID-19.

Supported amount of reimbursement per applicant documentation: \$100,000.00



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AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 2/27/2023

Year of Nonprofit Incorporation 2007

Organization Name Northwest Arkansas Community Creative Center

Organization Email Communitycreativecenter1@gmail.com

Mailing Address 505 W. Spring St., Fayetteville, AR 72701

Physical Address (if different) _____

Organization Phone Number 479-571-2706

Website communitycreativecenter.org

EIN 26-0166277

SAM Unique Entity ID Number J7Y4AHUEFC29

(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Bryce Brisco

Phone 479-571-2706

Email brycebrisco@gmail.com

Primary Contact Name Anita Cowan

Title Director of Community Partnerships

Phone 479-571-2703

Email anita@communitycreativecenter.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

Community Creative Center is a Visual Art Studio. Our programming is intentionally developed to fulfill our mission of awakening the extraordinary power of art to engage individuals and the community through accessible Arts education. We strive to meet the needs and demands of art enthusiasts and students of all ages, skill levels and art genres. Class syllabuses are developed with an educational, historical, and artistic foundation that deeply grounds all we offer. Students learn how, but they also learn why, when and what. We regularly survey to learn what our students want but avoid fads or superficial attempts at artmaking. We believe art takes time, requires patience and thoughtful persistence.

List and describe the services the organization provides to Fayetteville residents:

Community Creative Center (CCC) is a visual arts organization providing hands-on studio classes and workshops in a variety of art forms including clay and ceramics, painting, drawing, glass fusion, printmaking, watercolor, sand casting, air-brushing, and mixed media. We serve youth and adults of all ages and skill levels. Our 6900 sq.ft. space includes a fully equipped pottery studio, multi-purpose art studios and exhibition space for local artists. We provide arts education experiences for community members, area schools and partner with other non-profit arts and community organizations. Our programming is also designed to support the power art has in bringing people together. Our Family Nights, Date Nights and Friends Night Out workshops provide the opportunity for people to find enriching and creative ways to spend time together. In addition, we seek partnerships with the education community, youth organizations, community non-profits and social service agencies that use the powerful nature of the arts to heal, empower, relax, engage, and learn. We also look forward to getting the Wheel Mobile back on the road. Our mobile studio further underpins our aesthetic strategy.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

CCC's target audience is EVERYONE - from seniors to youth, anyone wanting to engage in Visual Arts and embrace the joy and creativity that art brings to lives. We continue to develop and implement appealing, affordable programming for adults, seniors and youth art students, education communities and underserved groups. We will identify new groups and re-build pre-COVID connections in order to develop needs-based programming to cultivate participation.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

After the initial suspension of all CCC programming in March 2020, we realized it could be possible to restart our Open Studio program once we evaluated our studio spaces, social distancing needs and the safety of students, staff, and teaching artists. Open Studio is CCC's membership program where community members work independently in our clay studio accessing pottery wheels, studio equipment, glazing room and staff-assisted kiln firings. Before the pandemic, 25-30 members had 7-day a week studio access. Upon restarting in April, members could elect to suspend their membership or continue to use our resources on a safe yet limited basis, 10 hours/week. Active members dropped to 50% of our pre-pandemic numbers. Before Covid, Open Studio program expenses were covered in part through earned income generated by robust wheel class and other program student fees.

We then restarted classes and workshops: Offering abbreviated (4 week) pottery wheel and painting classes; fall and winter holiday (2 hr.) workshops. Starting out slowly to gauge interest, evaluate safety protocols and adapt appropriately. Offering fewer classes with less students (for safety.) However, most expenses, teacher fees, marketing, rent, etc., remain the same.

The Pandemic may have been toughest of all on our Wheel Mobile Traveling Art Studio. Due to the confined space and the inability to social distance inside the Wheel Mobile all Wheel Mobile Programs were suspended and The Wheel Mobile put into storage. Completely wiping out an entire revenue stream but the expenses remained the same.

Keeping the organization operating as best as possible through this crisis, with a goal of keeping our staff paid and working to develop new ways to meet our mission, like creating Take-&-Make boxes with Zoom instructions, but to the best of our abilities, in October of 2020, 75% of Community Creative Center's staff was laid-off and most programs suspended.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

As our Statement of Activities will show that from March 3rd, 2019 to March 2nd, 2020 our earned income from Classes, Workshops, Art Parties and Gallery Sales was \$176,469.03, and our March 3rd 2020 to March 2nd 2021 our earned income from Classes, Workshops, Art Parties and Gallery Sales fell to \$53,945.12 at total of 69% less in 2020 then the previous year of 2019.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

Community Creative Center would use the ARPA Reimbursement funds to bring our staff and programming offered back to the pre-pandemic levels. They will hire a full-time Wheel Mobile, Marketing and Printmaking Staff. We envision a continued expansion of offerings, events and partnerships and have made concrete goals to meet as we emerge from pandemic related restrictions. We continue to develop and implement appealing, affordable programming for adult and youth art students, education communities and underserved groups by regularly surveying existing student and community groups through needs assessment instruments and focus groups to seek feedback that will ensure our programming is meeting their needs. Assessment of growth trajectories reveal that we are in need of physical expansion of studio space, greater diversity of programming, and full time staff to support both.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19? In Spring of 2021, a new staff was hired to the CCC. This scappy new staff has worked hard to develop new and diverse program offerings. Create new fun educational events that are free to the public. They have used these new programs and events to increase their earned income but also to create corporate sponsorships revenue as well. They have attended pop-up markets (i.e. First Thursdays and Goshen Farmers Market) to sell pottery and promote CCC. They team up with the City and other organizations whenever possible to partner on events by providing face painting and Art activities. Combined, all of these efforts of our hard working staff has helped CCC rebound for the financial impacts due to Covid-19.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

Covid made us suspend our school based grant funded out-reach programs like Stage to Studio, Arts Forward After School Program, Wheel Mobile and Summer Camps. We had great hope for these programs to return immediately after the vaccine became available to school aged students for the new 2021-2022 school year. However, because of the Delta variant and then the Omicron variant of Covid switching in-person learning to Alternative Method of Instruction in the 2021-2022 school year made scheduling these programs nearly impossible.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

PPP Loan - received 4/17/2020, \$33,800

Arkansas CARES grant - received 8/13/2020, \$6034

Arkansas Business Interruption Grant (BIG) - received 12/23/020, \$7154

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: [City of Fayetteville Qualified Census Tracts](#) ? ☐ YES ☒ NO

If Yes, please list:

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 8231

Total residents: 10,974

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

CCC is respectfully requesting ARPA funding for RENT we paid for our studio building and PAYROLL for 8 full and parttime staff employed during a portion of the program's covered period. As noted above, CCC received a PPP loan and two federal grants supporting rent, payroll and other administrative expenses totalling \$46,997 awarded during the program's covered period, 3/3/2020 - 3/2/2021. The amount of \$46,997 has been deducted from CCC's total rent and payroll expense for the same time period and is not included in the current ARPA \$135,208 request. Keeping the organization going--doors open and staff employed--assisted Fayetteville residents by allowing this creative resource to remain operational as best as possible until it was safe to restart normal operations.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021? ☒ YES ☐ NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

\$135208

Total requested (must match total documented expenses below): _____

Date	Vendor	Expense Description	Amount
8/1/2020-3/1/2021	Walton Arts Center	Rent	21,669
6/1/2020-3/1/21	Organization Operations	Payroll	113,539

Total \$135,208 _____

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.

Authorized Signature

Date

2-25-2023

BRYCE BRISCO / EXECUTIVE DIRECTOR
Printed Name and Title

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023
For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Theater Squared
Requested Amt: \$100,000.00

COVID-19 claimed impacts for Nonprofit organizations can include:

Decreased Revenue (e.g. Donations and Fees)

Financial Insecurity

Increased Costs (e.g., uncompensated increases in service need)

Capacity to weather financial hardship

Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and decreased revenue during 2020-2021 as a result of the pandemic.

Supported amount of reimbursement per applicant documentation: \$100,000.00



CITY OF
FAYETTEVILLE
ARKANSAS

AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 02/27/2023

Year of Nonprofit Incorporation 2004

Organization Name Theatre Squared, Inc.

Organization Email elliott@theatre2.org

Mailing Address PO Box 4188, Fayetteville, AR 72702

Physical Address (if different) 477 W Spring St, Fayetteville, AR 72701

Organization Phone Number 479-445-6333

Website www.theatre2.org

EIN 20-1016258

SAM Unique Entity ID Number PHLWMHAMZD94

(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Martin Miller

Phone 479-445-6333

Email martin@theatre2.org

Primary Contact Name Elliott James

Title Director of Finance

Phone 479-777-7079

Email elliott@theatre2.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

We believe that theatre—done well and with passion—can transform lives and communities.

At the theatre, in schools and online, we create remarkable performances; broaden access; foster empathy, equity and cohesion; and gather with one another around art, conversation, food and other shared experiences in a welcoming, inclusive space.

List and describe the services the organization provides to Fayetteville residents:

TheatreSquared (T2) is Arkansas's largest professional theatre, nationally recognized for its artistic excellence and trailblazing educational work. T2 produces 250 mainstage performances in downtown Fayetteville and 90 educational touring performances, bringing remarkable live theatre experiences to 75,000 audience members annually in Fayetteville and beyond—including more than 24,000 students and teachers. TheatreSquared's activity also serves as an economic engine for surrounding businesses—generating nearly \$10 million in local spending every year (Americans for the Arts). The theatre employs dozens of theatre professionals and artists residing in Fayetteville. Through "Lights Up! for Access," T2 offers more than 10,000 free and deeply discounted tickets annually to underserved community members who would not otherwise have access. The vast majority of Lights Up recipients are Fayetteville residents and clients of Fayetteville-based nonprofit partners. Although the "true cost" of a ticket to a T2 performance is nearly \$150, charitable support enables TheatreSquared to keep ticket prices accessible to the broader community, with an average public ticket price of \$31 and even greater accessibility for Lights Up participants through free tickets for clients of 100+ nonprofit community partners, \$1 tickets for SNAP recipients, and \$10 tickets for students and youth.

TheatreSquared's far-reaching educational programs reach more than 24,000 students and teachers at 90 schools each year, including many Fayetteville schools. TheatreSquared also offers free community events in its open-all-day public Commons, welcoming even non-theatre-goers inside and helping build strong connections across the community.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

TheatreSquared annually serves more than 75,000 community members of all backgrounds, including 25,000 students and teachers. Nearly half of TheatreSquared's beneficiaries experience professional theatre and education programs at free or deeply discounted rates, including more than 10,000 participants in the Lights Up! for Access program and 25,000 students and teachers from elementary school to high school, in Fayetteville and across the state. Lights Up participants include low-income families who qualify for SNAP benefits, underserved clients of more than 100 local non-profit partners, and students and youth under 30 who may not yet earn a steady income. Beyond these groups, the demographics of the remainder of T2's audience align closely with those of the city of Fayetteville. In the 2021/22 season, more than 25,000 of the 48,000 community members reached by T2's mainstage season were residents of Fayetteville.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

As a professional theatre company, TheatreSquared's programs rely upon the gathering of individuals in a shared space. On March 14, 2020, in response to the onset of the COVID-19 pandemic, TheatreSquared suspended performances of its sold-out and twice-extended run of "Ann" and rescheduled the remainder of performances in its 2019/2020 season. In the year-long period immediately following the shutdown, ticket sales plummeted by 74% over the previous year. The consequences to TheatreSquared's ongoing Our Next Stage Campaign were just as dire.

The theatre's future was uncertain, but the company was determined to continue serving the community. T2 staff and artists quickly innovated and adapted to the new circumstances, expending significant funds and staff time on the purchase of and training on new, multi-camera HD video and streaming equipment, acquiring the knowledge and skills necessary to film, edit, and share the theatre's productions digitally. TheatreSquared's subscribers, single ticket buyers, and Lights Up for Access participants had the opportunity to experience six streaming productions and five new-works-in-development between June 2020 and March 2021. These productions brought national attention to Fayetteville's arts offerings, including a New York Times Critics' Pick, acclaim from the Wall Street Journal, and even an Obie Award, off-Broadway's highest honor.

With T2's education team unable to visit schools in person, T2 Education staff reached out to teachers to find out how they could help and subsequently developed the original, 30-part series "Play On," providing free, daily online content for the students, teachers, and community members they would have otherwise been serving in person. Education staff also adapted five summer camps to immersive, two-way virtual programs (provided to students tuition-free) and worked to modify the 2020/21 Schools Tour to an interactive, virtual format, which has been shared free-of-charge with schools in Fayetteville and throughout Arkansas since spring 2021.

From spring 2020 to spring 2021, TheatreSquared's calendar was worked and reworked multiple times to meet the changing protocols and uncertain timeline of the pandemic. When public health conditions finally allowed a return to in-person performances in April 2021, T2 was among the first theatres in the country prepared for a safe return, due to its retention of staff throughout its March 2020 - March 2021 closure and diligent planning to maintain the highest health and safety standards.

While the theatre's return to in-person performances has been largely positive, ticket sales still have not returned to their pre-pandemic volume, leaving the theatre's earned income lagging despite increased expenses due to both COVID and inflation.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

T2's earned income from ticket sales, events, and hospitality was decimated by the COVID-19 public health emergency, dropping by 74% (nearly \$1 million) between March 3, 2020, and March 2, 2021 when compared to the previous year's ticket sales. Campaign fundraising for the closing phase of the Our Next Stage Campaign was also significantly impacted. A pending \$2.5 million request to a major foundation, which had received initial indications of approval, was scheduled to receive its final review in April 2020. The foundation instead shifted its focus to pandemic response in late March and the request was abandoned. The suspension of in-person meetings and events also had a substantial negative impact on the closing phase of the campaign. As a result, in FY20 alone, the theatre's fundraising came in more than \$3 million below its anticipated pace by the end of the fiscal year, leaving the company with unanticipated additional debt service expense for the foreseeable future.

The company's virtual productions were well received, but while expenses for the virtual productions remained similar to in-person, streaming ticket sales could never keep pace with the revenue earned from in-person tickets. Earned income remains deeply impacted in the current season. Throughout 2022, attendance remained 30-50% below pre-pandemic levels. A similar experience is reflected at theatres across the nation. Independent experts anticipate that audiences may take up to three years to fully return, even though health and safety precautions have been eliminated—simply because habits have changed during the extended crisis.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

Funding in the amount proposed would cover a small fraction of the substantial and ongoing economic losses sustained while performances were suspended due to the public health crisis and from continuing diminished attendance. The maximum grant award of \$100,000 through this program would help to mitigate a portion of the theatre's immediate challenges from reduced attendance, a nationwide phenomenon following the COVID-19 pandemic, within the currently announced programmatic year.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

TheatreSquared staff were quick to ramp up fundraising efforts and apply for every available form of assistance to help mitigate the significant losses brought about by the pandemic shutdown, including government relief grants such as the Paycheck Protection Program and Shuttered Venue Operations Grant. T2's ongoing fiscal responsibility and the diligent building of a healthy reserve fund over the past decade helped the company to weather the crisis. While other theatres across the country suspended all activity, canceled artistic contracts, and laid off the majorities of their staff, TheatreSquared instead invested in retaining its team, honoring contracts, and upholding high health and safety standards while continuing to produce innovative artistic work, even providing months of free housing for visiting artists who were unable to return home due to the public health emergency.

The company has maintained its staff and operations despite the significant headwinds faced by theatres across the country. In the current season, 96% of LORT (League of Regional Theatres) members reported a substantial deficit, averaging 16% of revenue—or \$3.3 million—and continued to project deficits forward for the 23/24 fiscal year. From Oregon to Ohio to New York, and hundreds of municipalities in between, ARPA funds made available via statewide, countywide, or citywide efforts have helped to offset these losses, but TheatreSquared has forged its own path by necessity in the absence of local or statewide efforts to provide support using federal funds intended to offset industry losses.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

Even after returning to streaming and, eventually, in-person performances, TheatreSquared has had to cancel numerous performances in efforts to monitor and contain the spread of COVID-19. The crisis period substantially increased turnover in staffing for the café and front-of-house areas. The building was closed to the public for performances and events from March 2020 to April 2021.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

see attached document titled "Other COVID-19 related funding assistance"

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: City of Fayetteville Qualified Census Tracts? ☒ YES ☐ NO

If Yes, please list:

Census Tract 113.02

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 14,584

Total residents: 40,009

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

TheatreSquared is seeking reimbursement for payroll expenses during the covered period. The significant majority of T2 staff live and work in Fayetteville, providing services to an audience that, in most seasons, is predominantly composed of Fayetteville residents. Through its Lights Up! for Access program, TheatreSquared partners with more than 100 nonprofit organizations to distribute free and reduced-price tickets to those who would otherwise be unable to attend due to price or other barriers. The majority of Lights Up partners are also based in Fayetteville. Low-income populations were disproportionately impacted by the economic effects of the COVID-19 pandemic. The tourism and hospitality sector was deeply affected by the pandemic, and T2's commitment to maintaining the employment of artists, hospitality workers, and arts professionals during this time was of significant assistance to these residents.

Audience members, students and teachers who participated in TheatreSquared's digital streaming productions and education programs enthusiastically shared with T2 the positive impact these services had on their mental and emotional wellbeing, calling them "a godsend," a "beacon of light," and a "life line" in a difficult time.

In addition to T2's regular activities, TheatreSquared's resident costume designer and costume technicians spent many weeks early in the pandemic sewing cloth masks, which were donated to frontline workers in Fayetteville, including healthcare workers at Washington Regional and other local medical facilities.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?



YES



NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

Total requested (must match total documented expenses below): \$100,000

Date	Vendor	Expense Description	Amount
10/1/2020-12/31/2020	Employee Payroll	Wages / Compensation. See supplemental documents for detail.	\$100,000

Total \$100,000

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.

Elliott James

Digitally signed by Elliott James
Date: 2023.02.27 00:01:58 -06'00'

2/27/2023

Authorized Signature

Date

Elliott James

Printed Name and Title

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023
For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov

NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Symphony of Northwest Arkansas
Requested Amt: \$86,993.00

COVID-19 claimed impacts for Nonprofit organizations can include:

Decreased Revenue (e.g. Donations and Fees)

Financial Insecurity

Increased Costs (e.g., uncompensated increases in service need)

Capacity to weather financial hardship

Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and reduced revenue from ticket sales, etc., during 2020-2021 as a result of the pandemic and additional costs related to mitigating the spread of COVID-19 in the facility.

Supported amount of reimbursement per applicant documentation: \$76,455.56



AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@favetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 2/26/23
Year of Nonprofit Incorporation 1975
Organization Name Symphony Orchestra of Northwest Arkansas (SoNA)
Organization Email riley@sonamusic.org
Mailing Address PO Box 1243, Fayetteville AR, 72702
Physical Address (if different) 217 E. Dickson St. Suite 106, Fay. AR 72701
Organization Phone Number 479.521.4166
Website sonamusic.org
EIN 23-7439184
SAM Unique Entity ID Number HVQ1TJPEMZR1
(see <https://sam.gov/content/entity-registration> for more information)
CEO/Executive Director Name D. Riley Nicholson
Phone 479.521.4166
Email riley@sonamusic.org

Primary Contact Name Riley Nicholson
Title Executive Director
Phone 479.521.4166
Email riley@sonamusic.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

Mission: SoNA brings great music to life in Northwest Arkansas.

Vision: SoNA will be recognized as a trailblazing orchestra as it: Expands the possibilities of what an orchestra can be; Changes lives by increasing interest and equity in the arts through outreach, education, collaboration and performance; Creatively honors the past, present and future of our artform, fostering the highest levels of artistic expression.

List and describe the services the organization provides to Fayetteville residents:

SoNA performs a season of 6+ mainstage symphonic concerts at the Walton Arts Center, and is the resident symphony orchestra of the Walton Arts Center. SoNA also performs out in the community across Northwest Arkansas and beyond the confines of the Walton Arts Center through its "SoNA Beyond" series, featuring innovative, accessible, and inclusive artistic experiences. SoNA also provides music education and youth-focused programming to support and inspire the next generation of musicians and music-lovers.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

SoNA, does not have one single target beneficiary; we aim to serve a wide, representative cross-section of Northwest Arkansas. We believe everyone should have the opportunity to experience live music.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

Due to large indoor gatherings being prohibitively dangerous during the time period of March 3, 2020 to March 2, 2021, SoNA was forced to cancel two concerts (March 21 and May 2 of 2020) during its 2019-20 mainstage season at the Walton Arts Center. Yet, while these concerts were canceled, SoNA still paid its musicians 100% of what they would have made if the concerts had occurred as planned. Additionally, SoNA had to cancel its gala, originally scheduled for March 17, 2020. SoNA also had to cancel the entire 2020-21 mainstage season. SoNA was able to launch its "Reimagined Season" during season 2020-21 in lieu of the mainstage season; this "Reimagined Season" consisted of virtual events and small scale, socially distanced and/or outdoor concerts.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

The two canceled mainstage concerts in spring of 2020 constituted a total projected loss of \$79,988 in ticket sale revenue (number based on previous two mainstage concerts before pandemic closures, see "P&L Comparison Data > concerts"). Additionally, the gala originally scheduled for March 17, 2020 was canceled – representing \$53,927 of projected contributed revenue that was not realized (number based on 2019 Gala, see "P&L Comparison Data > gala"). Lastly, as mentioned, the 2020-21 season was canceled, and in lieu of it SoNA produced its "Reimagined Season" which brought in only \$875 in ticket sales between 7/1/2020 and 3/2/2021; during a typical year SoNA brings in \$171,135 in ticket sales (comparison period 7/1/2019 and 3/2/2020, see "P&L Comparison Data > season"). This represents a total loss of \$250,248 in ticket sales and a loss of \$53,927 for gala revenue during the period in consideration (3/3/2020 - 3/2/2021) for this application.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

Despite the significant losses to both earned (box office) and contributed revenue, SoNA remained steadfast in its commitment to supporting its artists. SoNA still paid its artists the amount they would have made despite the cancellation of the concerts on March 21 and May 2 of 2020 totaling to \$70,211 in artist payroll. Additionally, in the 2020-21 "Reimagined Season" SoNA found ways to provide musicians work, including through two digital concerts where musicians recorded themselves from home including a holiday digital performance "Sleighride Together" in collaboration with Ballet AR – totaling to \$13,478 in artist payroll, and a recording of "Fanfare for the Common Man" totaling to \$3,304 in artist payroll. This totals to \$86,993 in artist payroll expense that was not supported by earned income or other pandemic relief. ARPA funding from the City of Fayetteville would help reimburse SoNA for these payroll expenses.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19? Since the beginning of the pandemic, SoNA has relied on individual, corporate, government, and foundational giving more than ever to support its operations despite disruptions to ticket sales and significantly less contracted services (events presented by external parties where SoNA musicians are hired to play). At the end of fiscal year 2019-20, cash reserves were used to make up for the significant deficits due to the pandemic; that fiscal year we paid musicians 100% of their service rates for canceled concerts. In fiscal year 2020-21, ticket sales continued to be severely impacted, down approximately 99%. This revenue loss has been balanced by decreased expenses, the continuation of contributed income, and government relief including PPP, the Arkansas Business Interruption, and the Shuttered Venue Operators Grant. The current fiscal year somewhat represents a return to normalcy with the return to our mainstage performances; however, ticket sales continue to be volatile and need to be balanced by other sources of income and cash reserves more than ever.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

Even once we were able to return to large scale concerts in season 2021-22, the public health emergency has required that we take precautions to mitigate risk including vaccination mandates, testing, masking, distancing, air filters, and other measures (safety policies have varied according to the levels of community spread and recommendations/guidelines from the CDC and State of Arkansas).

Even once these precautions could be relaxed in 2022, the public health emergency continues to significantly affect artistic staffing – an unusually high number of last-minute musician substitutes have been needed as musicians test positive and quarantine at home. This has increased the workload of our staff as we adapt to substitutions and an ongoing and dynamic situation.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:
See attachment.

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: [City of Fayetteville Qualified Census Tracts ?](#) ☒ YES ☐ NO

If Yes, please list:

Primary venue (Walton Arts Center) is within census tract 113.02. Admin offices are not.

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 22533

Total residents: 54958

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

See attachment.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?



YES



NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

\$86,993

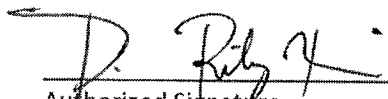
Total requested (must match total documented expenses below): _____

Date	Vendor	Expense Description	Amount
3/27/2020	artist payroll	artist payroll for canceled 3/21/20 concert	\$31,485
5/11/2020	artist payroll	artist payroll for canceled 5/2/20 concert	\$38,726
11/04/2020	artist payroll	artist payroll for virtual concert	\$3,304
12/17/2020	artist payroll	artist payroll for virtual concert	\$13,478

Total \$86,993

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.


Authorized Signature

2-26-23
Date

D. Riley Nicholson, Executive Director
Printed Name and Title

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023
For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Botanical Garden Society of the Ozarks
Requested Amt: \$100,000.00

COVID-19 claimed impacts for Nonprofit organizations can include:

Decreased Revenue (e.g. Donations and Fees)

Financial Insecurity

Increased Costs (e.g., uncompensated increases in service need)

Capacity to weather financial hardship

Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and decreased revenue from fundraising and fees during 2020-2021 as a result of the pandemic, and additional costs related to COVID-19 mitigation.

Supported amount of reimbursement per applicant documentation: \$100,000.00

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds?

If Yes, describe amount(s), use(s), and timeframe:

Two PPP loans: totaling to \$60,727, used between the period of 5/1/2020 to 9/21/2021, used for salaried administrative employee payroll (not artistic payroll) and rent expenses.

Arkansas Business Interruption Grant: \$18,602, reimbursement for qualified expenses during the period of March 1, 2020 to September 30, 2020. Qualified expenses included: rent expenses, operational and professional business licenses, certified payroll documentation (not including that covered by PPP), telephone and internet service expenses, business insurance expenses, PPE and covid mitigation expenses. Reimbursement was not used for artistic payroll expense.

Shuttered Venue Operators Grant: used for fiscal year 2022 costs (fiscal year is July 1, 2021-June 30, 2022). \$236,880 is used for: personnel (payroll cost), contractual obligations with independent contractors, office rent, insurance payment, advertising, and administrative costs. (not overlapping with PPP or Business Interruption Grant expenses)

ARPA support through the City of Fayetteville (round one of funding): reimbursed venue costs incurred between 1/27/2022 3/1/2022 totaling to \$19,314.

Please describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

Funding is requested to reimburse for artistic payroll costs for:

- 1.) Two canceled symphonic concerts at the Walton Arts Center (March 21 and May 2 of 2020) where artists were still paid 100% of their service fees (totaling to \$70,211)
- 2.) Two virtual performances during the "Reimagined Season" including "Sleighride Together" and "Fanfare for the Common Man" (totaling to \$16,782)

Working artists have disproportionately suffered from pandemic cancellations and the inability to perform. Therefore, we were and remain committed to supporting our local artists by still paying them for canceled concerts (despite having no contractual obligation to do so), as well as by continuing to provide work through virtual concerts and other "Reimagined Season" activities. Additionally, during this time when we were unable to gather in large contexts, these "Reimagined Season" activities allowed us to still serve our community and provide great music to Northwest Arkansas. We appreciate the opportunity from ARPA Non-Profit Assistance to help us continue to serve our artists, partners, and community.



CITY OF
FAYETTEVILLE
ARKANSAS

AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 2/27/2023

Year of Nonprofit Incorporation 1994

Organization Name Botanical Garden Society of the Ozarks, Inc.

Organization Email info@bgozarks.org

Mailing Address P.O. Box 10407, Fayetteville AR 72703

Physical Address (if different) 4703 N. Crossover Rd, Fayetteville AR 72764

Organization Phone Number 479-750-2620

Website www.bgozarks.org

EIN 71-0750464

SAM Unique Entity ID Number SX91DQXLSLY9
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Paul Prewitt

Phone 479-750-2620

Email pprewitt@bgozarks.org

Primary Contact Name Paul Prewitt

Title Executive Director

Phone 479-750-2620

Email pprewitt@bgozarks.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

We are dedicated to the education and environmental awareness and serve as a community destination for unique nature experiences.

List and describe the services the organization provides to Fayetteville residents:

Demonstration gardens showing the woody, herbaceous and exotic plant species that can be included in Northwest Arkansas gardens. Along with providing scientific research capabilities.

Event and regularly scheduled at the Garden to increase garden awareness with the public and provide outdoor enjoyment for families.

Educational programs, classes, and workshops for children and adults of all ages.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

We are here to serve the entire NWA community. This includes families, seniors, youth, veterans, LGBTQ, minorities and beyond. It is our pleasure to bring together beautifully diverse plants and people to enjoy unique nature experiences in our community.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

All money making events were unable to be held with the exception of our annual gala but less than half the guests could attend in person. We added a virtual open but that was very costly and few joined this way. Rentals cancelled or moved their event to the future.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

Revenue losses (comparing YoY for Mar 3 - 2 see attached report):

- Events Revenue -\$31,415.32
- Program/Education Revenues -\$15,271.49
- Sponsorships Revenues -\$67,200
- Fundraising (events) Revenues -\$76,527.07
- Facilities Rental Revenues -\$18,734.49
- Garden Admissions Gate Receipts -\$24,950.50

The Garden also continued to see normal operational expenses including payroll (\$462,945), utilities (\$14,755), etc. along with \$11,165.11 in additional COVID-19 readiness expenses.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

As the Garden has already recieved other grants to help cover some of the COVID-19 expenses, we are specifically seeking assistance with covering unreimbursed Personnel costs during the 3/3/20-3/2/21 timeframe.

This funding, if granted, would help us continue to ensure our abilitiy to cover salaries for our small and mighty team which are dedicated to making a different for the community.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19? Like most nonprofits, we realigned our priorities, tightened out belts and applied for all possible funding options. The Garden has struggled through the COVID-19 financial impacts as we do not have the traditional endowment (or reserves) that most botanical gardens are founded with at the onset. As such, we've seen mulitple financial losses and limitations on our continued growth for community impact due to the losses.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

Covid-19 changed everything except the flora and fauna in the Garden. The Garden closed for 2.5 months and 4 staff members resigned and one died during the first 5 months of the shutdown. We have not fully replaced all the positions at this time with the uncertainty of the economic future.

Volunteers, are a viatal part of our organziation but unfortunately the majority are of the senior age bracket which has extremely limited their ability to be out and about to help support the Garden. As restrictions have lifted more have come but we are at less than half the total number of volunteer that we had prior to the pandemic.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☒ YES ☐ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

PPP Loan #1, Federal, \$94,800, applied to payroll

PPP Loan #2, Federal, \$94,867, applied to payroll

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

PPP Loan #1, Federal, \$94,800, applied to payroll, May 10, 2020 - July 18, 2020

PPP Loan #2, Federal, \$94,867, applied to payroll, awarded in Mar. 2021 and applied to personnel and utilities expenses from 2021 - however, I've shown how it could have been historically applied to prevent duplication of reimbursement.

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: City of Fayetteville Qualified Census Tracts? ☐ YES ☒ NO

If Yes, please list:

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: not tracked Total residents: 56,985

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

Un-reimbursed Personnel Expenses from 3/3/20-3/2/21.

We are strictly seeking reimbursement of previously un-reimbursed personnel costs. The staff are the greatest expense as they pull together all the events, activities and services that supported residents during COVID-19.

During this time the Garden spent \$417,997.38 on gross payroll. However, we've only received PPP Loans to cover \$189,667 of these costs. This leaves us with a gap of \$228,330.38.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?

☒ YES

☐ NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

\$100,000

Total requested (must match total documented expenses below): _____

Date	Vendor	Expense Description	Amount
3/3/20-3/2/21	N/A	Un-reimbursed Payroll Expenses	\$100,000
		see detailed report showing the full gap	

Total \$100,000

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.



Authorized Signature

2/27/2023

Date

Paul Prewitt, Executive Director

Printed Name and Title

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023
For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Northwest Arkansas Jazz Society, Inc.
Requested Amt: \$18,690.00

COVID-19 claimed impacts for Nonprofit organizations can include:

Decreased Revenue (e.g. Donations and Fees)

Financial Insecurity

Increased Costs (e.g., uncompensated increases in service need)

Capacity to weather financial hardship

Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship decreased revenue from fees during 2020-2021 as a result of the pandemic.

Supported amount of reimbursement per applicant documentation: \$18,690.00



AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 02/27/23

Year of Nonprofit Incorporation 1992

Organization Name Northwest Arkansas Jazz Society, Inc.

Organization Email info@digjazz.com

Mailing Address 40 E Elm Street, Fayetteville, AR 72703

Physical Address (if different) _____

Organization Phone Number 479-225-2306

Website digjazz.com

EIN 71-0720637

SAM Unique Entity ID Number TLXEBXVL6BT5
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Graham Stewart

Phone 740-591-3358

Email graham@digjazz.com

Primary Contact Name graham@digjazz.com

Title Executive Director

Phone 740-591-3358

Email graham@digjazz.com

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

Please see attached

List and describe the services the organization provides to Fayetteville residents:

Please see attached

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

Please see attached

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

Please see attached

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

Please see attached

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

Please see attached

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

Please see attached

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

Please see attached

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

ARPA Grant, 2021-22

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: City of Fayetteville Qualified Census Tracts ? ☐ YES ☒ NO

If Yes, please list:

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 1800

Total residents: 3200

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

Please see attached

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021? ☒ YES ☐ NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

\$18,690

Total requested (must match total documented expenses below): _____

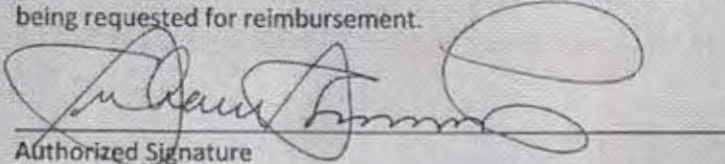
Date	Vendor	Expense Description	Amount
2/1/20-12/31/20	Robert Ginsberg	80% of compensation for 2/1 - 12/31/23	\$10000
2/1/20-12/31/20	Jacob Christiansen	77% of compensation for 2/1-12/31/23	\$6765
2/1/20-12/31/20	KayEllen Wilkenson	77% of compensation for 2/1-12/31/23	\$1925

\$18,690

Total _____

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.



Authorized Signature

02/26/2023

Date

Graham Stewart, Executive Director

Printed Name and Title

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov

Applications and supporting documentation are due by 5:00 PM on March 10, 2023

For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov

2020 ARPA application responses from Northwest Arkansas Jazz Society, Inc.

Please provide the philosophy, purpose and/or mission statement of the nonprofit entity:

The mission of the Northwest Arkansas Jazz Society (NAJS) is to present, preserve, promote, and celebrate the great American art form known as jazz.

NAJS was founded in 1982, incorporated in 1992, and we accomplish our mission by creating live concert presentations of our own, supporting regional and touring musicians by providing paid performance opportunities, collaborating on jazz projects with numerous regional organizations, and by developing and sustaining an innovative youth education program.

Highlights of our work to support our mission include:

- Since 1982, We have engaged the community through the production of an all-jazz radio show on our local NPR affiliate, KUAF.
- In 1998, NAJS founded the Summer Jazz Concert Series which still annually showcases local musicians alongside jazz masters.
- Collaborations are a pivotal part of our mission, and NAJS serves as jazz artist curator for Walton Arts Center, Crystal Bridges Museum, the University of Arkansas, and other regional arts organizations.
- We seek to educate future local jazz musicians. In 2002, NAJS established a scholarship fund and awarded scholarships to more than 90 music students. And, in 2017, NAJS founded the Jazz All-Stars Youth Ensemble (JYE), an annual big-band / small ensemble intensive for high school students, in collaboration with Walton Arts Center. In 2020, NAJS took full financial and operational leadership of JYE.

List and describe the services the organization provides to Fayetteville residents:

Northwest Arkansas Jazz Society (NAJS) is located in Fayetteville, Arkansas, and we serve Northwest Arkansas (NWA) - a population of more than 500,000 - including Bentonville, Rogers, Springdale, etc.

NAJS develops and promotes jazz performances held in Fayetteville, educational opportunities for its high school students, and collaborations with other Fayetteville non-profits in order to present internationally renowned jazz performers in NWA.

NAJS has a part-time staff of 4, (1 FTE employee), a board of 11, and more than 200 members.

What started as one-off concerts presented in partnership with Walton Arts Center (WAC) and the University of Arkansas, NAJS quickly grew to present the Summer Jazz Concert Series (SJCS), a unique program multi-concert program which celebrated its 25th year in 2022.

In 2018, NAJS founded a successful, monthly jam-style jazz performance, held in Fayetteville, in collaboration with local businesses. NAJS publicizes these "jam sessions," supplies a house rhythm section, and encourages local musicians of every age to sit in with professionals. The jam format is crucial in the history of jazz music and education.

NAJS has significantly improved the quality, quantity, and profile of jazz education in the region. In 2002, NAJS founded a scholarship program for music students with funding provided by revenue from its concert presentations. Since its inception, NAJS has awarded more than 90 scholarships.

NAJS partners with regional venues to present the Summer Jazz Concert Series. Examples of regular partners include Roots HQ (on the Fayetteville square) Botanical Garden of the Ozarks, Sunrise Guitars, and the Jones Center. Recently, Fayetteville-based NAJS has begun several new long-term collaborations, developing concert series with the Roots Festival, Crystal Bridges Museum of American Art, and the Walmart Museum.

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans etc.)

NAJS primarily serves three groups: musicians, music students, and audiences.

We serve musicians of all ages and levels by providing opportunities to perform. We book and promote Fayetteville based artists like Claudia Burson and Ben Harris to perform in Fayetteville and at other regional venues. Our successful, monthly jam-style jazz performance, held in Fayetteville, books local musicians to be the house rhythm section, and encourages local musicians of every age to sit in with professionals. The jam format is crucial in the history of jazz music and education.

As stated above, our youth education program includes a three-month intensive NAJS has significantly improved the quality, quantity, and profile of jazz education in the region. In 2002, NAJS founded a scholarship program for music students with funding provided by revenue from its concert presentations. Since its inception, NAJS has awarded more than 90 scholarships.

NAJS presents the Summer Jazz Concert Series, which highlights six to twelve local, regional and national artists in concerts held in Fayetteville (at Roots HQ, George's or other Fayetteville venues) as well as with regular partners.

Highlights of our efforts to expand access to quality jazz education, concerts, and opportunities to underrepresented groups include promotion and employment for regional musicians (who tend to be low-income), significant scholarships to empower students with financial need, and diverse programming - especially Latin Jazz to serve our expanding Latinx community.

Covid-19 impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to help those impacted by COVID-19, limited operations, etc.

Covid greatly impacted NAJS in 2020, as our organization depends on the ability to bring live music to audiences. Specific impact was as follows:

- Our Concert series offerings were cut in half, and some were offered free to the public, due to lower demand from in-person events, covid restrictions and artist cancellations. We brought in much less revenue from ticket sales and memberships declined as a result as well.
- NAJS' staff significantly shifted their duties to focus more on improving outreach to members and building online presence.
- The Jazz All-Stars Youth Ensemble (JYE) which was previously a live big-band, was adapted to focus on small-group ensembles and studio recording. The performance held at Walton Arts Center was socially distanced and had reduced attendance as a result.
- We did launch some new services to help students and jazz artists during covid, including a Jazz Education fundraising effort for the youth education program, and an online Jazz Musician Database (providing regional musicians a way to list their contact information for presenters and booking agents)
- NAJS curated a truncated, socially distanced concert series for Walton Arts Center, featuring regional and national artists.
- We revamped and sent out a weekly newsletter (highlighting local and national jazz events presented online).

List and describe the negative economic impact the COVID-19 public health emergency has had on the organization's finances (e.g., increased and new expenses, fundraising, loss of earnings, decline in revenue, etc.) Provide justification/calculation for any amount stated.:

2020 impacted the fiscal health of the Northwest Arkansas Jazz Society (NAJS) as seen in that year's nearly \$19,000 deficit. Specific examples of negative financial impacts include:

- Many of our pre-scheduled concerts were cancelled, and most others we presented were provided free to audiences. As a result, there was much less revenue from ticket sales than projected.
- NAJS had losses including funds spent on marketing the events, processing refunds where necessary, and pre-arranged logistical expenses for the season.

- Our annual fundraiser was not able to be held – instead we used our annual Jazz in Bloom concert at the Botanical Garden to provide free tickets to our members (as a thank you for sticking with us during the Pandemic) and to recruit new members. But net annual income from donations declined dramatically.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above:

ARPA grant funding from the City of Fayetteville would address the economic impact sustained by NAJS in 2020 by:

- Replacing lost revenue from ticket sales and donations by our patrons.
- Investing ARP funds in local professionals who we could book again for concerts in 2023.
- Bolstering the Jazz education program by using funds to promote the program further, audition and engage more high school students, and finding more opportunities for these young musicians to perform in public.
- Increasing our marketing and fundraising capabilities. We would use ARPA funds to increase our ability to reach our members more often (through planning and software investment), and execute an annual fundraising plan that would yield increased donations and membership.
- Provide the seed money needed to develop a signature annual fundraising event in 2023.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

We have addressed the financial impact caused by Covid 19 by:

- Negotiating lower fees with artists where possible
- Partnering with other organizations to share expenses
- Increasing our focus on individual donations, starting with building a larger board and requesting specific support.
- Cutting expenses where possible to allow us to be more creative with

marketing and software solutions (CRM for small-business purchased by a staff member for the organization)

- Booking more regional acts who have lower related costs. This is not sustainable long-term as our goal is to bring national and international acts to Fayetteville and NWA.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.)

- Fewer volunteers were willing to serve due to their personal fears about exposure in live settings.
- Staff were asked to shift their workloads to online priorities.
- Many of our available venues were not available for us, even if we wanted to host performances and market the event.

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted resident impacted by COVID-19.

We are seeking reimbursement for \$18,690 in losses incurred for 2020 – an amount represented by claiming a large percentage of the salaries (independent contractor fees) paid to three part time staff from March 1 through December 31, 2020. Even with the drastic reduction in performances, the services provided by our staff kept our members informed on status, upcoming plans, and jazz programs in the region. The staff invested time and effort in developing a stronger web presence to better connect with our members, donors and patrons. Despite the impact of the pandemic, we did produce several events and programs in 2020, including Jazz in Bloom and the Jazz all-stars youth education program. All programs were adapted to include social distancing measures for the musicians as well as audiences.

REQUIRED DOCUMENTS

Secretary of State filing number **100097176**

Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category **ATTACHED**

- Provide copies of IRS form 990 for 2019, 2020, and 2021 **ATTACHED**
- Provide copy of W-9 form (Taxpayer ID number and Certification) **ATTACHED**
- Provide a copy of IRS determination letter indicating nonprofit status **ATTACHED**
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website **100097176**
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s) **NONE CONDUCTED**
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information) **TLXEBXVL6BT5**
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid. ***Jacob Christiansen was paid almost \$1000 each month, KayEllen Wilkerson was paid \$3000 in October, Robert Ginsberg was paid \$15,000 in September.***

See ATTACHED bank statements from 03/20 to 12/20

- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement **N/A**
- Other supporting documentation if applicable **2020 1099's**
- Provide a copy of a signed application – **SIGNED**

SAM entity ID **TLXEBXVL6BT5**

EIN: 71-0720637

NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Fayetteville Art Alliance dba Art Ventures
Requested Amt: \$137,402.71

COVID-19 claimed impacts for Nonprofit organizations can include:

Decreased Revenue (e.g. Donations and Fees)

Financial Insecurity

Increased Costs (e.g., uncompensated increases in service need)

Capacity to weather financial hardship

Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and reduced revenue from ticketed fundraising during 2020-2021 as a result of the pandemic.

Supported amount of reimbursement per applicant documentation: \$100,000.00



CITY OF
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AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 02/27/2023

Year of Nonprofit Incorporation 2012

Organization Name The Fayetteville Art Alliance dba Art Ventures

Organization Email contact@artventures-nwa.org

Mailing Address 20 S Hill Ave Fayetteville, AR 72701

Physical Address (if different) _____

Organization Phone Number 479.871.2722

Website WWW.ARTVENTURES-NWA.ORG

EIN 45-5196864

SAM Unique Entity ID Number H138XT5XR2G3

(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Lakeisha Edwards

Phone 479.571.0690

Email execdirector@artventures-nwa.org

Primary Contact Name Lakeisha Edwards

Title Executive Director

Phone 479.571.0690

Email execdirector@artventures-nwa.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

Art Ventures promotes the visual arts in Northwest Arkansas by actively collaborating with the community, supporting artists working to the highest standards, encouraging education and public engagement in the arts, and providing accessibility to under-represented communities. Art for Everyone improves quality of life. We envision inclusive communities characterized by mutual understanding and respect and communication across cultures through art.

List and describe the services the organization provides to Fayetteville residents:

Art unlocks our community's potential and creates understanding among Arkansans. We are one of the only arts organizations in the region that deliberately and systematically seeks out and creates a base for diverse artists and invites broad communities to regularly come together to share the experience of Art for Everyone. Our programming provides a forum for under-represented voices, a platform for artists to share and improve their work, and a welcoming, inclusive public space to allow the whole community to experience and learn about art. The work we do through the educational part of our mission prepares youth to enter the local and regional arts and culture workforce by providing paid internships and free art education for K-12 youth. The representation we provide for local artists boosts the local economy by providing financial support for creatives through art sales, commissioned projects, and access to opportunities to be exhibit in spaces such as Crystal Bridges and 21C Hotel.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

The target beneficiaries of Art Ventures include individuals of all ages, backgrounds, and abilities who are interested in exploring and participating in the arts.

Children and Youth: Providing art and cultural experiences to children and youth can help to foster creativity, critical thinking, and problem-solving skills. These experiences can also help to build confidence and self-esteem.

Adults: Art and cultural experiences can provide a creative outlet for adults, as well as opportunities for social interaction and community engagement.

Seniors: Providing art and cultural experiences to seniors can help to promote social connectedness and combat isolation. These experiences can also provide opportunities for lifelong learning and personal growth.

Individuals with Disabilities: Art and cultural experiences can be adapted to accommodate individuals with disabilities and provide opportunities for creative expression, social interaction, and skill-building.

Marginalized Communities: Art and cultural experiences can help to amplify the voices and experiences of marginalized communities, including those who have been historically excluded from mainstream cultural institutions.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

The COVID-19 pandemic has had a significant impact on our organization, both in terms of our operation and financial sustainability. Closure of our physical space and lack of access to our extended gallery spaces forced us to find new ways to provide access to art through virtual exhibitions and creating a more prominent presence on social media. While this allowed some continuity in operations, it has also required additional investments in technology. The closure of our physical space and the limited number of visitors after in person events were allowed, resulted in a loss of revenue from ticketed fundraising events and the social aspect of in person events. The lack of in person connections with our donors decreased engagement and contributions.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

Total Revenue :

FY2021: 208,097 vs FY2020: 372,970

This is a \$164K difference, a 44.21% decline

Contributions were \$203K in FY21 vs \$282K in FY20

Earned Revenue \$4,614 in FY21 vs \$33K in FY20

This is a difference of \$28,386, a 86% decline

Please see the attached document for details.

New expenses included technology upgrades for the website and donor management.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

Operational Expenses: The funding will be used to help cover the operational expenses of the art gallery, such as rent, utilities, salaries of employees, and maintenance costs. This will help Art Ventures continue providing free programming for the residents of Fayetteville and continue to support local artists.

Marketing and Promotion: The funding will be used for marketing and promoting the art gallery's exhibitions and events. This will help to attract more visitors to the art gallery and increase its visibility, which can lead to increased revenue.

Artist Support: The funding will also be used to support the artists whose work is displayed in the art gallery. This can include providing financial assistance, organizing artist residencies, and offering professional development opportunities.

Exhibitions: Art Ventures will use the funding to create and promote exhibitions, which will allow people to view and purchase art online. This will help to increase the organization's revenue, provide more financial support for our artist, and reach a wider audience.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

Applying for grant funding

Soliciting new donors

Community Partnerships and participation in group cohorts

Increased number of exhibition sites to increase sales/revenue

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

Our organization relied heavily on volunteers in the past. Since the beginning of the pandemic, our volunteer program has experienced a steep decline. Without the help of volunteers, we were forced to increase staffing and solicit virtual assistance from those who support our efforts. Many of our donors have been negatively impacted by the pandemic and are unable to give as they have in the past. Soliciting new donors during a pandemic and making introductions virtually was a challenge.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

PPP Loans for salaries

\$2,000 - 4/1/20

\$8,552 - 3/17/21

\$8,552 - 6/3/21

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: City of Fayetteville Qualified Census Tracts? ☒ YES ☐ NO

If Yes, please list:

Tract 106.01

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 3200

Total residents: 3200

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

ARPA Non-Profit Direct Assistance Application

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021? ☒ YES ☐ NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

137,402.71

Total requested (must match total documented expenses below): _____

Date	Vendor	Expense Description	Amount
		Please see attached spreadsheet	

Total 137,402.71

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.

Lakeisha R. Edwards
Authorized Signature

2-27-23
Date

Lakeisha R Edwards Executive Director
Printed Name and Title

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023
For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Apple Seeds Inc.
Requested Amt: \$24,430.00

COVID-19 claimed impacts for Nonprofit organizations can include:

- Decreased Revenue (e.g. Donations and Fees)
- Financial Insecurity
- Increased Costs (e.g., uncompensated increases in service need)
- Capacity to weather financial hardship
- Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and decreased revenue during 2020-2021 as a result of COVID-19 pandemic related impacts to fundraising.

Supported amount of reimbursement per applicant documentation: \$24,430.00



CITY OF
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AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date February 27, 2023

Year of Nonprofit Incorporation 2007

Organization Name Apple Seeds Inc.

Organization Email mary@appleseedsnwa.org

Mailing Address 2648 N. Old Wire Road, Fayetteville, AR 72703

Physical Address (if different) _____

Organization Phone Number 479-966-6424

Website appleseedsnwa.org

EIN 20-8081842

SAM Unique Entity ID Number TA8XAGA3TRJ1

(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Mary Thompson

Phone 479-966-6424

Email mary@appleseedsnwa.org

Primary Contact Name Mary Thompson

Title Executive Director

Phone 479-9066-6424

Email mary@appleseedsnwa.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

Apple Seeds is a non-profit organization based in Fayetteville, AR that works to educate and excite children about healthy food while also increasing access to fresh fruits and vegetables. Our mission is to inspire healthy living through garden-based education. Our programs increase exposure to healthy foods in a positive atmosphere, empower students with skills to prepare healthy foods, and inspire students to try new fruits and vegetables. The common goal across all programming is to increase access to fresh produce and increase the consumption of fresh fruits and vegetables in youth with a particular focus on underserved youth.

List and describe the services the organization provides to Fayetteville residents:

Apple Seeds works with almost every school in Fayetteville by offering programming in schools and on the teaching farm. Our programs are focused on teaching nutrition and culinary skills with a focus on fresh produce. In addition, we also grow food for food distribution through Fayetteville Outback Pantry. Apple Seeds sends cooking kits home with youth after participation in a program as well.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

Youth and their families. We place a priority on the schools with the highest free and reduced lunch rates.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

Apple Seeds places a top priority on hands-on engaging programming that connects youth with the garden and gives them autonomy to learn and practice a new skill (gardening, cooking, and trying new foods). All of our programming is in partnership with schools. In March of 2020 all schools closed and went to virtual learning which halted all of our regular programming.

As a result, our team analyzed how our efforts could provide the most service to new needs. We shifted our resources to support new endeavors and launched a program to grow and distribute fresh produce with digital links to educational videos and recipes. We also launched virtual programming applications.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

All of our fundraising was done in-person as well with events throughout the year. We adapted these to the need for social distancing and revenue was reduced. With this forecast of uncertainty and decreased fundraising, we decreased our budget by over \$100,000. We had 2020 Qtr 4 and 2021 Qtr 1 operating at a loss and we continued to adjust our spending based resources available. Our decline in revenue from 2019 to 2020 was \$130,000. In realization that our revenue would be uncertain and would not match the original 2020 budget of \$497,000, we reduced our budget and spending. In addition, we stopped all planned programming and started all new programming with new expenses to meet one of the highest needs of covid - food insecurity.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

Prior to 2020, Apple Seeds had built up a reserve of cash to hold us over if something unexpected were to happen. We have been able to stay thriving and growing because of this reserve. However, our operating costs are now higher as we are implementing all in person programming as well as new operations that started as a result of covid. We have needed to increase revenue at an incredible pace. Funding from this effort would balance out our new expenses as we develop a sustainable fundraising plan to support our efforts for many years to come.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

Apple Seeds responded by reducing the budget, holding off on growth of existing programs pre-2020, and by dipping into reserves set aside for emergency.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

Covid impact was seen in every aspect of how Apple Seeds operates. All in-person programming stopped, all volunteer support ceased, and our core staff handled all operations. We transitioned to meet the needs as they became apparent. We held off on hiring more staff until fundraising efforts became more stable.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

PPP round 1: \$39,600 awarded April 17, 2020. Applied to period of April to June, 2020
EIDL: \$5000 on April 21, 2020
PPP round 2: \$58,465 awarded Jan. 28, 2021. Applied to period of January to June, 2021.
Arkansas Comm. Foundation: \$1000 on 4-29-20 for farm supplies for covid relief efforts
NW AR Equitable Food Relief: \$27,170 on 12-1-21 for food relief efforts/ tractor and supplies
United Way Covid Support: \$2,500 on 5-13-20 for food donation program

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: City of Fayetteville Qualified Census Tracts ? ☐ YES ☒ NO

If Yes, please list:

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☒ YES ☐ NO

If Yes above, please describe the relationship

The executive director's husband is an employee of the City of Fayetteville. Quin Thompson: Building and Facilities Maintenance Manager

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 5000

Total residents: 5000

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

The reimbursement requests are for overhead expenses and payroll expenses for this time period. The expense covered the service of growing food and distributing it to families who needed access to fresh healthy food. In addition, our team created digital content to connect kids/families with how to cook this fresh food. We also translated recipes into Spanish and provided links to our website for additional recipes and cooking videos.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?



YES



NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

Total requested (must match total documented expenses below): \$24,431

Date	Vendor	Expense Description	Amount
3/27/2020	PRZ	Audit, accoutning	\$6,260
3/28/20	Payroll	Part of Salary for march 3-31,202	\$7,465
6/28/2020	Payroll	Part of Salary for Jun 1-30, 2020	\$4,017
11/06/2020	Hoffenrich Productions	New Digital Content for online resources	\$2,000
12/29/2020	Arkansas Children's Hospital	Payment for Americorps Service members	\$951
2/10/2021	Ryan Patterson	Relocation Expenses for new employee	\$2,000
2/17/2021	Powers Electric	Electrical work for maintenance of facility/ Overhead	\$531
8/28/2020	Payroll	Part of Salary for August 1-31, 2020	\$1,206

Total \$24,431

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.



Digitally signed by Mary
Date: 2023.02.28 08:34:05 -06'00'

2-27-23

Authorized Signature

Date

Mary Thompson

Printed Name and Title

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023
For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov

NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: 7 Hills Homeless Center
Requested Amt: \$100,000.10

COVID-19 claimed impacts for Nonprofit organizations can include:

- Decreased Revenue (e.g. Donations and Fees)
- Financial Insecurity
- Increased Costs (e.g., uncompensated increases in service need)
- Capacity to weather financial hardship
- Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and increased costs (uncompensated increase in service need) during 2020-2021 as a result of the pandemic, and additional costs related to pandemic mitigation.

Supported amount of reimbursement per applicant documentation: \$85,608.76



CITY OF
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AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date February 27, 2023

Year of Nonprofit Incorporation 2001

Organization Name 7hills Homeless Center

Organization Email mike@7hillscenter.org

Mailing Address 1519 S. School Ave, Fayetteville AR 72701

Physical Address (if different) _____

Organization Phone Number 479-699-4378

Website www.7hillscenter.org

EIN 73-1603960

SAM Unique Entity ID Number EF6JF1UNAU3
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Mike Williams

Phone 901-237-0252

Email mike@7hillscenter.org

Primary Contact Name Becci Sisson

Title Director of Development

Phone 540-819-2075

Email becci@7hillscenter.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

7hills provides housing and basic needs services to people experiencing homelessness with a person-centered approach. We strive to incorporate dignity in all that we do, meeting individuals where they are with a spirit of compassion, and working with them to support their short and long-term needs as they work toward self-sufficiency. We envision a future where everyone in Northwest Arkansas has a place to call home.

List and describe the services the organization provides to Fayetteville residents:

For the past 20 years, 7hills Homeless Center has been a leader in the collaborative work of ending homelessness in Northwest Arkansas. We provide low-barrier basic needs resources, re-housing and support services to neighbors who are experiencing homelessness or are at risk of losing their home. Our services are designed to: 1) End our neighbors' homelessness by helping them achieve stable housing, and 2) Meet our neighbors immediate health and safety needs while they are experiencing homelessness.

We accomplish this through our two overarching programs:

1. Our HOPE Program - We provide several different types of housing assistance to help people into housing as quickly as possible.
2. Our Day Center- More than 2,000 people come to our Day Center each year to access daily needs such as meals, clothing, showers, storage lockers, computer access, basic health care and supplies. They also meet with our Case Managers for help in accessing resources needed for housing, additional health care, and obtaining identification.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

On any given night in Northwest Arkansas, there are approximately 900 individuals experiencing homelessness. Homelessness can range from couch surfing to staying in a temporary place like an emergency shelter or pay-per-week hotel to camping or staying somewhere else not meant for human habitation. These individuals are our organization's target beneficiaries.

They are welcome at our Day Center regardless of their race, religion or current circumstance. They are veterans who served our country. They are seniors who struggled to make ends meet and were unable to keep up with the rising inflation or perhaps were unprepared to live without a lost loved one. They are our classmates who had internal struggles, as we sat beside them every day unaware, that would lead to substance abuse disorders and mental health challenges.

The services 7hills provides to these people in need an integral part of our community's efforts to assist and stabilize these individuals experiencing homelessness. Our services help individuals meet their basic needs while homeless and are a stepping-stone in helping these individuals obtain housing and get back on their feet.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

During the March 2020 to March 2021 time period our organization not only saw an increase in demand for our services at our Day Center but we were faced with the incredible challenge of providing these much needed services WHILE keeping everyone SAFE and healthy. This required a shift of location to allow for social distancing and other safety precautions. In an effort to accomplish that, our Day Center operations moved to St. James Baptist Church to better serve our guests.

In August 2020 our organization opened Safe Camp, a COVID-19 sanctuary for people who were sheltering in place outdoors, also known as camping. We provided basic services including running water, restrooms, showers, sanitation stations, meals and onsite access to medical care.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

Increased and new expenses were the negative economic impact on our organization during this COVID-19 public health emergency. That amount was \$100,000 in expenses that were funded through our cash reserves, not reimbursed.

Safe Camp Portable Showers: \$426.77

Utilities: \$10,675.68

Internet: \$11,343.02

Payroll: \$47,836.95

Insurance: \$1,876.07

Food: \$2,852.81

Utility Assistance: \$24,988.80

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

This funding will be used to reimburse \$100,000 of unfunded expenses from our pandemic response. These expenses were funded from cash reserves at the time which have not recovered.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

1. To replace our in-person event, we hosted a virtual event. The virtual event was able to replace the income lost from the in-person event.
2. The organization received multiple COVID-specific grant awards designed to cover expenses incurred due to pandemic response. In total, we received 3 grants for \$234,829.41.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

1. Demands for services and rising expenses are still outpacing funding – a long standing problem with deep ramifications for delivery of programs and services in our community.
2. Staff Shortages and turnover due to salary competition with for-profit organizations, stress and burnout.
3. Decline in Volunteerism: We had to limit our volunteering activities during COVID-19 for safety reasons and corporations and entities had to limit their participation. We are still working to rebuild a strong volunteer base. Due to continual COVID-19 concerns, volunteers are still not comfortable working in large group settings.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

1. ESG19-22-CV (March 2020-March 2021) for Operating Expenses: \$15,659.41
2. CDBG (March 2020-March 2021) for Operating Expenses: \$85,470.00
3. SBA PPP Loan (March 2020-March 2021) for Payroll Expenses: \$133,700.00

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: [City of Fayetteville Qualified Census Tracts](#)? ☒ YES ☐ NO

If Yes, please list:

Our Day Center is located at 1832 S. School Avenue

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 3315

Total residents: 3603

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

Our organization is requesting reimbursement for the following expenses:

- 1) Portable Showers used at our Safe Camp site.
- 2) Utilities used at our locations during this time period.
- 3) Internet used at our locations during this time period.
- 4) Payroll
- 5) Insurance
- 6) Food served at our locations during this time period.
- 7) Utility Assistance for residents in our transitional housing program.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?



YES



NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

\$100,000.10

Total requested (must match total documented expenses below): _____

Date	Vendor	Expense Description	Amount
see attached	Arkansas Portables	Safe Camp Portable Showers	426.77
see attached	City of Fayetteville	Utilities	10,675.68
see attached	Cox Communications	Internet	11,343.02
see attached	Employer Advantage	Payroll	47,836.95
see attached	Philadelphia IC	Insurance	1,876.07
see attached	Salvation Army	Food For Safe Camp	2,852.81
see attached	Southwest Power	Utility Payments	24,988.80

100,000.10

Total

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.


Authorized Signature

2/28/23
Date

Mike Williams, CEO
Printed Name and Title

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023
For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Cobblestone Farms – Cobblestone Project
Requested Amt: \$47,441.98

COVID-19 claimed impacts for Nonprofit organizations can include:

Decreased Revenue (e.g. Donations and Fees)

Financial Insecurity

Increased Costs (e.g., uncompensated increases in service need)

Capacity to weather financial hardship

Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship, increased demand for services, and decreased revenues (donations and fees) during 2020-2021 as a result of the pandemic.

Supported amount of reimbursement per applicant documentation: \$46,968.85



CITY OF
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AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 03/01/2023

Year of Nonprofit Incorporation 2008

Organization Name The Cobblestone Project, DBA Cobblest

Organization Email kelton@cobblestonefarms.org

Mailing Address PO Box 3411 Fayetteville AR 72702

Physical Address (if different) 1210 N 54th Ave. Fayetteville, AR 72704

Organization Phone Number 479-718-6624

Website cobblestonefarms.org

EIN 26-2661349

SAM Unique Entity ID Number UN23GUHC68M1

(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Kelton Hays

Phone 870-654-5719

Email kelton@cobblestonefarms.org

Primary Contact Name Kelton Hays

Title Exec. Director

Phone 870-654-5719

Email kelton@cobblestonefarms.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

At Cobblestone Farms, we work to "cultivate a community free from hunger through sustainable agriculture". We operate a 25 acre farm at Wedington and 54th avenue where we grow food for community members experiencing food insecurity. We also operate education, training, and community engagement programs.

List and describe the services the organization provides to Fayetteville residents:

We grow and distribute fruit, vegetables and meats to community members experiencing food insecurity. We also provide volunteer and educational opportunities for Fayetteville residents.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

The target audience of our food distribution program is community members experiencing food insecurity. The target of our education and volunteering programs are any community resident.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

The Covid-19 pandemic had an immediate impact on the number of people experiencing food insecurity in our community. Prior to the pandemic, the charitable food system already lacked adequate food to service our community. The strain brought about due to the pandemic exacerbated the issue.

While we strive to employ a sufficient staff work our land, we rely heavily on volunteers. Like many other organizations, our volunteer program came to almost a complete halt due to covid 19.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

The biggest negative impact Covid-19 had on our organization was the reduction of income. Historically, we have relied on donations from community members, businesses and foundations.

We usually receive several hundred thousand dollars from business and individual donations each year. During 2020, that amount was close to zero.

Furthermore, we operate a small sales program that brings in around 50k annually. This did not happen in 2020 due to covid 19.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

In spite of the reduction in volunteers and donations, we continued limited operations with the hope that Covid would end and we could continue serving community members experiencing food insecurity.

This funding would help reimburse a portion of the expenses incurred serving our community from 3/4/20-3/2/21.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

We have spent the last 24 months rebuilding our fundraising program. We are on our way to pre-covid donation levels, but aren't quite there yet.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

As stated above, lack of volunteer labor.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

PPP Loan - 8/3/2020 \$28,735

PPP Loan - 1/21/21 \$28,735

EIDL Loan - 1/30/21 \$20,000 - WAS NOT FORGIVEN. LOAN STILL ACTIVE AND WILL BE REPAYED

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: City of Fayetteville Qualified Census Tracts? ☐ YES ☒ NO

If Yes, please list:

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 10000

Total residents: 20000

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

PPP Loan - 8/3/2020 \$28,735 - Payroll Costs in 2020

PPP Loan - 1/21/21 \$28,735 - Payroll costs in 2021

EIDL Loan - 1/30/21 \$20,000 - operating expenses after 1/30/2021. WAS NOT FORGIVEN. LOAN STILL ACTIVE AND WILL BE REPAYED

No payroll expenses were submitted with this application.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?



YES



NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

Total requested (must match total documented expenses below): 47,441.98

Date	Vendor	Expense Description	Amount
	Please see expense detail include with application	Please see expense detail include with application	
	Please see expense detail include with application	Please see expense detail include with application	
	Please see expense detail include with application	Please see expense detail include with application	
	Please see expense detail include with application	Please see expense detail include with application	
	Please see expense detail include with application	Please see expense detail include with application	

Total _____

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.

Authorized Signature

Kelton Hays, Executive Director

Printed Name and Title

3/1/2023

Date

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023
For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Washington County Historical Society
Requested Amt: \$23,780.52

COVID-19 claimed impacts for Nonprofit organizations can include:

- Decreased Revenue (e.g. Donations and Fees)
- Financial Insecurity
- Increased Costs (e.g., uncompensated increases in service need)
- Capacity to weather financial hardship
- Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and a reduction in revenue from fees, donations, and programs during 2020-2021 as a result of the pandemic.

Supported amount of reimbursement per applicant documentation: \$20,885.38



CITY OF
FAYETTEVILLE
ARKANSAS

AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date, February 27, 2023

Year of Nonprofit Incorporation 1968

Organization Name, Washington County Historical Society

Organization Email info@washcohistoricalsociety.org

Mailing Address, 118 E. Dickson Street, Fayetteville, AR 72701

Physical Address (if different) _____

Organization Phone Number 479-521-2970

Website, www.washcohistoricalsociety.org

EIN 71-0400895

SAM Unique Entity ID Number: DUNS 086626751 (applied for SAM on 2/26/23)
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Lee Anne Wiederkehr, President

Phone 949/338-6557

Email lawied@icloud.com

Primary Contact Name Lee Anne Wiederkehr

Title President

Phone 949/338-6557

Email lawied@icloud.com

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

The Washington County Historical Society is a nonprofit organization founded in 1951 with the mission to discover, preserve, and celebrate the history of Washington County, Arkansas, and to share that heritage with others.

List and describe the services the organization provides to Fayetteville residents:

Please see attachment.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

Please see attachment.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

Please see attachment.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

Please see attachment.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

Please see attachment.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

Please see attachment.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

Please see attachment.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☐ YES ☒ NO

If Yes, describe amount(s), use(s), and timeframe:

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: [City of Fayetteville Qualified Census Tracts](#)? ☒ YES ☐ NO

If Yes, please list:

113.20 for Headquarters House Museum, 118 E. Dickson St.; 113.20 for Ridge House, 230 W. Center

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☒ YES ☐ NO

If Yes above, please describe the relationship

City Council person, Mike Wiederkehr, is spouse of the Washington County Historical Society President, Lee Anne Wiederkehr.

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 2,185 Total residents: 3,050

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

Please see attachment.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?

☒ YES

☐ NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

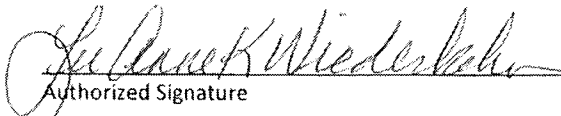
Total requested (must match total documented expenses below): \$23,780.52

Date	Vendor	Expense Description	Amount
SEE	ATTACHED	SPREADSHEET(S)	

Total _____

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.


Authorized Signature

February 27, 2023

Date

Lee Anne K. Wiederkehr, President

Printed Name and Title

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023
For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov

List and describe the services the organization provides to Fayetteville residents:

Washington County Historical Society (WCHS) was formed in 1951 by six individuals who held a meeting with more than 100 community members in attendance. WCHS is the oldest, continuous County level historical society in Arkansas. WCHS continues to uphold the vision of its founders and received the prestigious 'Diamond Award' from the Arkansas Historical Association for 'exceptional contribution to the study, preservation or promotion of Arkansas History'. Preserve Arkansas honored WCHS with 'Excellence in Heritage Preservation' for the 'This Place Matters' campaign launched at the Ridge House in May 2022.

Walter Lemke, University of Arkansas journalism professor, began to collect histories and publish *Flashback*, about the people, places and history of Washington County in 1953. *Flashback* has been indexed since its inception and is regularly used as a research tool all over the country.

The works of WCHS bring honor to Fayetteville and its region through the recent receipt of several Arkansas Historical Association awards. WCHS's quarterly journal, *Flashback*, received the 'Walter L. Brown Award for the Best County or Local Journal' in the state and for best articles in the state about 'Best School History' and 'Best Community History' during 2022.

The story of Fayetteville's earliest settlers is told through the preservation of two historic properties maintained and curated by WCHS. The Headquarters House Museum is open for tours conducted by the Museum Operations Manager and volunteers. The Museum and grounds are the site for programs, lectures, the Holiday Open House, Battle of Fayetteville commemoration, Statehood Day, Summer camp for public school children, Heritage School, and other events celebrating history and the public are welcome to attend. The Museum Bookstore makes available works by local and regional authors about history significant to the area.

WCHS offers tours of its properties free to the public, encouraging tourism, scholarship and activities in Washington County. Organized tours and bus tours are usually charged a fee to cover WCHS costs. Last year, the A&P Commission's Experience Fayetteville arranged a bus tour to the Headquarters House Museum.

In the early 1960s, the owners of 118 E. Dickson Street, Fayetteville, offered WCHS a below-market purchase price. Several Washington County leaders contributed to purchase this significant historic property, built for Judge Jonas Tebbetts and his wife, Matilda, in 1853 where they lived until the Civil War. Because Judge Tebbetts was an outspoken Unionist, his life was endangered, and the family left Fayetteville for Missouri after the Battle of Pea Ridge in 1862.

City of Fayetteville, AR: American Rescue Plan Act, Non-Profit Assistance Application

Applicant: Washington County Historical Society

February 27, 2023

On April 18, 1863, the Battle of Fayetteville was fought on the front lawn of the house. A doorway bears the scar of a mini-ball, which is preserved in testament to the battle endured by the citizens of Fayetteville – and which earned the intersection of College and Dickson the title of 'Bloody Corner'.

The house was placed on the National Register of Historic Places in 1971 and is called Headquarters House because twice during the Civil War, the house was used as headquarters by both the Union and Confederate forces thus saving the house from being burned. It, like the Ridge House, are two of only a few buildings not burned during the occupation of Fayetteville by Civil War soldiers - including the Masonic Lodge since many on both sides were Masons.

Annually in August, an old-fashioned Ice Cream Social is held on the lawn and is WCHS's primary fundraising event. This spring, an Osher Lifelong Learning Institute Class (OLLI) class will be taught at the museum. In addition, WCHS provides programs for civic clubs, the Chamber of Commerce and schools.

At the Annual Meeting, WCHS elects and honors two county residents as Distinguished Citizens. The list of Distinguished Citizens includes many elected officials, judges, professors and leaders as if it was the 'Who's Who' of Washington County.

Each year, WCHS's Diverse Settlers Committee provides programs highlighting diversity within the City and County focusing on the influence of African-American, Asian American and Pacific Islander, and Hispanic settlers. Diverse Settler have also presented a program entitled 'Women of Color'. In addition, WCHS has a newly formed Indigenous People Committee to provide focus and celebration about the influence of First Nations.

WCHS's Community History & Heritage Committee (aka Out in the County) hosts programs to sites around Washington County, including Fayetteville, of historic interest during the year.

WCHS offers Heritage School in the summer where children can take an immersive week-long educational camp into the history, culture and folkways of the region for a reasonable fee. Public schools use WCHS properties for special summer educational programs to teach the children history and, pre-COVID, for field trips when learning Arkansas History.

In 2022, WCHS received a Chamber of Commerce Building Industry Award for a major pre-COVID renovation of the Headquarters House Museum using local craftsmen to roof, clean and paint the structures and complete minor repairs on the 1853 building and the 1835 Yell Law Office, the oldest free standing law office in Arkansas.

City of Fayetteville, AR: American Rescue Plan Act, Non-Profit Assistance Application

Applicant: Washington County Historical Society

February 27, 2023

WCHS maintains a web-friendly Facebook page usually posting daily facts of historic significance about regional economic growth, schools, people and events. The time period of these postings begin in 1828 when Fayetteville officially became a town.

WCHS properties have been used to stage the film *The Blue and The Gray*, documentaries and historical re-enactments on topics that include Fayetteville's history as well as events of the era as a testament to the value of historic places.

WCHS also maintains and preserves the historic Ridge House built in 1834 before Arkansas' statehood in 1836, and is the oldest house that exists in the city. The house is an unofficial Trail of Tears landmark commemorating the Cherokee Nation, an indigenous people forced to leave their homeland and relocate to Indian Territory. It was purchased by Sarah Bird Northrup Ridge in the late 1830s as a refuge for her family of seven children, their tutor, Sophia Sawyer, and 14 girls of noble Cherokee families. Ridge was forced to flee her home in Georgia, after her husband, John Ridge, an influential leader in the Cherokee Nation, was killed.

Culturally, this house is significant since Sawyer and Ridge set up a school in 1839 at the Fayetteville courthouse, open to both white and Cherokee girls. Judge David Walker donated land for the Female Seminary and the school re-opened in 1841. The Female Seminary is often cited as one of the factors leading to the location of the state's land grant university in Fayetteville. The house was rescued by WCHS in the 1970s after it caught fire and suffered from dilapidation. Its pine floors and fieldstone fireplaces are original.

Today, the Ridge House lobby is open with a display about the house's history and offices are rented to psychologists and social workers. This rental income provides the primary source of funds for WCHS programs and operations.

The Ridge House was chosen by the City of Fayetteville in May 2022 as the kick-off site for the first 'This Place Matters' campaign created to celebrate Historic Preservation Month. The reasons for selecting the Ridge House for this inaugural event are that it is the oldest house existing in the community, was the home of significant indigenous people and founder of the Female Seminary, and, built prior to the year Arkansas became a state.

WCHS hosts events and programs and maintains historic properties without tax payer support as a 501(c)(3), nor does it receive financial support from the City or County. Our Board of Directors and officers are all volunteers, renewed annually. Board member term limit is ten years to provide the organization with institutional knowledge about what it does, how it runs its business, and cares for its properties.

Applicant: Washington County Historical Society

February 27, 2023

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

The organization benefits the entire community from every walk of life and of every age, from school children to the elderly, as well as those who visit Fayetteville from all over the United States and other countries. We offer memberships to help support the mission of the organization and pay for the publication of *Flashback*, a 70-year award-winning quarterly journal. Several school and public libraries subscribe to *Flashback* and use it as a resource about the people, places, culture, and historic events of the Fayetteville area.

Other organizations benefit from the existence of the Headquarters House Museum. For example, the garden is a 20-year sanctioned project of the Washington County Master Gardeners for which they have won 'Project of the Year' twice. The Master Gardeners worked during spring 2022 to prepare for the 2022 WCMG Garden Gate Tour. The Headquarters House Garden was the most popular garden on the tour with 250+ visitors who toured the house and garden on a single day.

The Washington County Bar Association and WCHS partner to preserve the oldest free standing law office in Arkansas. Archibald Yell – a judge, congressman, governor, and soldier – was a colorful figure from Arkansas Territory days who owned a large estate named Waxhaws in south Fayetteville. The Archibald Yell Law Office, built around 1835, was moved from its original location on South College Avenue to the grounds of Headquarters House Museum in 1992 at the request of the Washington County Bar Association.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

In March 2020, the Headquarters House Museum closed its doors to visitors and volunteers. Programs, tours and events ceased and, with a few exceptions, did not restart until summer 2022 when the Ice Cream Social was held after a two year hiatus.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increase or new expense, fundraising, loss of earnings, decline in revenue, etc.). Provide justification / calculation for any amount stated:

The loss of precious revenue is extremely impactful since WCHS Programs are provided and, the Headquarters House Museum and Ridge House are maintained on a

thin margin. Any loss in revenue reduces WCHS's capacity to provide its members with services such as publishing *Flashback* and maintaining structures that are on the National Historic Register that are important to the heritage, culture and history of Fayetteville

Primary financial support for the Headquarters House Museum and Ridge House comes from membership fees, donations, programs, activities and critical rental income from the Ridge House. The eight offices in the Ridge House provide office space for a dozen psychologists and social workers who serve a patient population throughout our community. Several of them have provided care to patients in this location for over 40 years. During the pandemic, WCHS reduced rents by half to: (1) support the psychologists and social workers struggling to pay rent during the pandemic shut down, and, (2) support mental health services for existing patients and new patients, many of whom were enduring the loss of family members or caring for loved ones impacted by COVID-19 with chronic health issues.

WCHS felt additional financial impact because the museum was closed and events canceled eliminating almost every source of income for the organization.

WCHS's fiscal year is October 1 through September 30. Therefore, the IRS Form 990s could not be used to directly determine the loss from the specified time period from March 3, 2020 through March 2, 2021. WCHS uses QuickBooks for bookkeeping which is used to prepare IRS Form 990s.

Attached are WCHS's IRS Form 990s for your review. In these documents, one can see that the income and operating expenses for the organization remain relatively constant with the exception of 2020. Therefore, the change in income during the pandemic can be generally identified in IRA Form 990s even though they are not for the specified time period of this application.

To show the specified period of time for this application, an adjusted QuickBooks report was prepared to compare income received from memberships and donations, activities and programs, and Ridge House rent from March 3, 2019 through March 2, 2020, prior to the pandemic, and during the pandemic year of March 3, 2020 through March 2, 2021. This comparison establishes the economic impact to WCHS from the COVID-19 public health emergency with a loss of \$31,676.35.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

It would be a tremendous gift to receive reimbursement of operating expenses to make up for losses suffered during the pandemic. Receiving ARPA funding would be important to help WCHS fulfill its Mission, as stated above, and include:

Applicant: Washington County Historical Society

February 27, 2023

- Publication of the quarterly journal *Flashback*.
- Help WCHS fund programs and volunteer opportunities that serve Fayetteville residents that includes, to name a few:
 - Heritage School, the summer educational camp for children,
 - Summer Academy for school children re-acclimating to a traditional learning environment after the COVID-19 shut down,
 - Washington County Master Gardener sanctioned project at Headquarters House.
- Help preserve and keep the Headquarters House Museum, its accessory buildings and garden open to the public.
- Help preserve the Ridge House.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

WCHS operates on a thin margin as a non-profit and the Board is in the habit of adopting budgets that correspond to the income of the organization that includes deferring maintenance on the historic buildings. This practice helped WCHS during the pandemic but we continue to experience the impacts of loss of revenue due to COVID-19. Fortunately, WCHS has a restricted endowment. In response to the financial loss experienced during the pandemic, WCHS's Finance Committee developed and presented, and the Board adopted, an investment policy and a spending policy to facilitate responsible utilization of funds that may be withdrawn from the endowment. These policies have been used to make up for shortfalls in income as a result of the pandemic.

Toward the end of the pandemic, WCHS received an unexpected grant of \$5,000 from a new donor. This was used to help cover the cost to publish *Flashback* since the grant was given due to the quality of *Flashback*. The annual direct cost to publish *Flashback* is \$7,200. This also helped WCHS's finances.

In addition, WCHS is embracing the opportunity to apply for ARPA Funds. Receipt of ARPA Funds would truly make a significant difference for WCHS!

List any other impact the COVID -19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to covid-19 mitigation, etc.):

WCHS has one paid part-time employee, the Museum Operations Manager, who could work since the employee was working alone. The good news is that book sales increased as the Manager filled bookstore orders to ship to people staying at home.

Executive Board and Board of Directors meetings were conducted via Zoom for two and a half years which impacted our connections with each other. The Zoom subscription

Applicant: Washington County Historical Society

February 27, 2023

was a new expense for the organization. The Board began meeting in person beginning November 2021 but not at the museum because the space is too small to accommodate social distancing.

WCHS Board members are grateful to have had access to larger venues and a grant from the Fayetteville Public Library that made meeting in person possible in their facility starting in late 2021. Meetings were again conducted via zoom during the resurgences of COVID-19 cases during the winter months of early 2022. At last, the Board will meet in person at Headquarters House Museum beginning in April 2023.

The Ice Cream Social, WCHS's primary fundraiser, was canceled for two years and was held for the first time in August 2022. Some programs, like Heritage School, were conducted remotely but at a reduced fee and with reduced numbers of attendees.

The Washington County Master Gardeners did not tend the garden for the entire growing season of 2020 but returned in 2021 adhering to COVID guidelines. In the meantime, the Garden & Grounds Committee hosted a campaign to call Master Gardener volunteers to keep them interested in Headquarters House garden. The Master Gardeners provide a service to the museum grounds worth thousands of dollars and the results of their work are enjoyed by the entire community, which utilizes our large outdoor property as a tree shaded park.

Committee meetings also moved to Zoom which was difficult since many of our members and volunteers are senior citizens with limited technological skills. However, it gave many who were extremely fearful of COVID and had been home alone with little or no contact with their friends, a way to stay connected and learn a new skill as we coached them to use Zoom.

It has taken much effort to bring things back to a new normal and to engage the volunteer community but it is worth it and we are recovering!

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

During the pandemic, many people sought refuge on the paths and relaxed on the benches in the gardens of the Headquarters House Museum. Many Fayetteville residents could be found in the garden out for a stroll during the pandemic. Many, looking for a place to take a break from home, experienced the historic site for the first time and read the plaques displayed in the garden that interpret the history of the garden. This is one way that WCHS's work to maintain the Headquarters House Museum serves the people of Fayetteville in addition to the events and programs described previously in this application.

City of Fayetteville, AR: American Rescue Plan Act, Non-Profit Assistance Application

Applicant: Washington County Historical Society

February 27, 2023

Heritage School programs were modified so children could attend remotely during the summers of 2020 and 2021. This gave the children interesting things to do and gave the parents a break from in-home teaching.

When it was possible, WCHS lifted spirits by moving events outdoors. For example, guests and carolers were masked, distanced, and bundled up on a cold December day in 2020 for the WCHS caroling event held outdoors as a substitute for the annual Holiday Open House. The carolers were staged in a location so that people who wanted to be more isolated could drive by to hear the festive tunes from inside their automobiles.

The reimbursement will allow Washington County Historical Society to recover from economic loss and allow the organization to fully resume its activities and events and fulfill its responsibilities.



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Arts Live Theater Inc
Requested Amt: \$34,920

COVID-19 claimed impacts for Nonprofit organizations can include:

- Decreased Revenue (e.g. Donations and Fees)
- Financial Insecurity
- Increased Costs (e.g., uncompensated increases in service need)
- Capacity to weather financial hardship
- Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and decreased revenue from donations/fees and ticket sales during 2020-2021 as a result of the pandemic.

Supported amount of reimbursement per applicant documentation: \$18,748.99



CITY OF
FAYETTEVILLE
ARKANSAS

AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation to <https://documents.fayetteville-ar.gov/Forms/arpaassistance>

Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 2.28.2023

Year of Nonprofit Incorporation 1984

Organization Name Arts Live Theatre

Organization Email info@artslivetheatre.com

Mailing Address PO Box 4362, Fayetteville, AR 72702

Physical Address (if different) 818 North Sang Avenue, Fayetteville, AR 72701

Organization Phone Number 1.479.521.4932

Website www.artslivetheatre.com

EIN 71--599469

SAM Unique Entity ID Number FLRLNPXAL8K6
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Mark Landon Smith

Phone 1.479.236.6849

Email marksmith@artslivetheatre.com

Primary Contact Name Mark Landon Smith

Title Executive Director

Phone 1.479.236.6849

Email marksmith@artslivetheatre.com

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

To empower children and enrich lives through excellence in children's theatre and education.

List and describe the services the organization provides to Fayetteville residents:

Arts Live Theatre, Inc., founded in 1984, is Northwest Arkansas' only dedicated children's and youth theatre. Programming includes 14 productions annually, with five performances per production for a total of 70 performances. Fifty two after-school, spring break and summer classes are offered for young artists in grades K-12. Arts Live Theatre also develops original works and adaptations for production and provide students the opportunity to experience all facets of the Theatre.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

Arts Live Theatre's target beneficiaries are children and youth ages 4-18 and their families.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

COVID-19 resulted in Arts Live Theatre having to cancel programming including productions and classes. Upon cancellation, Arts Live Theatre transitioned to virtual programming within a week and became a leader in the region for online productions, classes, workshops and special events. Arts Live offered virtual productions directed by theatre professionals with cast of young actors from across the country. Arts Live also created partnerships with other national organizations such as the 24-Hour Play and the 24-Hour Monologue to create programming and gave young playwrights an opportunity to write original plays for virtual production. (The Ada Project and In The Year 2025). In addition Arts Live produced original programming for the ALT YouTube Channel including the series One on One, Curtain Up!, Living Room Theatre, Shaky Bugs, Black History Month, Women in History, Splash Theatre, Book of Wonders and Me Interview You Too. ALT also uploaded previous productions for at-home viewing. Since the March 2020 the ALT YouTube Channel has had over 134,000 views.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

COVID-19 effected Arts Live Theatre finances through a loss and decline of revenue from cancelled productions, participation fees, ticket sales, cancelled classes, spring break camps and fundraising events. The cancelled productions of The Wizarding Way and Shrek resulting in a loss of \$9,825 in participation fees and a loss of \$1,382 in Shrek royalties. The cancellation of classes and spring break camps resulted in a loss of \$13,600 in tuition. Arts Live Theatre staff were also asked to take a 50% and then an 80% pay cut resulting in \$10,515.43 in lost wages.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

Funding would be use to reimburse Arts Live for financial losses due to cancellation of programming as the organization continues to financially recover due to COVID-19 losses.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

Arts Live Theatre addressed the financial impacts due to COVID -19 by creating programming exclusively for the virtual market, applying for government assistance, (PPP/CARE ACT/EIDL, etc), holding virtual fund raising events, cutting on site costs by working remotely, cutting hours and wages for Arts Live Theatre staff.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

COVID-19 caused Arts Live Theatre to close its physical location and strategize on adjusting programming and making a plan for eventual re-opening. Staffing was reduced as a result of cancelled programming and the volunteer program was suspended due to a lack of events to volunteer for. The Arts Live Theatre volunteer board remained very active providing governance and guidance.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

Payroll Protection Program: \$12,932.35/payroll/7.1.2020

EIDL: \$15,000/general operating support/7.30.2021

CARES Act: \$5,034/general operating support/7.20.2020

Windgate Foundation: \$9,000/COVID relief/general operating support/8.30.2020

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: [City of Fayetteville Qualified Census Tracts](#)? ☐ YES ☒ NO

If Yes, please list:

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 3,000

Total residents: 6,000

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

Tuition fees from cancelled Arts Live Theatre spring classes: \$10,600

Tuition fees from cancelled Arts Live Theatre spring break camps: \$2,600

Participation fees from the cancelled Arts Live Theatre production of The Wizarding Way: \$2,625

Participation fees from the cancelled Arts Live Theatre production of Shrek: \$7,200

Shrek royalties: \$1,380

Lost wages: \$10,515

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021? ☒ YES ☐ NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

\$34,920

Total requested (maximum requested amount allowable is \$100,000): _____

Date	Vendor	Expense Description	Amount
3.15.2020	MTI Shows	Shrek Royalties	\$1,380
3.15.2020	Arts Live Theatre	Participation Fees	\$9,825
3.15.2020	Arts Live Theatre	Tuition Fees	\$13,200
3.15.2020	Arts Live Theatre	Lost Wages	\$10,515

Total \$34,920

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.



Authorized Signature

2.28.2023

Date

Mark Landon Smith, Executive Director

Printed Name and Title

City Use Only

Please submit application and all documentation to <https://documents.fayetteville-ar.gov/Forms/arpaassistance>

Applications and supporting documentation are due by 5:00 PM on March 10, 2023

For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Omni Center for Peace, Justice, and Ecology
Requested Amt: \$34,835.00

COVID-19 claimed impacts for Nonprofit organizations can include:

- Decreased Revenue (e.g. Donations and Fees)
- Financial Insecurity
- Increased Costs (e.g., uncompensated increases in service need)
- Capacity to weather financial hardship
- Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and decreased revenue from donations during 2020-2021 as a result of the pandemic, and additional costs related to sanitizing their facility against COVID-19.

Supported amount of reimbursement per applicant documentation: \$20,566.05



CITY OF
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AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation to <https://documents.fayetteville-ar.gov/Forms/arpaassistance>

Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date March 5, 2023

Year of Nonprofit Incorporation 2005

Organization Name Omni Center for Peace Justice Ecology

Organization Email omni@omnicenter.org

Mailing Address 3274 N Lee Ave

Physical Address (if different) _____

Organization Phone Number 479-935-4422

Website www.omnicenter.org

EIN 20-1247116

SAM Unique Entity ID Number XRPQFMKBS5Q3
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Gladys Tiffany

Phone 479-283-2167

Email gladystiffany@yahoo.com

Primary Contact Name Gladys Tiffany

Title Executive Director

Phone 477-283-2167

Email omni@omnicenter.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

Our vision is a world that works for everyone, starting in our home town.
Our mission is to “educate, empower and connect people for a world that is nonviolent, sustainable and just”

List and describe the services the organization provides to Fayetteville residents:

We operate a community radio station, KPSQ FM Radio at 91.3 fm and www.kpsq.org as a community building and educational outreach. We are organizing a time bank, the NWA Time Exchange, to help socially re-connect and heal after covid and build a community resilient enough to meet future challenges. We operate MayDay Community Kitchen, whose volunteers feed hungry people for free. We hold cultural events and discussion groups to promote a culture of peace. We support work for homeless neighbors. And we help others with great ideas to help our community start up new work by fiscally sponsoring their projects. We've assisted TriCycle Farms, Seeds That Feed, the Black Action Collective, and other local groups in their early phases.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

Omni Center serves a broad constituency because we are working to weave a network that includes all of us. We're working toward a network of care and fairness. That means work on the connections between us as much as the individuals we connect to. Here are some examples of why our target audiences are so broad:

Targeted communities during covid, though, included some specific groups. These were our most active projects during this period.

MayDay Kitchen targeted people who were food insecure during this period

The Student Life Program targeted students who were food insecure

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

Our annual Members and Friends Gathering was an important fundraiser for us for many years but was not held in 2020, 2021, 2022 and will probably not happen in 2023. We are hopeful for 2024.

We have not been able to hold our normal schedule of educational and cultural events in person, where they are most impactful. We've done a number of activities by zoom and hybrid, but they're not the same, and many people lack access to zoom technology or skill. From a calendar of roughly 220 events in the course of a year, we now have scheduled only about 36 events and 100 smaller meetings. Income from events was a definite asset to our program.

In 2020 when our President, Alex Tripodi's work closed because of the pandemic, he asked for support to start MayDay Community Kitchen. For 18 months he and up to 40 volunteers fed 500 meals a week to people whose access to food had been curtailed by shut-downs. Now that shut-downs are over they fix fewer meals, but volunteers still feed over 100 homeless people per week. Omni volunteers worked hard to fund and support their work from the beginning to the present day. However, it sometimes included an expense that was partly born by donations from Omni's reserve that was depleted over the course of the pandemic.

These are representative samples of pandemic impact, not an exhaustive account.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

Our net operating revenue dropped drastically by Aug 2021

Program income was zero

Pre-covid program income went down drastically after the pandemic began

Member donations down 32% (grateful for that. Could have been worse)

Other event donations were down 100%

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

The draw on our reserve has left us with fewer programming resources at a time when our community needs more from us.

We have post-covid plans to build out our Time Exchange now that it's easier to meet in person, and expand MayDay Kitchen, and we're considering how we might participate in work to alleviate distresses of the homeless community in our area. ARPA funds could assist in developing all these emerging projects.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

Unfortunately, we had to draw heavily on our financial reserves. Fortunately, we had reserves to draw from. As we emerge from covid we need to take lessons from the shocks we endured.

Primarily we reduced expenses in areas where possible and put off needed renovations and maintenance to our building. We are an almost entirely volunteer organization. Some staff receive stipends, but most of us volunteer time, knowledge and skills toward our mission. That makes our budget very lean, which is an advantage at times like this.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

For much of the 3 years of the pandemic we were virtually closed.
Our volunteer base still has not fully emerged from seclusion.

We had the tragic experience of watching a staff member slide into a mental health crisis directly related to stresses of the virus.

An important project organizing university students closed and did not successfully re-open.
Of 16 different projects related to our mission of peace, justice and the environment, two were re-opened as the virus abated.

However,
We have also used the time to focus our energies and zero in on what is important to us to achieve our vision.

We choose to prioritize local service even as we continue to uphold the global elements of our mission

Where we can help our community grapple with current problems and prepare for the next crisis that's where we want to take a stand. We love our city and its people. We see it as a beacon for the South, striding toward a difficult future with confidence that we can thrive when we do it together. Omni people can be active participants in this exciting journey.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☒ YES ☐ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Omni received \$1000 from the Cares Act to build an outdoor patio for covid programming.
None of those expenses have been included in this application.

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☐ YES ☒ NO

If Yes, describe amount(s), use(s), and timeframe:

The original Cares Act money is the only other covid grant we've received.

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: City of Fayetteville Qualified Census Tracts? ☒ YES ☐ NO

If Yes, please list:

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 5300

Total residents: 5364

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

KPSQ Community Radio immediately moved their producers into healthy seclusion at the beginning of the virus. Within a month they had all producers recording their programming from home. Only 2 producer/engineers were absolutely essential to go to the station in person, keeping the station equipment running smoothly. We continued to present cultural and educational programming that was calming and nurturing for listeners in Fayetteville as we endured those first terrible months. They are now partially operating in person but are optimistically cautious about returning to the old normal.

Our MayDay Community Kitchen served 500 meals per week to food-insecure people put out of work by covid. It also utilized the skills of many volunteers who could not work for the first 18 months of the pandemic. Some participants said it "saved my sanity." to have this productive work to do at that time. They are still feeding people today on a smaller scale.

Our Student Life Coordinators collaborated with MayDay Kitchen to see that there was food for students who had nowhere to go when the university was closed. The cafeterias and most restaurants were closed, and some low-and moderate-income students were put in a terrific bind. This was not a large population, but Student Life feed 10-20 students every week for a year and a half.

Omni is not a high-tech organization, but we managed to take some of our services online through zoom. It helped our Board and our Climate Change Forum continue so that we could maintain operations.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021? ☒ YES ☐ NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

34835

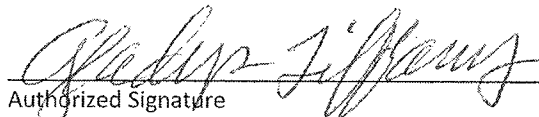
Total requested (maximum requested amount allowable is \$100,000): _____

Date	Vendor	Expense Description	Amount
		Please see a spreadsheet attached	

Total _____

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.


Authorized Signature

Gladys Tiffany, Executive Director

Printed Name and Title

March 5, 2023

Date

City Use Only

Please submit application and all documentation to <https://documents.fayetteville-ar.gov/Forms/arpaassistance>

Applications and supporting documentation are due by 5:00 PM on March 10, 2023

For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Credit Counseling of Arkansas, Inc.
Requested Amt: \$59,328.58

COVID-19 claimed impacts for Nonprofit organizations can include:

- Decreased Revenue (e.g. Donations and Fees)
- Financial Insecurity
- Increased Costs (e.g., uncompensated increases in service need)
- Capacity to weather financial hardship
- Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and decreased revenue during 2020-2021 as a result of the pandemic.

Supported amount of reimbursement per applicant documentation: \$58,269.63



CITY OF
FAYETTEVILLE
ARKANSAS

AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation to <https://documents.fayetteville-ar.gov/Forms/arpaassistance>

Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 03/09/2023

Year of Nonprofit Incorporation 1995

Organization Name Credit Counseling Of Arkansas, Inc.

Organization Email contactus@ccoacares.com

Mailing Address 1111 E. Zion Road, Fayetteville, AR 72703

Physical Address (if different) _____

Organization Phone Number 479-521-8877

Website https://www.ccoacares.com/

EIN 71-0772094

SAM Unique Entity ID Number 839888831
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Mary Catherine Harcourt

Phone 479-521-8877

Email maryh@ccoacares.com

Primary Contact Name Mary Catherine Harcourt

Title Executive Director

Phone 479-521-8877

Email maryh@ccoacares.com

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

The mission is to improve the quality of life of individuals and families through financial education, credit and housing counseling and debt management services.

List and describe the services the organization provides to Fayetteville residents:

See attachment: City of Fayetteville_ARPA_WD_CCOA_2023

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

CCOA works to do outreach to the Arkansas communities that are most affected by income and economic inequality. According to Arkansas Advocates for Children and Families (AACF), while 22% of the state's overall child population lives in poverty, that number jumps to 27% among the Latin community, and in the Black community, to a startling 39%. In 2020, Arkansas' Black population experienced one of the country's highest mortgage denial rates. Throughout the beginning of the coronavirus pandemic, Northwest Arkansas' Hispanic and Marshallese immigrant communities struggled disproportionately with housing insecurity and high debt. CCOA partners with 11 other organizations to invite these communities to seek help and bring the assistance they need.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

Due to the COVID-19 public health emergency, CCOA experienced substantial shifts in its programs and operations between March 3, 2020, and March 2, 2021. CCOA has suffered a significant decline in its business due to the pandemic. Additionally, CCOA had to adapt the way it provided services to clients. Due mainly to local regulations and the requirement to adhere to social distancing guidelines, CCOA was forced to temporarily close its physical offices and replace in-person counseling sessions with virtual counseling sessions.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

The COVID-19 pandemic caused a decline in demand for CCOA's services, as people have been more focused on immediate needs like food and rent rather than financial counseling. Additionally, clients have faced job loss or reduced income, which has impacted the ability to pay for CCOA's services. This loss of earnings has led to a decrease in revenue for the organization.

During the COVID-19 pandemic, CCOA lost two staff members to retirement. While this may have been planned for one of them, the retirement of the other due to COVID-19 illness impacted CCOA's operations and potentially led to an increased workload for the remaining staff.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

ARPA funding can provide financial relief to organizations such as CCOA negatively impacted by the COVID-19 pandemic. If CCOA were to receive ARPA funding, it would use the money to mitigate its financial difficulties, such as covering the administrative costs of its services and essential operating expenses. This would help alleviate the burden on its counselors and improve the organization's overall sustainability. Additionally, ARPA funding would enable CCOA to expand its services and reach more people struggling financially due to the pandemic, thereby fulfilling its mission of helping as many individuals as possible.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19? While CCOA has faced significant financial difficulties throughout the COVID-19 pandemic, the organization has been able to continue providing its services. At times of economic insecurity, credit counseling groups have difficulty staying afloat. Because of this volatility, CCOA was forced to discontinue employee benefits. This is a frightening scenario for these committed counselors, making hiring support staff to relieve the administrative burden practically difficult.

CCOA counselors, on the other hand, are passionate and service-oriented persons motivated to help others. Notwithstanding these challenges, many employees have remained with the organization for over a decade. While budget counseling can only be offered if the organization's administrative costs are met, CCOA is dedicated to making this resource available for as long and as extensively as possible.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

See attachment: City of Fayetteville_ARPA_WD_CCOA_2023

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:
n/a

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

11/18/2020: Capital One COVID Relief Grant - 15,000.00

5/26/2020: Paycheck Protection Program (PPP) Loan - \$130,472

2/5/2021: Paycheck Protection Program (PPP) Loan - \$130,472

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: City of Fayetteville Qualified Census Tracts? ☒ YES ☐ NO

If Yes, please list:

While the organization's office is not in a designated Qualified Census Tract, CCOA provides services to clients who reside within the following designated Qualified Census Tracts: 106.1, 106.2, 107.3, 107.4, 111.04, 111.05, 113.01, and 113.02.

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship
n/a

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?
Fayetteville residents: 226 Total residents: 1552

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

See attachment: City of Fayetteville_ARPA_WD_CCOA_2023

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?
 ☒ YES
 ☐ NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.
 59328.58

Total requested (maximum requested amount allowable is \$100,000):

Date	Vendor	Expense Description	Amount
	See Attachment:	CCOA_City of Fayetteville_ARPA_Billing	
Total			\$59,328.58

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.

Mary Catherine Harcourt

03/09/2023

Authorized Signature

Date

Mary Catherine Harcourt

Printed Name and Title

City Use Only

Please submit application and all documentation to <https://documents.fayetteville-ar.gov/Forms/arpaassistance>

Applications and supporting documentation are due by 5:00 PM on March 10, 2023

For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov

**Credit Counseling of Arkansas
City of Fayetteville - ARPA
Expenses to be Reimbursed**

TOTAL - \$59,328.58

City of Fayetteville - Water, Sewer, Recycling & Trash

04/03/2020 - \$114.22 - Paid 04/15/2020
05/05/2020 - \$98.89 - Paid 05/15/2020
06/04/2020 - \$98.89 - Paid 06/15/2020
07/02/2020 - \$122.29 - Paid 07/15/2020
08/05/2020 - \$121.67 - Paid 08/17/2020
09/03/2020 - \$99.05 - Paid 09/15/2020
10/05/2020 - \$99.05 - Paid 10/15/2020
11/05/2020 - \$99.05 - Paid 11/13/2020
12/03/2020 - \$99.05 - Paid 12/15/2020
01/05/2021 - \$99.05 - Paid 01/15/2021
02/03/2021 - \$100.84 - Paid 02/15/2021
03/03/2021 - \$100.84 - Paid 03/15/2021
Total - \$1,252.89

Ozark Electric

Acct # 135622001

03/16/2020 - \$116.71 - Paid 04/02/2020
04/16/2020 - \$55.71 - Paid 05/04/2020
05/15/2020 - \$44.65 - Paid 06/02/2020
06/15/2020 - \$90.66 - Paid 07/02/2020
07/16/2020 - \$138.49 - Paid 08/03/2020
08/14/2020 - \$172.10 - Paid 09/03/2020
09/16/2020 - \$62.04 - Paid 10/05/2020
10/15/2020 - \$70.54 - Paid 11/02/2020
11/16/2020 - \$52.91 - Paid 12/03/2020
12/15/2020 - \$56.52 - Paid 01/04/2021
01/18/2021 - \$70.38 - Paid 02/04/2021
02/15/2021 - \$68.81 - Paid 03/04/2021
03/15/2021 - \$68.55 - Paid 04/01/2021
Total - \$1,068.07

Acct # 135622002

03/16/2020 - \$84.92 - Paid 04/02/2020
04/16/2020 - \$62.35 - Paid 05/04/2020
05/15/2020 - \$55.28 - Paid 06/02/2020
06/15/2020 - \$85.27 - Paid 07/02/2020
07/16/2020 - \$113.15 - Paid 08/03/2020

08/14/2020 - \$103.55 - Paid 09/03/2020
09/16/2020 - \$95.66 - Paid 10/05/2020
10/15/2020 - \$59.14 - Paid 11/02/2020
11/16/2020 - \$61.82 - Paid 12/03/2020
12/15/2020 - \$62.17 - Paid 01/04/2021
01/18/2021 - \$72.53 - Paid 02/04/2021
02/15/2021 - \$64.50 - Paid 03/04/2021
03/15/2021 - \$68.05 - Paid 04/01/2021
Total - \$988.39

Cox Communications

Acct # 0020806514781401

03/01/2020 - \$169.95 - Paid 03/13/2020
04/01/2020 - \$169.95 - Paid 04/15/2020
05/01/2020 - \$169.95 - Paid 05/15/2020
06/01/2020 - \$169.95 - Paid 06/16/2020
07/01/2020 - \$186.82 - Paid 07/16/2020
08/01/2020 - \$186.82 - Paid 08/17/2020
09/01/2020 - \$186.82 - Paid 09/15/2020
10/01/2020 - \$186.82 - Paid 10/15/2020
11/01/2020 - \$186.82 - Paid 11/13/2020
12/01/2020 - \$186.82 - Paid 12/15/2020
01/01/2021 - \$186.82 - Paid 01/29/2021
02/01/2021 - \$186.82 - Paid 02/15/2021
03/01/2021 - \$186.82 - Paid 03/15/2021
Total - \$2,361.18

Acct # 0010806514781401

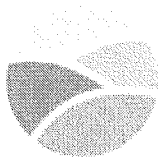
03/01/2020 - \$54.89 - Paid 03/13/2020
04/01/2020 - \$54.89 - Paid 04/15/2020
05/01/2020 - \$54.89 - Paid 05/15/2020
06/01/2020 - \$54.89 - Paid 06/16/2020
07/01/2020 - \$48.03 - Paid 07/16/2020
08/01/2020 - \$52.72 - Paid 08/17/2020
09/01/2020 - \$50.38 - Paid 09/15/2020
10/01/2020 - \$50.38 - Paid 10/15/2020
11/01/2020 - \$50.38 - Paid 11/13/2020
12/01/2020 - \$50.38 - Paid 12/15/2020
01/01/2021 - \$54.45 - Paid 01/29/2021
02/01/2021 - \$54.45 - Paid 02/15/2021
03/01/2021 - \$54.45 - Paid 03/15/2021 (NO BILL - ONLY CHECK)
Total - \$685.18

Black Hills Energy

03/19/2020 - \$168.68 - Paid 03/30/2020
04/17/2020 - \$76.06 - Paid 04/30/2020
05/18/2020 - \$48.67 - Paid 05/16/2020
06/22/2020 - \$26.83 - Paid 06/30/2020
07/20/2020 - \$26.04 - Paid 07/30/2020
08/19/2020 - \$26.10 - Paid 08/28/2020
09/17/2020 - \$26.10 - Paid 09/30/2020
10/16/2020 - \$27.68 - Paid 10/30/2020
11/17/2020 - \$96.47 - Paid 11/30/2020
12/17/2020 - \$213.30 - Paid 01/04/2021
01/19/2020 - \$316.99 - Paid 01/29/2021
02/17/2021 - \$319.95 - Paid 02/28/2021
Total - \$1,372.87

Rent

April 2020 - \$4,300 - Paid 04/01/2020
May 2020 - \$4,300 - Paid 05/01/2020
June 2020 - \$4,300 - Paid 05/29/2020
July 2020 - \$4,300 - Paid 06/30/2020
August 2020 - \$4,300 - Paid 08/03/2020
September 2020 - \$4,300 - Paid 08/31/2020
October 2020 - \$4,300 - Paid 10/01/2020
November 2020 - \$4,300 - Paid 12/01/2020
December 2020 - \$4,300 - Paid 01/04/2021
January 2021 - \$4,300 - Paid 01/22/2021
February 2021 - \$4,300 - Paid 02/01/2021
March 2021 - \$4,300 - Paid 03/01/2021
Total - \$51,600



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Habitat for Humanity of Washington County Arkansas
Requested Amt: \$91,800.00

COVID-19 claimed impacts for Nonprofit organizations can include:

Decreased Revenue (e.g. Donations and Fees)

Financial Insecurity

Increased Costs (e.g., uncompensated increases in service need)

Capacity to weather financial hardship

Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and decreased revenue from a closure to some operations and a reduction to the donations and fundraising during 2020-2021 as a result of the pandemic.

Supported amount of reimbursement per applicant documentation: \$19,675.73



CITY OF
FAYETTEVILLE
ARKANSAS

AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation to <https://documents.fayetteville-ar.gov/Forms/arpaassistance>

Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date March 10, 2023

Year of Nonprofit Incorporation 1991

Organization Name Habitat for Humanity of Washington County, Arkansas

Organization Email brandon@habitatwashingtoncoar.org

Mailing Address P.O. Box 3872, Fayetteville, AR 72702

Physical Address (if different) 1421 E. 15th Street, Fayetteville, AR 72701

Organization Phone Number 479.575.9696

Website www.habitatwashingtoncounty.org

EIN 71-0712905

SAM Unique Entity ID Number M9HLZ88E1UF7
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Brandon Swoboda

Phone 479.418.9499

Email brandon@habitatwashingtoncoar.org

Primary Contact Name Brandon Swoboda

Title Executive Director

Phone 479.418.9499

Email brandon@habitatwashingtoncoar.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

Habitat for Humanity believes everyone deserves to live in an affordable, decent home. We accomplish this vision by bringing people together to build homes, communities and hope. Habitat works specifically with low-income families earning 80% or less of the AMI to become homeowners through new construction and an affordable monthly payment. In addition, Habitat works with low-income homeowners to retain homeownership through repairs and an affordable re-payment program.

List and describe the services the organization provides to Fayetteville residents:

Habitat ReStore: The ReStore is a re-sale, retail outlet offering affordable home goods and construction materials to Fayetteville residents. The ReStore accepts donated, gently used goods from local residents which are re-sold to local residents. Any materials not able to be re-sold are recycled keeping materials out of the land fill.

New Construction: Habitat builds new homes for low-income families earning 80% or less of the AMI and offers 0% interest loans to create affordable monthly mortgage payments.

Repairs: Habitat offers repairs and an affordable 0% interest re-payment program for low income homeowners earning 80% or less AMI.

Training: Habitat offers free monthly community wide trainings around subjects such as homeownership, budgeting, home maintenance, car maintenance, will and end of life planning, investing, banking, aging in place, etc.

Advocacy: Habitat advocates for affordable homeownership by communicating needs with local and state government agencies and collaborates with other area non-profits to provide housing resources to local residents

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

Habitat's target beneficiaries are local residents and/or families earning 80% or less of the area median income. There is no restriction on age, sex, gender, or religious affiliation.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

When the COVID-19 lockdowns began, Habitat was forced to close the ReStore which is the primary funding source for our operations and programs. Residents were unable to drop off donations and Habitat was unable to pick up donated goods from homes. Residents were unable to shop. In addition, Habitat was forced to stop in-person fundraising and limit volunteers on construction projects. This forced our construction to slow significantly.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

Negative Impact Includes:

- Loss of income via ReStore sales
- Loss of donated goods made to the ReStore due to not being able to receive donations or be able to pick up donated goods at donor residences
- Loss of income via in-person fundraising
- Increased cost of construction due to volunteers being unable to help with projects
- Loss of income due to hiring freeze

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

This funding, if provided, would allow us to recapture lost income spent on rent. Habitat was unable to pick up or receive donated home goods due to Covid lockdowns. In addition, the ReStore was unable to sell product. Construction slowed without volunteer help. Habitat was unable to fundraise. This funding would help us recover loss income which was spent on rent instead.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

Habitat address the financial impact during the pandemic by retaining staff and pouring any funds into rent and operations. We intentionally chose not to layoff any workers because we value people. We dwindled any reserves in the bank in order to do this. We stopped construction, closed the ReStore, stopped receiving volunteers, stopped receiving donated goods, and hoped for the best. This funding will help us recover those losses.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

Covid lockdown hurt our volunteer base. We could no longer receive volunteers to run the ReStore or perform construction. This pandemic put us back on housing production which negatively impacts low-income families in Fayetteville wish for a better housing option for them and their children. Habitat was forced to install a hiring freeze. We closed our offices and our ReStore.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

We applied for the PPP loan. Our average monthly income at the time was \$32,081.90. Habitat applied for $\$32,081.90 \times 2.5 = \$80,204.75$. This amount was proposed to be used to help cover payroll, utilities and rent on the application but was used primarily to cover payroll.

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: [City of Fayetteville Qualified Census Tracts](#)? ☐ YES ☒ NO

If Yes, please list:

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: Total residents:

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

We are seeking reimbursement for rent of the facilities used to operate the ReStore and Habitat offices during the pandemic. As described above, the ReStore and offices assist in providing affordable home goods, new home construction and repairs for residents of Fayetteville especially low income families earning 80% or less of the AMI.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?



YES



NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

\$91,800

Total requested (maximum requested amount allowable is \$100,000): _____

Date	Vendor	Expense Description	Amount
April 1, 2020	Burt Hanna, LLC	Rent	\$7,650
May 1, 2020	Burt Hanna, LLC	Rent	\$7,650
June 1, 2020	Burt Hanna, LLC	Rent	\$7,650
July 1, 2020	Burt Hanna, LLC	Rent	\$7,650
August 1, 2020	Burt Hanna, LLC	Rent	\$7,650
September 1, 2020	Burt Hanna, LLC	Rent	\$7,650
October 1, 2020	Burt Hanna, LLC	Rent	\$7,650
November 1, 2020	Burt Hanna, LLC	Rent	\$7,650
December 1, 2020	Burt Hanna, LLC	Rent	\$7,650
January 1, 2021	Burt Hanna, LLC	Rent	\$7,650
February 1, 2021	Burt Hanna, LLC	Rent	\$7,650
March 1, 2021	Burt Hanna, LLC	Rent	\$7,650

Total \$91,800

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.

Brandon M. Swoboda

Authorized Signature

Brandon M. Swoboda

Printed Name and Title

March 10, 2023

Date

City Use Only

Please submit application and all documentation to <https://documents.fayetteville-ar.gov/Forms/arpaassistance>

Applications and supporting documentation are due by 5:00 PM on March 10, 2023

For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule

U.S. DEPARTMENT OF THE TREASURY

January 2022



The Overview of the Final Rule provides a summary of major provisions of the final rule for informational purposes and is intended as a brief, simplified user guide to the final rule provisions.

The descriptions provided in this document summarize key provisions of the final rule but are non-exhaustive, do not describe all terms and conditions associated with the use of SLFRF, and do not describe all requirements that may apply to this funding. Any SLFRF funds received are also subject to the terms and conditions of the agreement entered into by Treasury and the respective jurisdiction, which incorporate the provisions of the final rule and the guidance that implements this program.



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Introduction

The Coronavirus State and Local Fiscal Recovery Funds (SLFRF), a part of the American Rescue Plan, delivers \$350 billion to state, local, and Tribal governments across the country to support their response to and recovery from the COVID-19 public health emergency. The program ensures that governments have the resources needed to:

- Fight the pandemic and support families and businesses struggling with its public health and economic impacts,
- Maintain vital public services, even amid declines in revenue, and
- Build a strong, resilient, and equitable recovery by making investments that support long-term growth and opportunity.

EARLY PROGRAM IMPLEMENTATION

In May 2021, Treasury published the Interim final rule (IFR) describing eligible and ineligible uses of funds (as well as other program provisions), sought feedback from the public on these program rules, and began to distribute funds. The IFR went immediately into effect in May, and since then, governments have used SLFRF funds to meet their immediate pandemic response needs and begin building a strong and equitable recovery, such as through providing vaccine incentives, development of affordable housing, and construction of infrastructure to deliver safe and reliable water.

As governments began to deploy this funding in their communities, Treasury carefully considered the feedback provided through its public comment process and other forums. Treasury received over 1,500 comments, participated in hundreds of meetings, and received correspondence from a wide range of governments and other stakeholders.

KEY CHANGES AND CLARIFICATIONS IN THE FINAL RULE

The final rule delivers broader flexibility and greater simplicity in the program, responsive to feedback in the comment process. Among other clarifications and changes, the final rule provides the features below.

Replacing Lost Public Sector Revenue

The final rule offers a standard allowance for revenue loss of up to \$10 million, allowing recipients to select between a standard amount of revenue loss or complete a full revenue loss calculation. Recipients that select the standard allowance may use that amount – in many cases their full award – for government services, with streamlined reporting requirements.

Public Health and Economic Impacts

In addition to programs and services, the final rule clarifies that recipients can use funds for capital expenditures that support an eligible COVID-19 public health or economic response. For example, recipients may build certain affordable housing, childcare facilities, schools, hospitals, and other projects consistent with final rule requirements.



In addition, the final rule provides an expanded set of households and communities that are presumed to be “impacted” and “disproportionately impacted” by the pandemic, thereby allowing recipients to provide responses to a broad set of households and entities without requiring additional analysis. Further, the final rule provides a broader set of uses available for these communities as part of COVID-19 public health and economic response, including making affordable housing, childcare, early learning, and services to address learning loss during the pandemic eligible in all impacted communities and making certain community development and neighborhood revitalization activities eligible for disproportionately impacted communities.

Further, the final rule allows for a broader set of uses to restore and support government employment, including hiring above a recipient’s pre-pandemic baseline, providing funds to employees that experienced pay cuts or furloughs, avoiding layoffs, and providing retention incentives.

Premium Pay

The final rule delivers more streamlined options to provide premium pay, by broadening the share of eligible workers who can receive premium pay without a written justification while maintaining a focus on lower-income and frontline workers performing essential work.

Water, Sewer & Broadband Infrastructure

The final rule significantly broadens eligible broadband infrastructure investments to address challenges with broadband access, affordability, and reliability, and adds additional eligible water and sewer infrastructure investments, including a broader range of lead remediation and stormwater management projects.

FINAL RULE EFFECTIVE DATE

The final rule takes effect on April 1, 2022. Until that time, the interim final rule remains in effect; funds used consistently with the IFR while it is in effect are in compliance with the SLFRF program.

However, recipients can choose to take advantage of the final rule’s flexibilities and simplifications now, even ahead of the effective date. Treasury will not take action to enforce the interim final rule to the extent that a use of funds is consistent with the terms of the final rule, regardless of when the SLFRF funds were used. Recipients may consult the *Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule*, which can be found on Treasury’s website, for more information on compliance with the interim final rule and the final rule.



Overview of the Program

The Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program provides substantial flexibility for each jurisdiction to meet local needs within the four separate eligible use categories. This Overview of the Final Rule addresses the four eligible use categories ordered from the broadest and most flexible to the most specific.

Recipients may use SLFRF funds to:

- **Replace lost public sector revenue**, using this funding to provide government services up to the amount of revenue loss due to the pandemic.
 - Recipients may determine their revenue loss by choosing between two options:
 - A standard allowance of up to \$10 million in aggregate, not to exceed their award amount, during the program;
 - Calculating their jurisdiction's specific revenue loss each year using Treasury's formula, which compares actual revenue to a counterfactual trend.
 - Recipients may use funds up to the amount of revenue loss for government services; generally, services traditionally provided by recipient governments are government services, unless Treasury has stated otherwise.
- **Support the COVID-19 public health and economic response** by addressing COVID-19 and its impact on public health as well as addressing economic harms to households, small businesses, nonprofits, impacted industries, and the public sector.
 - Recipients can use funds for programs, services, or capital expenditures that respond to the public health and negative economic impacts of the pandemic.
 - To provide simple and clear eligible uses of funds, Treasury provides a list of enumerated uses that recipients can provide to households, populations, or classes (i.e., groups) that experienced pandemic impacts.
 - Public health eligible uses include COVID-19 mitigation and prevention, medical expenses, behavioral healthcare, and preventing and responding to violence.
 - Eligible uses to respond to negative economic impacts are organized by the type of beneficiary: assistance to households, small businesses, and nonprofits.
 - Each category includes assistance for "impacted" and "disproportionately impacted" classes: impacted classes experienced the general, broad-based impacts of the pandemic, while disproportionately impacted classes faced meaningfully more severe impacts, often due to preexisting disparities.
 - To simplify administration, the final rule presumes that some populations and groups were impacted or disproportionately impacted and are eligible for responsive services.



- Eligible uses for assistance to impacted households include aid for re-employment, job training, food, rent, mortgages, utilities, affordable housing development, childcare, early education, addressing learning loss, and many more uses.
- Eligible uses for assistance to impacted small businesses or nonprofits include loans or grants to mitigate financial hardship, technical assistance for small businesses, and many more uses.
- Recipients can also provide assistance to impacted industries like travel, tourism, and hospitality that faced substantial pandemic impacts, or address impacts to the public sector, for example by re-hiring public sector workers cut during the crisis.
- Recipients providing funds for enumerated uses to populations and groups that Treasury has presumed eligible are clearly operating consistently with the final rule. Recipients can also identify (1) other populations or groups, beyond those presumed eligible, that experienced pandemic impacts or disproportionate impacts and (2) other programs, services, or capital expenditures, beyond those enumerated, to respond to those impacts.
- **Provide premium pay for eligible workers performing essential work**, offering additional support to those who have and will bear the greatest health risks because of their service in critical sectors.
 - Recipients may provide premium pay to eligible workers – generally those working in-person in key economic sectors – who are below a wage threshold or non-exempt from the Fair Labor Standards Act overtime provisions, or if the recipient submits justification that the premium pay is responsive to workers performing essential work.
- **Invest in water, sewer, and broadband infrastructure**, making necessary investments to improve access to clean drinking water, to support vital wastewater and stormwater infrastructure, and to expand affordable access to broadband internet.
 - Recipients may fund a broad range of water and sewer projects, including those eligible under the EPA’s Clean Water State Revolving Fund, EPA’s Drinking Water State Revolving Fund, and certain additional projects, including a wide set of lead remediation, stormwater infrastructure, and aid for private wells and septic units.
 - Recipients may fund high-speed broadband infrastructure in areas of need that the recipient identifies, such as areas without access to adequate speeds, affordable options, or where connections are inconsistent or unreliable; completed projects must participate in a low-income subsidy program.

While recipients have considerable flexibility to use funds to address the diverse needs of their communities, some restrictions on use apply across all eligible use categories. These include:

- **For states and territories:** No offsets of a reduction in net tax revenue resulting from a change in state or territory law.

Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule



- **For all recipients except for Tribal governments:** No extraordinary contributions to a pension fund for the purpose of reducing an accrued, unfunded liability.
- **For all recipients:** No payments for debt service and replenishments of rainy day funds; no satisfaction of settlements and judgments; no uses that contravene or violate the American Rescue Plan Act, Uniform Guidance conflicts of interest requirements, and other federal, state, and local laws and regulations.

Under the SLFRF program, funds must be used for costs incurred on or after March 3, 2021. Further, funds must be obligated by December 31, 2024, and expended by December 31, 2026. This time period, during which recipients can expend SLFRF funds, is the “period of performance.”

In addition to SLFRF, the American Rescue Plan includes other sources of funding for state and local governments, including the [Coronavirus Capital Projects Fund](#) to fund critical capital investments including broadband infrastructure; the [Homeowner Assistance Fund](#) to provide relief for our country’s most vulnerable homeowners; the [Emergency Rental Assistance Program](#) to assist households that are unable to pay rent or utilities; and the [State Small Business Credit Initiative](#) to fund small business credit expansion initiatives. Eligible recipients are encouraged to visit the Treasury website for more information.



Replacing Lost Public Sector Revenue

The Coronavirus State and Local Fiscal Recovery Funds provide needed fiscal relief for recipients that have experienced revenue loss due to the onset of the COVID-19 public health emergency. Specifically, SLFRF funding may be used to pay for “government services” in an amount equal to the revenue loss experienced by the recipient due to the COVID-19 public health emergency.

Government services generally include any service traditionally provided by a government, including construction of roads and other infrastructure, provision of public safety and other services, and health and educational services. Funds spent under government services are subject to streamlined reporting and compliance requirements.

In order to use funds under government services, recipients should first determine revenue loss. They may, then, spend up to that amount on general government services.

DETERMINING REVENUE LOSS

Recipients have two options for how to determine their amount of revenue loss. Recipients must choose one of the two options and cannot switch between these approaches after an election is made.

- 1. Recipients may elect a “standard allowance” of \$10 million to spend on government services through the period of performance.**

Under this option, which is newly offered in the final rule Treasury presumes that up to \$10 million in revenue has been lost due to the public health emergency and recipients are permitted to use that amount (not to exceed the award amount) to fund “government services.” The standard allowance provides an estimate of revenue loss that is based on an extensive analysis of average revenue loss across states and localities, and offers a simple, convenient way to determine revenue loss, particularly for SLFRF’s smallest recipients.

All recipients may elect to use this standard allowance instead of calculating lost revenue using the formula below, including those with total allocations of \$10 million or less. Electing the standard allowance does not increase or decrease a recipient’s total allocation.

- 2. Recipients may calculate their actual revenue loss according to the formula articulated in the final rule.**

Under this option, recipients calculate revenue loss at four distinct points in time, either at the end of each calendar year (e.g., December 31 for years 2020, 2021, 2022, and 2023) or the end of each fiscal year of the recipient. Under the flexibility provided in the final rule, recipients can choose whether to use calendar or fiscal year dates but must be consistent throughout the period of performance. Treasury has also provided several adjustments to the definition of general revenue in the final rule.

To calculate revenue loss at each of these dates, recipients must follow a four-step process:



- a. Calculate revenues collected in the most recent full fiscal year prior to the public health emergency (i.e., last full fiscal year before January 27, 2020), called the *base year revenue*.
- b. Estimate *counterfactual revenue*, which is equal to the following formula, where n is the number of months elapsed since the end of the base year to the calculation date:

$$\text{base year revenue} \times (1 + \text{growth adjustment})^{\frac{n}{12}}$$

The *growth adjustment* is the greater of either a standard growth rate—5.2 percent—or the recipient’s average annual revenue growth in the last full three fiscal years prior to the COVID-19 public health emergency.

- c. Identify *actual revenue*, which equals revenues collected over the twelve months immediately preceding the calculation date.

Under the final rule, recipients must adjust actual revenue totals for the effect of tax cuts and tax increases that are adopted after the date of adoption of the final rule (January 6, 2022). Specifically, the estimated fiscal impact of tax cuts and tax increases adopted after January 6, 2022, must be added or subtracted to the calculation of actual revenue for purposes of calculation dates that occur on or after April 1, 2022.

Recipients may subtract from their calculation of actual revenue the effect of tax increases enacted prior to the adoption of the final rule. Note that recipients that elect to remove the effect of tax increases enacted before the adoption of the final rule must also remove the effect of tax decreases enacted before the adoption of the final rule, such that they are accurately removing the effect of tax policy changes on revenue.

- d. Revenue loss for the calculation date is equal to *counterfactual revenue* minus *actual revenue* (adjusted for tax changes) for the twelve-month period. If actual revenue exceeds counterfactual revenue, the loss is set to zero for that twelve-month period. Revenue loss for the period of performance is the sum of the revenue loss on for each calculation date.

The supplementary information in the final rule provides an example of this calculation, which recipients may find helpful, in the Revenue Loss section.



SPENDING ON GOVERNMENT SERVICES

Recipients can use SLFRF funds on government services up to the revenue loss amount, whether that be the standard allowance amount or the amount calculated using the above approach. **Government services generally include *any service traditionally provided by a government***, unless Treasury has stated otherwise. Here are some common examples, although this list is not exhaustive:

- ✓ Construction of schools and hospitals
- ✓ Road building and maintenance, and other infrastructure
- ✓ Health services
- ✓ General government administration, staff, and administrative facilities
- ✓ Environmental remediation
- ✓ Provision of police, fire, and other public safety services (including purchase of fire trucks and police vehicles)

Government services is the most flexible eligible use category under the SLFRF program, and funds are subject to streamlined reporting and compliance requirements. Recipients should be mindful that certain restrictions, which are detailed further in the Restrictions on Use section and apply to all uses of funds, apply to government services as well.



Responding to Public Health and Economic Impacts of COVID-19

The Coronavirus State and Local Fiscal Recovery Funds provide resources for governments to meet the public health and economic needs of those impacted by the pandemic in their communities, as well as address longstanding health and economic disparities, which amplified the impact of the pandemic in disproportionately impacted communities, resulting in more severe pandemic impacts.

The eligible use category to respond to public health and negative economic impacts is organized around the types of assistance a recipient may provide and includes several sub-categories:

- public health,
- assistance to households,
- assistance to small businesses,
- assistance to nonprofits,
- aid to impacted industries, and
- public sector capacity.

In general, to identify eligible uses of funds in this category, recipients should (1) identify a COVID-19 public health or economic impact on an individual or class (i.e., a group) and (2) design a program that responds to that impact. Responses should be related and reasonably proportional to the harm identified and reasonably designed to benefit those impacted.

To provide simple, clear eligible uses of funds that meet this standard, Treasury provides a non-exhaustive list of enumerated uses that respond to pandemic impacts. Treasury also presumes that some populations experienced pandemic impacts and are eligible for responsive services. In other words, recipients providing enumerated uses of funds to populations presumed eligible are clearly operating consistently with the final rule.¹

Recipients also have broad flexibility to (1) identify and respond to other pandemic impacts and (2) serve other populations that experienced pandemic impacts, beyond the enumerated uses and presumed eligible populations. Recipients can also identify groups or “classes” of beneficiaries that experienced pandemic impacts and provide services to those classes.

¹ However, please note that use of funds for enumerated uses may not be grossly disproportionate to the harm. Further, recipients should consult the Capital Expenditures section for more information about pursuing a capital expenditure; please note that enumerated capital expenditures are not presumed to be reasonably proportional responses to an identified harm except as provided in the Capital Expenditures section.



Step	1. Identify COVID-19 public health or economic impact	2. Design a response that addresses or responds to the impact
Analysis	• Can identify impact to a specific household, business or nonprofit or to a class of households, businesses, or nonprofits (i.e., group) • Can also identify disproportionate impacts, or more severe impacts, to a specific beneficiary or to a class	• Types of responses can include a program, service, or capital expenditure • Response should be related and reasonably proportional to the harm • Response should also be reasonably designed to benefit impacted individual or class
Simplifying Presumptions	• Final Rule presumes certain populations and classes are impacted and disproportionately impacted	• Final Rule provides non-exhaustive list of enumerated eligible uses that respond to pandemic impacts and disproportionate impacts

To assess eligibility of uses of funds, recipients should first determine the sub-category where their use of funds may fit (e.g., public health, assistance to households, assistance to small businesses), based on the entity that experienced the health or economic impact.² Then, recipients should refer to the relevant section for more details on each sub-category.

While the same overall eligibility standard applies to all uses of funds to respond to the public health and negative economic impacts of the pandemic, each sub-category has specific nuances on its application. In addition:

- Recipients interested in using funds for capital expenditures (i.e., investments in property, facilities, or equipment) should review the Capital Expenditures section in addition to the eligible use sub-category.
- Recipients interested in other uses of funds, beyond the enumerated uses, should refer to the section on “Framework for Eligible Uses Beyond Those Enumerated.”

² For example, a recipient interested in providing aid to unemployed individuals is addressing a negative economic impact experienced by a household and should refer to the section on assistance to households. Recipients should also be aware of the difference between “beneficiaries” and “sub-recipients.” Beneficiaries are households, small businesses, or nonprofits that can receive assistance based on impacts of the pandemic that they experienced. On the other hand, sub-recipients are organizations that carry out eligible uses on behalf of a government, often through grants or contracts. Sub-recipients do not need to have experienced a negative economic impact of the pandemic; rather, they are providing services to beneficiaries that experienced an impact.



RESPONDING TO THE PUBLIC HEALTH EMERGENCY

While the country has made tremendous progress in the fight against COVID-19, including a historic vaccination campaign, the disease still poses a grave threat to Americans' health and the economy. Providing state, local, and Tribal governments the resources needed to fight the COVID-19 pandemic is a core goal of the Coronavirus State and Local Fiscal Recovery Funds, as well as addressing the other ways that the pandemic has impacted public health. Treasury has identified several public health impacts of the pandemic and enumerated uses of funds to respond to impacted populations.

- **COVID-19 mitigation and prevention.** The pandemic has broadly impacted Americans and recipients can provide services to prevent and mitigate COVID-19 to the general public or to small businesses, nonprofits, and impacted industries in general. Enumerated eligible uses include:
 - ✓ Vaccination programs, including vaccine incentives and vaccine sites
 - ✓ Testing programs, equipment and sites
 - ✓ Monitoring, contact tracing & public health surveillance (e.g., monitoring for variants)
 - ✓ Public communication efforts
 - ✓ Public health data systems
 - ✓ COVID-19 prevention and treatment equipment, such as ventilators and ambulances
 - ✓ Medical and PPE/protective supplies
 - ✓ Support for isolation or quarantine
 - ✓ Ventilation system installation and improvement
 - ✓ Technical assistance on mitigation of COVID-19 threats to public health and safety
 - ✓ Transportation to reach vaccination or testing sites, or other prevention and mitigation services for vulnerable populations
 - ✓ Support for prevention, mitigation, or other services in congregate living facilities, public facilities, and schools
 - ✓ Support for prevention and mitigation strategies in small businesses, nonprofits, and impacted industries
 - ✓ Medical facilities generally dedicated to COVID-19 treatment and mitigation (e.g., ICUs, emergency rooms)
 - ✓ Temporary medical facilities and other measures to increase COVID-19 treatment capacity
 - ✓ Emergency operations centers & emergency response equipment (e.g., emergency response radio systems)
 - ✓ Public telemedicine capabilities for COVID-19 related treatment



- **Medical expenses.** Funds may be used for expenses to households, medical providers, or others that incurred medical costs due to the pandemic, including:
 - ✓ Unreimbursed expenses for medical care for COVID-19 testing or treatment, such as uncompensated care costs for medical providers or out-of-pocket costs for individuals
 - ✓ Paid family and medical leave for public employees to enable compliance with COVID-19 public health precautions
 - ✓ Emergency medical response expenses
 - ✓ Treatment of long-term symptoms or effects of COVID-19
- **Behavioral health care, such as mental health treatment, substance use treatment, and other behavioral health services.** Treasury recognizes that the pandemic has broadly impacted Americans' behavioral health and recipients can provide these services to the general public to respond. Enumerated eligible uses include:
 - ✓ Prevention, outpatient treatment, inpatient treatment, crisis care, diversion programs, outreach to individuals not yet engaged in treatment, harm reduction & long-term recovery support
 - ✓ Enhanced behavioral health services in schools
 - ✓ Services for pregnant women or infants born with neonatal abstinence syndrome
 - ✓ Support for equitable access to reduce disparities in access to high-quality treatment
 - ✓ Peer support groups, costs for residence in supportive housing or recovery housing, and the 988 National Suicide Prevention Lifeline or other hotline services
 - ✓ Expansion of access to evidence-based services for opioid use disorder prevention, treatment, harm reduction, and recovery
 - ✓ Behavioral health facilities & equipment
- **Preventing and responding to violence.** Recognizing that violence – and especially gun violence – has increased in some communities due to the pandemic, recipients may use funds to respond in these communities through:
 - ✓ Referrals to trauma recovery services for victims of crime
 - ✓ Community violence intervention programs, including:
 - Evidence-based practices like focused deterrence, with wraparound services such as behavioral therapy, trauma recovery, job training, education, housing and relocation services, and financial assistance
 - ✓ In communities experiencing increased gun violence due to the pandemic:
 - Law enforcement officers focused on advancing community policing
 - Enforcement efforts to reduce gun violence, including prosecution
 - Technology & equipment to support law enforcement response



RESPONDING TO NEGATIVE ECONOMIC IMPACTS

The pandemic caused severe economic damage and, while the economy is on track to a strong recovery, much work remains to continue building a robust, resilient, and equitable economy in the wake of the crisis and to ensure that the benefits of this recovery reach all Americans. While the pandemic impacted millions of American households and businesses, some of its most severe impacts fell on low-income and underserved communities, where pre-existing disparities amplified the impact of the pandemic and where the most work remains to reach a full recovery.

The final rule recognizes that the pandemic caused broad-based impacts that affected many communities, households, and small businesses across the country; for example, many workers faced unemployment and many small businesses saw declines in revenue. The final rule describes these as “impacted” households, communities, small businesses, and nonprofits.

At the same time, the pandemic caused disproportionate impacts, or more severe impacts, in certain communities. For example, low-income and underserved communities have faced more severe health and economic outcomes like higher rates of COVID-19 mortality and unemployment, often because pre-existing disparities exacerbated the impact of the pandemic. The final rule describes these as “disproportionately impacted” households, communities, small businesses, and nonprofits.

To simplify administration of the program, the final rule presumes that certain populations were “impacted” and “disproportionately impacted” by the pandemic; these populations are presumed to be eligible for services that respond to the impact they experienced. The final rule also enumerates a non-exhaustive list of eligible uses that are recognized as responsive to the impacts or disproportionate impacts of COVID-19. Recipients providing enumerated uses to populations presumed eligible are clearly operating consistently with the final rule.

As discussed further in the section Framework for Eligible Uses Beyond Those Enumerated, recipients can also identify other pandemic impacts, impacted or disproportionately impacted populations or classes, and responses.

However, note that the final rule maintains that general infrastructure projects, including roads, streets, and surface transportation infrastructure, would generally not be eligible under this eligible use category, unless the project responded to a specific pandemic public health need or a specific negative economic impact. Similarly, general economic development or workforce development – activities that do not respond to negative economic impacts of the pandemic but rather seek to more generally enhance the jurisdiction’s business climate – would generally not be eligible under this eligible use category.



Assistance to Households

Impacted Households and Communities

Treasury presumes the following households and communities are impacted by the pandemic:

- ✓ Low- or-moderate income households or communities
- ✓ Households that experienced unemployment
- ✓ Households that experienced increased food or housing insecurity
- ✓ Households that qualify for the Children's Health Insurance Program, Childcare Subsidies through the Child Care Development Fund (CCDF) Program, or Medicaid
- ✓ *When providing affordable housing programs:* households that qualify for the National Housing Trust Fund and Home Investment Partnerships Program
- ✓ *When providing services to address lost instructional time in K-12 schools:* any student that lost access to in-person instruction for a significant period of time

Low- or moderate-income households and communities are those with (i) income at or below 300 percent of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines or (ii) income at or below 65 percent of the area median income for the county and size of household based on the most recently published data. For the vast majority of communities, the Federal Poverty Guidelines are higher than the area's median income and using the Federal Poverty Guidelines would result in more households and communities being presumed eligible. Treasury has provided an easy-to-use spreadsheet with Federal Poverty Guidelines and area median income levels on its website.

Recipients can measure income for a specific household or the median income for the community, depending on whether the response they plan to provide serves specific households or the general community. The income thresholds vary by household size; recipients should generally use income thresholds for the appropriate household size but can use a default household size of three when easier for administration or when measuring income for a general community.

The income limit for 300 percent of the Federal Poverty Guidelines for a household of three is \$65,880 per year.³ In other words, recipients can always presume that a household earning below this level, or a community with median income below this level, is impacted by the pandemic and eligible for services to respond. Additionally, by following the steps detailed in the section Framework for Eligible Uses Beyond Those Enumerated, recipients may designate additional households as impacted or disproportionately impacted beyond these presumptions, and may also pursue projects not listed below in response to these impacts consistent with Treasury's standards.

³ For recipients in Alaska, the income limit for 300 percent of the Federal Poverty Guidelines for a household of three is \$82,350 per year. For recipients in Hawaii, the income limit for 300 percent of the Federal Poverty Guidelines for a household of three is \$75,780 per year.



Treasury recognizes the enumerated projects below, which have been expanded under the final rule, as eligible to respond to impacts of the pandemic on households and communities:

- ✓ Food assistance (e.g., child nutrition programs, including school meals) & food banks
- ✓ Emergency housing assistance: rental assistance, mortgage assistance, utility assistance, assistance paying delinquent property taxes, counseling and legal aid to prevent eviction and homelessness & emergency programs or services for homeless individuals, including temporary residences for people experiencing homelessness
- ✓ Health insurance coverage expansion
- ✓ Benefits for surviving family members of individuals who have died from COVID-19
- ✓ Assistance to individuals who want and are available for work, including job training, public jobs programs and fairs, support for childcare and transportation to and from a jobsite or interview, incentives for newly-employed workers, subsidized employment, grants to hire underserved workers, assistance to unemployed individuals to start small businesses & development of job and workforce training centers
- ✓ Financial services for the unbanked and underbanked
- ✓ Burials, home repair & home weatherization
- ✓ Programs, devices & equipment for internet access and digital literacy, including subsidies for costs of access
- ✓ Cash assistance
- ✓ Paid sick, medical, and family leave programs
- ✓ Assistance in accessing and applying for public benefits or services
- ✓ Childcare and early learning services, home visiting programs, services for child welfare-involved families and foster youth & childcare facilities
- ✓ Assistance to address the impact of learning loss for K-12 students (e.g., high-quality tutoring, differentiated instruction)
- ✓ Programs or services to support long-term housing security: including development of affordable housing and permanent supportive housing
- ✓ Certain contributions to an Unemployment Insurance Trust Fund⁴

⁴ Recipients may only use SLFRF funds for contributions to unemployment insurance trust funds and repayment of the principal amount due on advances received under Title XII of the Social Security Act up to an amount equal to (i) the difference between the balance in the recipient's unemployment insurance trust fund as of January 27, 2020 and the balance of such account as of May 17, 2021, plus (ii) the principal amount outstanding as of May 17, 2021 on any advances received under Title XII of the Social Security Act between January 27, 2020 and May 17, 2021. Further, recipients may use SLFRF funds for the payment of any interest due on such Title XII advances. Additionally, a recipient that deposits SLFRF funds into its unemployment insurance trust fund to fully restore the pre-pandemic balance may not draw down that balance and deposit more SLFRF funds, back up to the pre-pandemic balance. Recipients that deposit SLFRF funds into an unemployment insurance trust fund, or use SLFRF funds to repay principal on Title XII advances, may not take action to reduce benefits available to unemployed workers by changing the computation method governing regular unemployment compensation in a way that results in a reduction of average weekly benefit amounts or the number of weeks of benefits payable (i.e., maximum benefit entitlement).



Disproportionately Impacted Households and Communities

Treasury presumes the following households and communities are disproportionately impacted by the pandemic:

- ✓ Low -income households and communities
- ✓ Households residing in Qualified Census Tracts
- ✓ Households that qualify for certain federal benefits⁵
- ✓ Households receiving services provided by Tribal governments
- ✓ Households residing in the U.S. territories or receiving services from these governments

Low-income households and communities are those with (i) income at or below 185 percent of the Federal Poverty Guidelines for the size of its household based on the most recently published poverty guidelines or (ii) income at or below 40 percent of area median income for its county and size of household based on the most recently published data. For the vast majority of communities, the Federal Poverty Guidelines level is higher than the area median income level and using this level would result in more households and communities being presumed eligible. Treasury has provided an easy-to-use spreadsheet with Federal Poverty Guidelines and area median income levels on its website.

Recipients can measure income for a specific household or the median income for the community, depending on whether the service they plan to provide serves specific households or the general community. The income thresholds vary by household size; recipients should generally use income thresholds for the appropriate household size but can use a default household size of three when easier for administration or when measuring income for a general community.

The income limit for 185 percent of the Federal Poverty Guidelines for a household of three is \$40,626 per year.⁶ In other words, recipients can always presume that a household earning below this level, or a community with median income below this level, is disproportionately impacted by the pandemic and eligible for services to respond.

⁵ These programs are Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), Free- and Reduced-Price Lunch (NSLP) and/or School Breakfast (SBP) programs, Medicare Part D Low-Income Subsidies, Supplemental Security Income (SSI), Head Start and/or Early Head Start, Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Section 8 Vouchers, Low-Income Home Energy Assistance Program (LIHEAP), and Pell Grants. For services to address educational disparities, Treasury will recognize Title I eligible schools as disproportionately impacted and responsive services that support the school generally or support the whole school as eligible.

⁶ For recipients in Alaska, the income limit for 185 percent of the Federal Poverty Guidelines for a household of three is \$50,783 per year. For recipients in Hawaii, the income limit for 185 percent of the Federal Poverty Guidelines for a household of three is \$46,731 per year



Treasury recognizes the enumerated projects below, which have been expanded under the final rule, as eligible to respond to disproportionate impacts of the pandemic on households and communities:

- ✓ Pay for community health workers to help households access health & social services
- ✓ Remediation of lead paint or other lead hazards
- ✓ Primary care clinics, hospitals, integration of health services into other settings, and other investments in medical equipment & facilities designed to address health disparities
- ✓ Housing vouchers & assistance relocating to neighborhoods with higher economic opportunity
- ✓ Investments in neighborhoods to promote improved health outcomes
- ✓ Improvements to vacant and abandoned properties, including rehabilitation or maintenance, renovation, removal and remediation of environmental contaminants, demolition or deconstruction, greening/vacant lot cleanup & conversion to affordable housing⁷
- ✓ Services to address educational disparities, including assistance to high-poverty school districts & educational and evidence-based services to address student academic, social, emotional, and mental health needs
- ✓ Schools and other educational equipment & facilities
- ✓ Responses available to respond to impacts of the pandemic on households and communities (including those listed on page 18)

⁷ Please see the final rule for further details and conditions applicable to this eligible use. This includes Treasury's presumption that demolition of vacant or abandoned residential properties that results in a net reduction in occupiable housing units for low- and moderate-income individuals in an area where the availability of such housing is lower than the need for such housing is ineligible for support with SLFRF funds.



Assistance to Small Businesses

Small businesses have faced widespread challenges due to the pandemic, including periods of shutdown, declines in revenue, or increased costs. The final rule provides many tools for recipients to respond to the impacts of the pandemic on small businesses, or disproportionate impacts on businesses where pre-existing disparities like lack of access to capital compounded the pandemic's effects.

Small businesses eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "small business," specifically:

1. Have no more than 500 employees, or if applicable, the size standard in number of employees [established](#) by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates, and
2. Are a small business concern as defined in section 3 of the Small Business Act⁸ (which includes, among other requirements, that the business is independently owned and operated and is not dominant in its field of operation).

Impacted Small Businesses

Recipients can identify small businesses impacted by the pandemic, and measures to respond, in many ways; for example, recipients could consider:

- | | |
|---------------------------------------|--|
| ✓ Decreased revenue or gross receipts | ✓ Capacity to weather financial hardship |
| ✓ Financial insecurity | ✓ Challenges covering payroll, rent or mortgage, and other operating costs |
| ✓ Increased costs | |

Assistance to small businesses that experienced negative economic impacts includes the following enumerated uses:

- | | |
|---|--|
| ✓ Loans or grants to mitigate financial hardship, such as by supporting payroll and benefits, costs to retain employees, and mortgage, rent, utility, and other operating costs | ✓ Technical assistance, counseling, or other services to support business planning |
|---|--|

Disproportionately Impacted Small Businesses

Treasury presumes that the following small businesses are disproportionately impacted by the pandemic:

⁸ 15 U.S.C. 632.



- ✓ Small businesses operating in Qualified Census Tracts
- ✓ Small businesses operated by Tribal governments or on Tribal lands
- ✓ Small businesses operating in the U.S. territories

Assistance to disproportionately impacted small businesses includes the following enumerated uses, which have been expanded under the final rule:

- ✓ Rehabilitation of commercial properties, storefront improvements & façade improvements
- ✓ Technical assistance, business incubators & grants for start-up or expansion costs for small businesses
- ✓ Support for microbusinesses, including financial, childcare, and transportation costs



Assistance to Nonprofits

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees.

Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Impacted Nonprofits

Recipients can identify nonprofits impacted by the pandemic, and measures to respond, in many ways; for example, recipients could consider:

- ✓ Decreased revenue (e.g., from donations and fees)
- ✓ Financial insecurity
- ✓ Increased costs (e.g., uncompensated increases in service need)
- ✓ Capacity to weather financial hardship
- ✓ Challenges covering payroll, rent or mortgage, and other operating costs

Assistance to nonprofits that experienced negative economic impacts includes the following enumerated uses:

- ✓ Loans or grants to mitigate financial hardship
- ✓ Technical or in-kind assistance or other services that mitigate negative economic impacts of the pandemic

Disproportionately Impacted Nonprofits

Treasury presumes that the following nonprofits are disproportionately impacted by the pandemic:

- ✓ Nonprofits operating in Qualified Census Tracts
- ✓ Nonprofits operated by Tribal governments or on Tribal lands
- ✓ Nonprofits operating in the U.S. territories

Recipients may identify appropriate responses that are related and reasonably proportional to addressing these disproportionate impacts.



Aid to Impacted Industries

Recipients may use SLFRF funding to provide aid to industries impacted by the COVID-19 pandemic. Recipients should first designate an impacted industry and then provide aid to address the impacted industry's negative economic impact.

This sub-category of eligible uses does not separately identify disproportionate impacts and corresponding responsive services.

1. Designating an impacted industry. There are two main ways an industry can be designated as "impacted."

1. If the industry is in the travel, tourism, or hospitality sectors (including Tribal development districts), the industry is impacted.
2. If the industry is outside the travel, tourism, or hospitality sectors, the industry is impacted if:
 - a. The industry experienced at least 8 percent employment loss from pre-pandemic levels,⁹ or
 - b. The industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries as of the date of the final rule, based on the totality of economic indicators or qualitative data (if quantitative data is unavailable), and if the impacts were generally due to the COVID-19 public health emergency.

Recipients have flexibility to define industries broadly or narrowly, but Treasury encourages recipients to define narrow and discrete industries eligible for aid. State and territory recipients also have flexibility to define the industries with greater geographic precision; for example, a state may identify a particular industry in a certain region of a state as impacted.

2. Providing eligible aid to the impacted industry. Aid may only be provided to support businesses, attractions, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. Further, aid should be generally broadly available to all businesses within the impacted industry to avoid potential conflicts of interest, and Treasury encourages aid to be first used for operational expenses, such as payroll, before being used on other types of costs.

⁹ Specifically, a recipient should compare the percent change in the number of employees of the recipient's identified industry and the national Leisure & Hospitality sector in the three months before the pandemic's most severe impacts began (a straight three-month average of seasonally-adjusted employment data from December 2019, January 2020, and February 2020) with the latest data as of the final rule (a straight three-month average of seasonally-adjusted employment data from September 2021, October 2021, and November 2021). For parity and simplicity, smaller recipients without employment data that measure industries in their specific jurisdiction may use data available for a broader unit of government for this calculation (e.g., a county may use data from the state in which it is located; a city may use data for the county, if available, or state in which it is located) solely for purposes of determining whether a particular industry is an impacted industry.



Treasury recognizes the enumerated projects below as eligible responses to impacted industries.

- ✓ Aid to mitigate financial hardship, such as supporting payroll costs, lost pay and benefits for returning employees, support of operations and maintenance of existing equipment and facilities
- ✓ Technical assistance, counseling, or other services to support business planning
- ✓ COVID-19 mitigation and infection prevention measures (see section Public Health)

As with all eligible uses, recipients may pursue a project not listed above by undergoing the steps outlined in the section Framework for Eligible Uses Beyond Those Enumerated.



PUBLIC SECTOR CAPACITY

Recipients may use SLFRF funding to restore and bolster public sector capacity, which supports government's ability to deliver critical COVID-19 services. There are three main categories of eligible uses to bolster public sector capacity and workforce: Public Safety, Public Health, and Human Services Staff; Government Employment and Rehiring Public Sector Staff; and Effective Service Delivery.

Public Safety, Public Health, and Human Services Staff

SLFRF funding may be used for payroll and covered benefits for public safety, public health, health care, human services and similar employees of a recipient government, for the portion of the employee's time spent responding to COVID-19. Recipients should follow the steps below.

1. Identify eligible public safety, public health, and human services staff. Public safety staff include:

- ✓ Police officers (including state police officers)
- ✓ Sheriffs and deputy sheriffs
- ✓ Firefighters
- ✓ Emergency medical responders
- ✓ Correctional and detention officers
- ✓ Dispatchers and supervisor personnel that directly support public safety staff

Public health staff include:

- ✓ Employees involved in providing medical and other physical or mental health services to patients and supervisory personnel, including medical staff assigned to schools, prisons, and other such institutions
- ✓ Laboratory technicians, medical examiners, morgue staff, and other support services essential for patient care
- ✓ Employees of public health departments directly engaged in public health matters and related supervisory personnel

Human services staff include:

- ✓ Employees providing or administering social services and public benefits
- ✓ Child welfare services employees
- ✓ Child, elder, or family care employees

2. Assess portion of time spent on COVID-19 response for eligible staff.

Recipients can use a variety of methods to assess the share of an employees' time spent responding to COVID-19, including using reasonable estimates—such as estimating the share of time based on discussions with staff and applying that share to all employees in that position.

For administrative convenience, recipients can consider public health and safety employees entirely devoted to responding to COVID-19 (and their payroll and benefits fully covered by SLFRF) if the



employee, or his or her operating unit or division, is “primarily dedicated” to responding to COVID-19. Primarily dedicated means that more than half of the employee, unit, or division’s time is dedicated to responding to COVID-19.

Recipients must periodically reassess their determination and maintain records to support their assessment, although recipients do not need to track staff hours.

3. **Use SLFRF funding for payroll and covered benefits for the portion of eligible staff time spent on COVID-19 response.** SLFRF funding may be used for payroll and covered benefits for the portion of the employees’ time spent on COVID-19 response, as calculated above, through the period of performance.

Government Employment and Rehiring Public Sector Staff

Under the increased flexibility of the final rule, SLFRF funding may be used to support a broader set of uses to restore and support public sector employment. Eligible uses include hiring up to a pre-pandemic baseline that is adjusted for historic underinvestment in the public sector, providing additional funds for employees who experienced pay cuts or were furloughed, avoiding layoffs, providing worker retention incentives, and paying for ancillary administrative costs related to hiring, support, and retention.

- **Restoring pre-pandemic employment.** Recipients have two options to restore pre-pandemic employment, depending on the recipient’s needs.
 - *If the recipient simply wants to hire back employees for pre-pandemic positions:* Recipients may use SLFRF funds to hire employees for the same positions that existed on January 27, 2020 but that were unfilled or eliminated as of March 3, 2021. Recipients may use SLFRF funds to cover payroll and covered benefits for such positions through the period of performance.
 - *If the recipient wants to hire above the pre-pandemic baseline and/or would like to have flexibility in positions:* Recipients may use SLFRF funds to pay for payroll and covered benefits associated with the recipient increasing its number of budgeted FTEs up to 7.5 percent above its pre-pandemic baseline. Specifically, recipients should undergo the following steps:
 - a. Identify the recipient’s budgeted FTE level on January 27, 2020. This includes all budgeted positions, filled and unfilled. This is called the *pre-pandemic baseline*.
 - b. Multiply the pre-pandemic baseline by 1.075. This is called the *adjusted pre-pandemic baseline*.
 - c. Identify the recipient’s budgeted FTE level on March 3, 2021, which is the beginning of the period of performance for SLFRF funds. Recipients may, but are not required to, exclude the number of FTEs dedicated to responding to the COVID-19 public health emergency. This is called the *actual number of FTEs*.
 - d. Subtract the *actual number of FTEs* from the *adjusted pre-pandemic baseline* to calculate the number of FTEs that can be covered by SLFRF funds. Recipients do not have to hire for the same roles that existed pre-pandemic.

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Recipients may use SLFRF funds to cover payroll and covered benefits through the period of performance; these employees must have begun their employment on or after March 3, 2021. Recipients may only use SLFRF funds for additional FTEs hired over the March 3, 2021 level (i.e., the *actual number of FTEs*).

- **Supporting and retaining public sector workers.** Recipients can also use funds in other ways that support the public sector workforce.¹⁰ These include:
 - **Providing additional funding for employees who experienced pay reductions or were furloughed** since the onset of the pandemic, up to the difference in the employee's pay, taking into account unemployment benefits received.
 - **Maintaining current compensation levels to prevent layoffs.** SLFRF funds may be used to maintain current compensation levels, with adjustments for inflation, in order to prevent layoffs that would otherwise be necessary.
 - **Providing worker retention incentives, including reasonable increases in compensation** to persuade employees to remain with the employer as compared to other employment options. Retention incentives must be entirely additive to an employee's regular compensation, narrowly tailored to need, and should not exceed incentives traditionally offered by the recipient or compensation that alternative employers may offer to compete for the employees. Treasury presumes that retention incentives that are less than 25 percent of the rate of base pay for an individual employee or 10 percent for a group or category of employees are reasonably proportional to the need to retain employees, as long as other requirements are met.
- **Covering administrative costs associated with administering the hiring, support, and retention programs above.**

Effective Service Delivery

SLFRF funding may be used to improve the efficacy of public health and economic programs through tools like program evaluation, data, and outreach, as well as to address administrative needs caused or exacerbated by the pandemic. Eligible uses include:

- **Supporting program evaluation, data, and outreach through:**

¹⁰ Recipients should be able to substantiate that these uses of funds are substantially due to the public health emergency or its negative economic impacts (e.g., fiscal pressures on state and local budgets) and respond to its impacts. See the final rule for details on these uses.



U.S. DEPARTMENT OF THE TREASURY

- ✓ Program evaluation and evidence resources
 - ✓ Data analysis resources to gather, assess, share, and use data
 - ✓ Technology infrastructure to improve access to and the user experience of government IT systems, as well as technology improvements to increase public access and delivery of government programs and services
 - ✓ Community outreach and engagement activities
 - ✓ Capacity building resources to support using data and evidence, including hiring staff, consultants, or technical assistance support
- **Addressing administrative needs, including:**
 - ✓ Administrative costs for programs responding to the public health emergency and its economic impacts, including non-SLFRF and non-federally funded programs
 - ✓ Address administrative needs caused or exacerbated by the pandemic, including addressing backlogs caused by shutdowns, increased repair or maintenance needs, and technology infrastructure to adapt government operations to the pandemic (e.g., video-conferencing software, data and case management systems)

**CAPITAL EXPENDITURES**

As described above, the final rule clarifies that recipients may use funds for programs, services, and capital expenditures that respond to the public health and negative economic impacts of the pandemic. Any use of funds in this category for a capital expenditure must comply with the capital expenditure requirements, in addition to other standards for uses of funds.

Capital expenditures are subject to the same eligibility standard as other eligible uses to respond to the pandemic's public health and economic impacts; specifically, they must be related and reasonably proportional to the pandemic impact identified and reasonably designed to benefit the impacted population or class.

For ease of administration, the final rule identifies enumerated types of capital expenditures that Treasury has identified as responding to the pandemic's impacts; these are listed in the applicable sub-category of eligible uses (e.g., public health, assistance to households, etc.). Recipients may also identify other responsive capital expenditures. Similar to other eligible uses in the SLFRF program, no pre-approval is required for capital expenditures.

To guide recipients' analysis of whether a capital expenditure meets the eligibility standard, recipients (with the exception of Tribal governments) must complete and meet the requirements of a written justification for capital expenditures equal to or greater than \$1 million. For large-scale capital expenditures, which have high costs and may require an extended length of time to complete, as well as most capital expenditures for non-enumerated uses of funds, Treasury requires recipients to submit their written justification as part of regular reporting. Specifically:

If a project has total capital expenditures of	and the use is enumerated by Treasury as eligible, then	and the use is beyond those enumerated by Treasury as eligible, then
Less than \$1 million	No Written Justification required	No Written Justification required
Greater than or equal to \$1 million, but less than \$10 million	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury	Written Justification required and recipients must submit as part of regular reporting to Treasury
\$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury	

A Written Justification includes:

- *Description of the harm or need to be addressed.* Recipients should provide a description of the specific harm or need to be addressed and why the harm was exacerbated or caused by the public health emergency. Recipients may provide quantitative information on the extent and the type of harm, such as the number of individuals or entities affected.



- *Explanation of why a capital expenditure is appropriate.* For example, recipients should include an explanation of why existing equipment and facilities, or policy changes or additional funding to pertinent programs or services, would be inadequate.
- *Comparison of proposed capital project against at least two alternative capital expenditures and demonstration of why the proposed capital expenditure is superior.* Recipients should consider the effectiveness of the capital expenditure in addressing the harm identified and the expected total cost (including pre-development costs) against at least two alternative capital expenditures.

Where relevant, recipients should consider the alternatives of improving existing capital assets already owned or leasing other capital assets.

Treasury presumes that the following capital projects are generally ineligible:

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| ✖ Construction of new correctional facilities as a response to an increase in rate of crime | ✖ Construction of convention centers, stadiums, or other large capital projects intended for general economic development or to aid impacted industries |
| ✖ Construction of new congregate facilities to decrease spread of COVID-19 in the facility | |

In undertaking capital expenditures, Treasury encourages recipients to adhere to strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also encourages recipients to prioritize in their procurements employers with high labor standards and to prioritize employers without recent violations of federal and state labor and employment laws.

**FRAMEWORK FOR ELIGIBLE USES BEYOND THOSE ENUMERATED**

As described above, recipients have broad flexibility to identify and respond to other pandemic impacts and serve other populations that experienced pandemic impacts, beyond the enumerated uses and presumed eligible populations. Recipients should undergo the following steps to decide whether their project is eligible:

Step	1. Identify COVID-19 public health or economic impact	2. Design a response that addresses or responds to the impact
Analysis	- Can identify impact to a specific household, business or nonprofit or to a class of households, businesses or nonprofits (i.e., group) - Can also identify disproportionate impacts, or more severe impacts, to a specific beneficiary or to a class	- Types of responses can include a program, service, or capital expenditure - Response should be related and reasonably proportional to the harm - Response should also be reasonably designed to benefit impacted individual or class

1. Identify a COVID-19 public health or negative economic impact on an individual or a class.

Recipients should identify an individual or class that is “impacted” or “disproportionately impacted” by the COVID-19 public health emergency or its negative economic impacts as well as the specific impact itself.

- “Impacted” entities are those impacted by the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID-19 public health emergency. For example, an individual who lost their job or a small business that saw lower revenue during a period of closure would both have experienced impacts of the pandemic.
- “Disproportionately impacted” entities are those that experienced disproportionate public health or economic outcomes from the pandemic; Treasury recognizes that pre-existing disparities, in many cases, amplified the impacts of the pandemic, causing more severe impacts in underserved communities. For example, a household living in a neighborhood with limited access to medical care and healthy foods may have faced health disparities before the pandemic, like a higher rate of chronic health conditions, that contributed to more severe health outcomes during the COVID-19 pandemic.

The recipient may choose to identify these impacts at either the individual level or at a class level. If the recipient is identifying impacts at the individual level, they should retain documentation supporting the impact the individual experienced (e.g., documentation of lost revenues from a small business). Such documentation can be streamlined in many cases (e.g., self-attestation that a household requires food assistance).

Recipients also have broad flexibility to identify a “class” – or a group of households, small businesses, or nonprofits – that experienced an impact. In these cases, the recipients should



first identify the class and the impact that it faced. Then, recipients only need to document that the individuals served fall within that class; recipients do not need to document a specific impact to each individual served. For example, a recipient could identify that restaurants in the downtown area faced substantial declines in revenue due to decreased foot traffic from workers; the recipient could develop a program to respond to the impact on that class and only needs to document that the businesses being served are restaurants in the downtown area.

Recipients should keep the following considerations in mind when designating a class:

- **There should be a relationship between the definition of the class and the proposed response.** Larger and less-specific classes are less likely to have experienced similar harms, which may make it more difficult to design a response that appropriately responds to those harms.
- **Classes may be determined on a population basis or on a geographic basis,** and the response should be appropriately matched. For example, a response might be designed to provide childcare to single parents, regardless of which neighborhood they live in, or a response might provide a park to improve the health of a disproportionately impacted neighborhood.
- **Recipients may designate classes that experienced disproportionate impact,** by assessing the impacts of the pandemic and finding that some populations experienced meaningfully more severe impacts than the general public. To determine these disproportionate impacts, recipients:
 - May designate classes based on academic research or government research publications (such as the citations provided in the supplementary information in the final rule), through analysis of their own data, or through analysis of other existing data sources.
 - May also consider qualitative research and sources to augment their analysis, or when quantitative data is not readily available. Such sources might include resident interviews or feedback from relevant state and local agencies, such as public health departments or social services departments.
 - Should consider the quality of the research, data, and applicability of analysis to their determination in all cases.
- **Some of the enumerated uses may also be appropriate responses to the impacts experienced by other classes of beneficiaries.** It is permissible for recipients to provide these services to other classes, so long as the recipient determines that the response is also appropriate for those groups.
- **Recipients may designate a class based on income level, including at levels higher than the final rule definition of "low- and moderate-income."** For example, a recipient may identify that households in their community with incomes above the final rule threshold for low-income nevertheless experienced disproportionate impacts from the pandemic and provide responsive services.

2. **Design a response that addresses or responds to the impact.** Programs, services, and other interventions must be reasonably designed to benefit the individual or class that experienced



the impact. They must also be related and reasonably proportional to the extent and type of impact experienced. For example, uses that bear no relation or are grossly disproportionate to the type or extent of the impact would not be eligible.

“Reasonably proportional” refers to the scale of the response compared to the scale of the harm, as well as the targeting of the response to beneficiaries compared to the amount of harm they experienced; for example, it may not be reasonably proportional for a cash assistance program to provide a very small amount of aid to a group that experienced severe harm and a much larger amount to a group that experienced relatively little harm. Recipients should consider relevant factors about the harm identified and the response to evaluate whether the response is reasonably proportional. For example, recipients may consider the size of the population impacted and the severity, type, and duration of the impact. Recipients may also consider the efficacy, cost, cost-effectiveness, and time to delivery of the response.

For disproportionately impacted communities, recipients may design interventions that address broader pre-existing disparities that contributed to more severe health and economic outcomes during the pandemic, such as disproportionate gaps in access to health care or pre-existing disparities in educational outcomes that have been exacerbated by the pandemic.



Premium Pay

The Coronavirus State and Local Fiscal Recovery Funds may be used to provide premium pay to eligible workers performing essential work during the pandemic. Premium pay may be awarded to eligible workers up to \$13 per hour. Premium pay must be in addition to wages or remuneration (i.e., compensation) the eligible worker otherwise receives. Premium pay may not exceed \$25,000 for any single worker during the program.

Recipients should undergo the following steps to provide premium pay to eligible workers.

1. **Identify an “eligible” worker.** Eligible workers include workers “needed to maintain continuity of operations of essential critical infrastructure sectors.” These sectors and occupations are eligible:

- ✓ Health care
- ✓ Emergency response
- ✓ Sanitation, disinfection & cleaning
- ✓ Maintenance
- ✓ Grocery stores, restaurants, food production, and food delivery
- ✓ Pharmacy
- ✓ Biomedical research
- ✓ Behavioral health
- ✓ Medical testing and diagnostics
- ✓ Home and community-based health care or assistance with activities of daily living
- ✓ Family or child care
- ✓ Social services
- ✓ Public health
- ✓ Mortuary
- ✓ Critical clinical research, development, and testing necessary for COVID-19 response
- ✓ State, local, or Tribal government workforce
- ✓ Workers providing vital services to Tribes
- ✓ Educational, school nutrition, and other work required to operate a school facility
- ✓ Laundry
- ✓ Elections
- ✓ Solid waste or hazardous materials management, response, and cleanup
- ✓ Work requiring physical interaction with patients
- ✓ Dental care
- ✓ Transportation and warehousing
- ✓ Hotel and commercial lodging facilities that are used for COVID-19 mitigation and containment

Beyond this list, the chief executive (or equivalent) of a recipient government may designate additional non-public sectors as critical so long as doing so is necessary to protecting the health and wellbeing of the residents of such jurisdictions.

2. **Verify that the eligible worker performs “essential work,”** meaning work that:

- Is not performed while teleworking from a residence; and
- Involves either:
 - a. regular, in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or
 - b. regular physical handling of items that were handled by, or are to be handled by, patients, the public, or coworkers of the individual that is performing the work.



3. Confirm that the premium pay “responds to” workers performing essential work during the COVID-19 public health emergency. Under the final rule, which broadened the share of eligible workers who can receive premium pay without a written justification, recipients may meet this requirement in one of three ways:

- Eligible worker receiving premium pay is earning (with the premium included) at or below 150 percent of their residing state or county’s average annual wage for all occupations, as defined by the Bureau of Labor Statistics’ [Occupational Employment and Wage Statistics](#), whichever is higher, on an annual basis; or
- Eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions; or
- If a worker does not meet either of the above requirements, the recipient must submit written justification to Treasury detailing how the premium pay is otherwise responsive to workers performing essential work during the public health emergency. This may include a description of the essential worker’s duties, health, or financial risks faced due to COVID-19, and why the recipient determined that the premium pay was responsive. Treasury anticipates that recipients will easily be able to satisfy the justification requirement for front-line workers, like nurses and hospital staff.

Premium pay may be awarded in installments or lump sums (e.g., monthly, quarterly, etc.) and may be awarded to hourly, part-time, or salaried or non-hourly workers. Premium pay must be paid in addition to wages already received and may be paid retrospectively. A recipient may not use SLFRF to merely reimburse itself for premium pay or hazard pay already received by the worker, and premium pay may not be paid to volunteers.



Water & Sewer Infrastructure

The Coronavirus State and Local Fiscal Recovery Funds may be used to make necessary investments in water and sewer infrastructure. State, local, and Tribal governments have a tremendous need to address the consequences of deferred maintenance in drinking water systems and removal, management, and treatment of sewage and stormwater, along with additional resiliency measures needed to adapt to climate change.

Recipients may undertake the eligible projects below:

PROJECTS ELIGIBLE UNDER EPA'S CLEAN WATER STATE REVOLVING FUND (CWSRF)

Eligible projects under the CWSRF, and the final rule, include:

- ✓ Construction of publicly owned treatment works
- ✓ Projects pursuant to implementation of a nonpoint source pollution management program established under the Clean Water Act (CWA)
- ✓ Decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage
- ✓ Management and treatment of stormwater or subsurface drainage water
- ✓ Water conservation, efficiency, or reuse measures
- ✓ Development and implementation of a conservation and management plan under the CWA
- ✓ Watershed projects meeting the criteria set forth in the CWA
- ✓ Energy consumption reduction for publicly owned treatment works
- ✓ Reuse or recycling of wastewater, stormwater, or subsurface drainage water
- ✓ Security of publicly owned treatment works

Treasury encourages recipients to review the EPA handbook for the [CWSRF](#) for a full list of eligibilities.

PROJECTS ELIGIBLE UNDER EPA'S DRINKING WATER STATE REVOLVING FUND (DWSRF)

Eligible drinking water projects under the DWSRF, and the final rule, include:

- ✓ Facilities to improve drinking water quality
- ✓ Transmission and distribution, including improvements of water pressure or prevention of contamination in infrastructure and lead service line replacements
- ✓ New sources to replace contaminated drinking water or increase drought resilience, including aquifer storage and recovery system for water storage
- ✓ Green infrastructure, including green roofs, rainwater harvesting collection, permeable pavement
- ✓ Storage of drinking water, such as to prevent contaminants or equalize water demands
- ✓ Purchase of water systems and interconnection of systems
- ✓ New community water systems

Treasury encourages recipients to review the EPA handbook for the [DWSRF](#) for a full list of eligibilities.

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ADDITIONAL ELIGIBLE PROJECTS

With broadened eligibility under the final rule, SLFRF funds may be used to fund additional types of projects— such as additional stormwater infrastructure, residential wells, lead remediation, and certain rehabilitations of dams and reservoirs — beyond the CWSRF and DWSRF, if they are found to be “necessary” according to the definition provided in the final rule and outlined below.

- ✓ Culvert repair, resizing, and removal, replacement of storm sewers, and additional types of stormwater infrastructure
- ✓ Infrastructure to improve access to safe drinking water for individual served by residential wells, including testing initiatives, and treatment/remediation strategies that address contamination
- ✓ Dam and reservoir rehabilitation if primary purpose of dam or reservoir is for drinking water supply and project is necessary for provision of drinking water
- ✓ Broad set of lead remediation projects eligible under EPA grant programs authorized by the Water Infrastructure Improvements for the Nation (WIIN) Act, such as lead testing, installation of corrosion control treatment, lead service line replacement, as well as water quality testing, compliance monitoring, and remediation activities, including replacement of internal plumbing and faucets and fixtures in schools and childcare facilities

A “necessary” investment in infrastructure must be:

- (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which may include a reasonable projection of increased need, whether due to population growth or otherwise,
- (2) a cost-effective means for meeting that need, taking into account available alternatives, and
- (3) for investments in infrastructure that supply drinking water in order to meet projected population growth, projected to be sustainable over its estimated useful life.

Please note that DWSRF and CWSRF-eligible projects are generally presumed to be necessary investments. Additional eligible projects generally must be responsive to an identified need to achieve or maintain an adequate minimum level of service. Recipients are only required to assess cost-effectiveness of projects for the creation of new drinking water systems, dam and reservoir rehabilitation projects, or projects for the extension of drinking water service to meet population growth needs. Recipients should review the supplementary information to the final rule for more details on requirements applicable to each type of investment.

APPLICABLE STANDARDS & REQUIREMENTS

Treasury encourages recipients to adhere to strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also encourages recipients to prioritize in their procurements employers with high labor standards and to prioritize employers without recent violations of federal and state labor and employment laws.

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Broadband Infrastructure

The Coronavirus State and Local Fiscal Recovery Funds may be used to make necessary investments in broadband infrastructure, which has been shown to be critical for work, education, healthcare, and civic participation during the public health emergency. The final rule broadens the set of eligible broadband infrastructure investments that recipients may undertake.

Recipients may pursue investments in broadband infrastructure meeting technical standards detailed below, as well as an expanded set of cybersecurity investments.

BROADBAND INFRASTRUCTURE INVESTMENTS

Recipients should adhere to the following requirements when designing a broadband infrastructure project:

1. **Identify an eligible area for investment.** Recipients are encouraged to prioritize projects that are designed to serve locations without access to reliable wireline 100/20 Mbps broadband service (meaning service that reliably provides 100 Mbps download speed and 20 Mbps upload speed through a wireline connection), but are broadly able to invest in projects designed to provide service to locations with an identified need for additional broadband investment. Recipients have broad flexibility to define need in their community. Examples of need could include:

- ✓ Lack of access to a reliable high-speed broadband connection
- ✓ Lack of affordable broadband
- ✓ Lack of reliable service

If recipients are considering deploying broadband to locations where there are existing and enforceable federal or state funding commitments for reliable service of at least 100/20 Mbps, recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investment that is not met by existing federal or state funding commitments. Recipients must also ensure that SLFRF funds will not be used for costs that will be reimbursed by the other federal or state funding streams.

2. **Design project to meet high-speed technical standards.** Recipients are required to design projects to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds. In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, eligible projects may be designed to reliably meet or exceed 100/20 Mbps and be scalable to a minimum of symmetrical 100 Mbps download and upload speeds.

Treasury encourages recipients to prioritize investments in fiber-optic infrastructure wherever feasible and to focus on projects that will achieve last-mile connections. Further, Treasury encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and co-operatives.



3. **Require enrollment in a low-income subsidy program.** Recipients must require the service provider for a broadband project that provides service to households to either:

- ✓ Participate in the FCC's Affordable Connectivity Program (ACP)
- ✓ Provide access to a broad-based affordability program to low-income consumers that provides benefits commensurate to ACP

Treasury encourages broadband services to also include at least one low-cost option offered without data usage caps at speeds sufficient for a household with multiple users to simultaneously telework and engage in remote learning. Recipients are also encouraged to consult with the community on affordability needs.

CYBERSECURITY INVESTMENTS

SLFRF may be used for modernization of cybersecurity for existing and new broadband infrastructure, regardless of their speed delivery standards. This includes modernization of hardware and software.

APPLICABLE STANDARDS & REQUIREMENTS

Treasury encourages recipients to adhere to strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also encourages recipients to prioritize in their procurements employers with high labor standards and to prioritize employers without recent violations of federal and state labor and employment laws.



Restrictions on Use

While recipients have considerable flexibility to use Coronavirus State and Local Fiscal Recovery Funds to address the diverse needs of their communities, some restrictions on use of funds apply.

OFFSET A REDUCTION IN NET TAX REVENUE

- **States and territories may not use this funding to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation beginning on March 3, 2021, through the last day of the fiscal year in which the funds provided have been spent.** If a state or territory cuts taxes during this period, it must demonstrate how it paid for the tax cuts from sources other than SLFRF, such as by enacting policies to raise other sources of revenue, by cutting spending, or through higher revenue due to economic growth. If the funds provided have been used to offset tax cuts, the amount used for this purpose must be repaid to the Treasury.

DEPOSITS INTO PENSION FUNDS

- **No recipients except Tribal governments may use this funding to make a deposit to a pension fund.** Treasury defines a “deposit” as an extraordinary contribution to a pension fund for the purpose of reducing an accrued, unfunded liability. While pension deposits are prohibited, recipients may use funds for routine payroll contributions connected to an eligible use of funds (e.g., for public health and safety staff). Examples of extraordinary payments include ones that:

✖ Reduce a liability incurred prior to the start of the COVID-19 public health emergency and occur outside the recipient's regular timing for making the payment	✖ Occur at the regular time for pension contributions but is larger than a regular payment would have been
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ADDITIONAL RESTRICTIONS AND REQUIREMENTS

Additional restrictions and requirements that apply across all eligible use categories include:

- **No debt service or replenishing financial reserves.** Since SLFRF funds are intended to be used prospectively, recipients may not use SLFRF funds for debt service or replenishing financial reserves (e.g., rainy day funds).
- **No satisfaction of settlements and judgments.** Satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding is itself not an eligible use. However, if a settlement requires the recipient to provide services or incur other costs that are an eligible use of SLFRF funds, SLFRF may be used for those costs.
- **Additional general restrictions.** SLFRF funds may not be used for a project that conflicts with or contravenes the purpose of the American Rescue Plan Act statute (e.g., uses of funds that

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undermine COVID-19 mitigation practices in line with CDC guidance and recommendations) and may not be used in violation of the Award Terms and Conditions or conflict of interest requirements under the Uniform Guidance. Other applicable laws and regulations, outside of SLFRF program requirements, may also apply (e.g., laws around procurement, contracting, conflicts-of-interest, environmental standards, or civil rights).



Program Administration

The Coronavirus State and Local Fiscal Recovery Funds final rule details a number of administrative processes and requirements, including on distribution of funds, timeline for use of funds, transfer of funds, treatment of loans, use of funds to meet non-federal match or cost-share requirements, administrative expenses, reporting on use of funds, and remediation and recoupment of funds used for ineligible purposes. This section provides a summary for the most frequently asked questions.

TIMELINE FOR USE OF FUNDS

Under the SLFRF, funds must be used for costs incurred on or after March 3, 2021. Further, costs must be obligated by December 31, 2024, and expended by December 31, 2026.

TRANSFERS

Recipients may undertake projects on their own or through subrecipients, which carry out eligible uses on behalf of a recipient, including pooling funds with other recipients or blending and braiding SLFRF funds with other sources of funds. Localities may also transfer their funds to the state through section 603(c)(4), which will decrease the locality's award and increase the state award amounts.

LOANS

Recipients may generally use SLFRF funds to provide loans for uses that are otherwise eligible, although there are special rules about how recipients should track program income depending on the length of the loan. Recipients should consult the final rule if they seek to utilize these provisions.

NON-FEDERAL MATCH OR COST-SHARE REQUIREMENTS

Funds available under the "revenue loss" eligible use category (sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act) generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. However, note that SLFRF funds may not be used as the non-federal share for purposes of a state's Medicaid and CHIP programs because the Office of Management and Budget has approved a waiver as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations.

SLFRF funds beyond those that are available under the revenue loss eligible use category may not be used to meet the non-federal match or cost-share requirements of other federal programs, other than as specifically provided for by statute. As an example, the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-federal match requirements of authorized Bureau of Reclamation projects and certain broadband deployment projects. Recipients should consult the final rule for further details if they seek to utilize SLFRF funds as a match for these projects.

ADMINISTRATIVE EXPENSES

SLFRF funds may be used for direct and indirect administrative expenses involved in administering the program. For details on permissible direct and indirect administrative costs, recipients should refer to Treasury's [Compliance and Reporting Guidance](#). Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect costs.

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REPORTING, COMPLIANCE & RECOUPMENT

Recipients are required to comply with Treasury's [Compliance and Reporting Guidance](#), which includes submitting mandatory periodic reports to Treasury.

Funds used in violation of the final rule are subject to remediation and recoupment. As outlined in the final rule, Treasury may identify funds used in violation through reporting or other sources. Recipients will be provided with an initial written notice of recoupment with an opportunity to submit a request for reconsideration before Treasury provides a final notice of recoupment. If the recipient receives an initial notice of recoupment and does not submit a request for reconsideration, the initial notice will be deemed the final notice. Treasury may pursue other forms of remediation and monitoring in conjunction with, or as an alternative to, recoupment.

REVISIONS TO THE OVERVIEW OF THE FINAL RULE:

- January 18, 2022 (p. 4, p. 16): Clarification that the revenue loss standard allowance is “up to” \$10 million under the Replacing Lost Public Sector Revenue eligible use category; addition of further information on the eligibility of general infrastructure, general economic development, and worker development projects under the Public Health and Negative Economic Impacts eligible use category.
- March 17, 2022 (p. 18): Specified that provision of child nutrition programs is available to respond to impacts of the pandemic on households and communities.

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505-AC77

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Secretary of the Treasury (Treasury) is adopting as final the interim final rule published on May 17, 2021, with amendments. This rule implements the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act.

DATES: The provisions in this final rule are effective April 1, 2022.

FOR FURTHER INFORMATION CONTACT:

Katharine Richards, Director, Coronavirus State and Local Fiscal Recovery Funds, Office of Recovery Programs, Department of the Treasury, (844) 529-9527.

SUPPLEMENTARY INFORMATION:

I. Introduction

Overview

Since the first case of coronavirus disease 2019 (COVID-19) was discovered in the United States in January 2020, the pandemic has caused severe, intertwined public health and economic crises. In March 2021, as these crises continued, the American Rescue Plan Act of 2021 (ARPA)¹ established the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) to provide state, local, and Tribal governments² with the resources needed to respond to the pandemic and its economic effects and to build a stronger, more equitable economy during the recovery. The U.S. Department of the Treasury (Treasury) issued an interim final rule implementing the SLFRF program on May 10, 2021³ and has since disbursed over \$240 billion to state, local, and Tribal governments and received over 1,500 public comments on the interim final rule. Treasury is now issuing this final rule which responds to public comments, implements the ARPA statutory provisions on eligible and ineligible uses of SLFRF funds, and

makes several changes to the provisions of the interim final rule, summarized below in the section Executive Summary of Major Changes.

Since Treasury issued the interim final rule in May 2021, both the public health and economic situations facing the country have evolved. On the public health front, the United States has made tremendous progress in the fight against COVID-19, including a historic vaccination campaign that has reached over 80 percent of adults with at least one dose and is reaching millions of children as well.⁴ However, the disease continues to present an imminent threat to public health, especially among unvaccinated individuals. As the Delta variant spread across the country this summer and fall, the United States faced another severe wave of cases, deaths, and strain on the healthcare system, with the risk of hospitalization and mortality exponentially greater to unvaccinated Americans. COVID-19 has now infected over 50 million and killed over 800,000 Americans since January 2020; tens of thousands of Americans continue to be infected each day.⁵ Even as the nation recovers, new and emerging COVID-19 variants may continue to pose threats to both public health and the economy. Moving forward, state, local, and Tribal governments will continue to play a major role in responding through vaccination campaigns, testing, and other services.

The economic recovery similarly has made tremendous progress but faces continued risks from the disease and the disruptions it has caused. In the early months of the pandemic, the United States experienced the sharpest economic downturn on record, with unemployment spiking to 14.8 percent in April 2020.⁶ The economy has gradually added back jobs, with growth accelerating in the first half of 2021.⁷ However, as the Delta variant spread, the intensified health risks and renewed disruptions slowed growth, demonstrating the continued risks from the virus. By fall 2021, the economy had

exceeded its pre-pandemic size⁸ and unemployment had fallen below 5 percent,⁹ but despite this progress, too many Americans remain unemployed, out of the labor force, or unable to pay their bills, with this pain particularly acute among lower-income Americans and communities of color. Again, moving forward, state, local, and Tribal governments will remain on the frontlines of the economic response and rebuilding a stronger economy in the aftermath of the pandemic.

However, as state, local, and Tribal governments continue to face substantial needs to respond to public health and economic conditions, they have also experienced severe impacts from the pandemic and resulting recession. State, local, and Tribal governments cut over 1.5 million jobs in the early months of the pandemic amid sharp declines in revenue and remain over 950,000 jobs below their pre-pandemic levels.¹⁰ As the Great Recession demonstrated, austerity among state, local, and Tribal governments can hamper overall economic growth and severely curtail the ability of governments to serve their constituents.

Recognizing these imperatives, the SLFRF program provides vital resources for state, local, and Tribal governments to respond to the pandemic and its economic effects and to replace revenue lost due to the public health emergency, preventing cuts to government services. Specifically, the ARPA provides that SLFRF funds¹¹ may be used:

- (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

¹ U.S. Bureau of Economic Analysis, Real Gross Domestic Product (GDP), retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/GDP> (last visited December 7, 2021).

² U.S. Bureau of Labor Statistics, *supra* note 6.

³ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited December 7, 2021).

⁴ The ARPA adds section 602 of the Social Security Act, which creates the State Fiscal Recovery Fund, and section 603 of the Social Security Act, which creates the Local Fiscal Recovery Fund (together, SLFRF). Sections 602 and 603 contain substantially similar eligible uses; the primary difference between the two sections is that section 602 establishes a fund for states, territories, and Tribal governments and section 603 establishes a fund for metropolitan cities, nonentitlement units of local government, and counties.

¹ Public Law 117-2. <https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf>.

² Throughout this Supplementary Information, Treasury uses “state, local, and Tribal governments” or “recipients” to refer generally to governments receiving SLFRF funds; this includes states, territories, Tribal governments, counties, metropolitan cities, and nonentitlement units of local government.

³ 86 FR 26786 (May 17, 2021).

⁴ Centers for Disease Control and Prevention, COVID Data Tracker: COVID-19 Vaccinations in the United States, <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last visited December 31, 2021).

⁵ Centers for Disease Control and Prevention, COVID Data Tracker, <http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited December 7, 2021).

⁶ U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/UNRATE> (last visited December 7, 2021).

⁷ *Id.*

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.

In addition, Congress specified two types of ineligible uses of funds: funds may not be used for deposit into any pension fund or, for states and territories only, to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation.

Issued May 10, 2021, Treasury's interim final rule provided further detail on eligible uses of funds within the four statutory categories, ineligible uses of funds, and administration of the program. The interim final rule provided state, local, and Tribal governments substantial flexibility to determine how best to use payments from the SLFRF program to meet the needs of their communities. The interim final rule aimed to facilitate swift and effective implementation by establishing a framework for determining the types of programs and services that are eligible under the ARPA along with examples of eligible uses of funds that state, local, and Tribal governments may consider.

State, local, and Tribal governments are already deploying SLFRF funds to make an impact in their communities. The SLFRF program ensures that state, local, and Tribal governments have the resources needed to fight the pandemic, sustain and strengthen the economic recovery, maintain vital public services, and make investments that support long-term growth, opportunity, and equity. Treasury looks forward to supporting and engaging with state, local, and Tribal governments as they use these funds to make transformative investments in their communities. Finally, with so many pressing and effective ways to use SLFRF funds, there is no excuse for waste, fraud, or abuse of these funds.

Treasury received over 1,500 comments spanning nearly all aspects of the interim final rule. The final rule considers and responds to comments, provides clarification to many aspects of the interim final rule, and makes several changes to eligible uses under the program, summarized immediately below.

Executive Summary of Major Changes and Clarifications

The final rule provides broader flexibility and greater simplicity in the program, in response to public comments. Among other clarifications and changes, the final rule provides for the following:

- **Public Health and Negative Economic Impacts:** In addition to programs and services, the final rule clarifies that recipients may use funds for capital expenditures that support an eligible COVID-19 public health or economic response. For example, recipients may build certain affordable housing, childcare facilities, schools, hospitals, and other projects consistent with the requirements in this final rule and the Supplementary Information.

In addition, the final rule presumes that an expanded set of households and communities are "impacted" or "disproportionately impacted" by the pandemic, thereby allowing recipients to provide responses to a broad set of households and entities without requiring additional analysis. Further, the final rule provides a broader set of enumerated eligible uses available for these communities as part of COVID-19 public health and economic response, including making affordable housing, childcare, and early learning services eligible in all impacted communities and making certain community development and neighborhood revitalization activities eligible for disproportionately impacted communities.

Further, the final rule allows for a broader set of uses to restore and support government employment, including hiring above a recipient's pre-pandemic baseline, providing funds to employees that experienced pay cuts or furloughs, avoiding layoffs, and providing retention incentives.

- **Premium Pay:** The final rule offers more streamlined options to provide premium pay, by broadening the share of essential workers who can receive premium pay without a written justification while maintaining a focus on lower-income and frontline essential workers.

- **Revenue Loss:** The final rule offers a standard allowance for revenue loss of up to \$10 million, not to exceed a recipient's SLFRF award amount, allowing recipients to select between a standard amount of revenue loss or complete a full revenue loss calculation. Recipients that select the standard allowance may use that amount for government services.

- **Water, Sewer, and Broadband Infrastructure:** The final rule

significantly broadens eligible broadband infrastructure investments to address challenges with broadband access, affordability, and reliability, and adds additional eligible water and sewer infrastructure investments, including a broad range of lead remediation and stormwater management projects.

Structure of the Supplementary Information

In addition to this Introduction, this Supplementary Information is organized into four sections: (1) Eligible Uses, (2) Restrictions on Use, (3) Program Administration Provisions, and (4) Regulatory Analyses.

The Eligible Uses section describes the standards to determine eligible uses of funds in each of the four eligible use categories:

- (1) Responding to the public health and negative economic impacts of the pandemic (which includes several sub-categories)

- (2) Providing premium pay to essential workers

- (3) Providing government services to the extent of revenue loss due to the pandemic, and

- (4) Making necessary investments in water, sewer, and broadband infrastructure.

Each eligible use category has separate and distinct standards for assessing whether a use of funds is eligible. Standards, restrictions, or other provisions in one eligible use category do not apply to the others. Therefore, recipients should first determine which eligible use category a potential use of funds fits within, then assess whether the potential use of funds meets the eligibility standard or criteria for that category. In the case of uses to respond to the public health and negative economic impacts of the pandemic, recipients should also determine which sub-category the eligible use fits within (i.e., public health, assistance to households, assistance to small businesses, assistance to nonprofits, aid to impacted industries, or public sector capacity and workforce), then assess whether the potential use of funds meets the eligibility standard for that sub-category. Treasury does not pre-approve uses of funds; recipients are advised to review the final rule and may pursue eligible projects under it.

In some sections of the rule, Treasury identifies specific uses of funds that are eligible, called "enumerated eligible uses"; for example, Treasury provides many enumerated eligible uses of funds to respond to the public health and negative economic impacts of the pandemic. Uses of funds that are not specifically named as eligible in this

final rule may still be eligible in two ways. First, under the revenue loss eligible use category, recipients have broad latitude to use funds for government services up to their amount of revenue loss due to the pandemic. A potential use of funds that does not fit within the other three eligible use categories may be permissible as a government service, which recipients can fund up to their amount of revenue loss. For example, transportation infrastructure projects are generally ineligible as a response to the public health and negative economic impacts of the pandemic; however, a recipient could fund these projects as a government service up to its amount of revenue loss, provided that other restrictions on use do not apply. See sections Revenue Loss and Restrictions on Use for further information. Second, the eligible use category for responding to the public health and negative economic impacts of the pandemic provides a non-exhaustive list of enumerated eligible uses, which means that the listed eligible uses include some, but not all, of the uses of funds that could be eligible. The Eligible Uses section provides a standard for determining if other uses of funds, beyond those specifically enumerated, are eligible. If a recipient would like to pursue a use of funds that is not specifically enumerated, the recipient should use the standard and other guidance provided in the section Public Health and Negative Economic Impacts to assess whether the use of funds is eligible.

Next, the Restrictions on Use section describes limitations on how funds may be used. Treasury has divided the Restriction on Use section into (A) statutory restrictions under the ARPA, which include (1) offsetting a reduction in net tax revenue, and (2) deposits into pension funds, and (B) other restrictions on use, which include (1) debt service and replenishing reserves, (2) settlements and judgments, and (3) general restrictions. These restrictions apply to all eligible use categories; however, some restrictions apply only to certain types of recipient governments, and recipients are advised to review the final rule to determine which restrictions apply to their type of government (e.g., state, territory, Tribal government, county, metropolitan city, or nonentitlement unit of government). To reiterate, for recipient governments covered by a specific restriction, that restriction applies to all eligible use categories and any use of funds under the SLFRF program. Specifically:

- For states and territories only, funds may not be used to offset directly or

indirectly a reduction in net tax revenue resulting from a change in state or territory law.

- For all recipients except Tribal governments, funds may not be used for deposits into a pension fund.
- For all recipients, funds may not be used for debt service or replenishing financial reserves.
- All recipients must also comply with three general restrictions. First, a recipient may not use SLFRF funds for a program, service, or capital expenditure that conflicts with or contravenes the statutory purpose of ARPA, including a program, service, or capital expenditure that includes a term or condition that undermines efforts to stop the spread of COVID-19. Second, recipients may not use SLFRF funds in violation of the conflict-of-interest requirements contained in the Award Terms and Conditions, including any self-dealing or violation of ethics rules. Lastly, recipients should be aware that federal, state, and local laws and regulations, outside of SLFRF program requirements, also apply, including for example, environmental laws and federal civil rights and nondiscrimination requirements, which include prohibitions on discrimination on the basis of race, color, national origin, sex (including sexual orientation and gender identity), religion, disability, age, or familial status (having children under the age of 18).

The Program Administration Provisions section describes the processes and requirements for administering the program on an ongoing basis, specifically as relates to the following: Distribution of funds, timeline for using funds, transfer of funds from a recipient to different organizations, use of funds for program administration, reporting on use of funds, and remediation and recoupment of funds used for ineligible purposes. Of note, SLFRF funds may only be used for costs incurred within a specific time period, beginning March 3, 2021, with all funds obligated by December 31, 2024 and all funds spent by December 31, 2026. Recipients are advised to also consult Treasury's Reporting and Compliance Guidance for additional information on program administration processes and requirements, including applicability of the Uniform Guidance.

Finally, the section Regulatory Analyses provides Treasury's analysis of the impacts of this rulemaking, as required by several laws, regulations, and Executive Orders.

Throughout this Supplementary Information, statements using the terms "should" or "must" refer to requirements, except when used in

summarizing opinions expressed in public comments. Statements using the term "encourage" refer to recommendations, not requirements.

II. Eligible Uses

A. Public Health and Negative Economic Impacts

Background

Since the first case of COVID-19 was discovered in the United States in January 2020, the disease has infected over 50 million and killed over 800,000 Americans.¹² The disease—and necessary measures to respond—have had an immense public health and economic impact on millions of Americans across many areas of life, as detailed below in the respective sections on Public Health and Negative Economic Impacts. Since the release of the interim final rule in May 2021, the country has made major progress in fighting the disease and rebuilding the economy but faces continued risks, as illustrated by the spread of the Delta variant and the resulting slowdown in the economic recovery. The SLFRF program, and Treasury's interim final rule, provide substantial flexibility to recipients to respond to pandemic impacts in their local community; this flexibility is designed to help state, local, and Tribal governments adapt to the evolving public health emergency and tailor their response as needs evolve and to the particular local needs of their communities.

Indeed, state, local, and Tribal governments face continued needs to respond at scale to the public health emergency. This includes continued public health efforts to slow the spread of the disease, to increase vaccination rates and provide vaccinations to new populations as they become eligible, to protect individuals living in congregate facilities, and to address the broader impacts of the pandemic on public health. Similarly, while a strong economic recovery is underway, the economy remains 3.9 million jobs below its pre-pandemic level, pointing to the continued need for response efforts, with low-income workers and communities of color facing elevated rates of unemployment and economic hardship.¹³ Long-standing disparities in health and economic outcomes in

¹² Centers for Disease Control and Prevention, COVID Data Tracker, <http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited December 31, 2021).

¹³ U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm (PAYEMS) <https://fred.stlouisfed.org/series/PAYEMS> (last visited December 7, 2021).

underserved¹⁴ communities, that amplified and exacerbated the impacts of the pandemic, also present continued barriers to full and equitable recovery.

As state, local, and Tribal governments work to meet the public health and economic needs of their communities, these governments are also confronting the need to rebuild their own capacity. Facing severe budget challenges during the pandemic, many state, local, and Tribal governments have been forced to make cuts to services or their workforces, including cutting over 1.5 million jobs from February to May 2020, or delay critical investments. As of fall 2021, state, local, and Tribal government employment remained over 950,000 jobs below pre-pandemic levels.¹⁵ In the recovery from the Great Recession, cuts to state, local, and Tribal governments became a meaningful drag on economic growth for several years, and the SLFRF program provides the resources needed to re-invest in vital public services and workers to avoid this outcome.¹⁶

1. General Provisions: Structure and Standards

Background: Sections 602(c)(1)(A) and 603(c)(1)(A) of the Social Security Act establish that recipients may use funds “to respond to the public health emergency with respect to COVID–19 or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality.” The interim final rule established three categories within this eligible use: (1) Public health responses for those impacted by the pandemic, including the general public; (2) responses to the negative economic impacts that were experienced by those impacted as a result of the pandemic; and (3) additional services, either as a public health response or a response to the negative economic impacts of the

pandemic, for disproportionately impacted communities.

The interim final rule established the method to determine which specific programs or services may be eligible to respond to the public health emergency or to respond to the negative economic impacts of the public health emergency within this framework. The interim final rule included multiple enumerated uses that are eligible within each of these categories when provided to eligible populations, including populations that the interim final rule presumed to have been *impacted* (in the case of public health responses and responses to negative economic impacts) or *disproportionately impacted* (in the case of disproportionately impacted communities). Finally, the interim final rule also allowed recipients to designate additional individuals or classes as impacted or disproportionately impacted. The standards for each of these criteria under the interim final rule are discussed below.

To assess whether a program or service would be eligible to respond to the public health emergency or its negative economic impacts, the interim final rule stated that, “the recipient [is required] to, first, identify a need or negative impact of the COVID–19 public health emergency and, second, identify how the program, service, or other intervention addresses the identified need or impact [. . .] [E]ligible uses under this category must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID–19 public health emergency.” The enumerated eligible uses were presumed to meet this criterion.

With respect to uses not specifically enumerated in the interim final rule as eligible public health responses, the interim final rule stated that, “[t]o assess whether additional uses would be eligible under this category, recipients should identify an effect of COVID–19 on public health, including either or both of immediate effects or effects that may manifest over months or years, and assess how the use would respond to or address the identified need.”

With respect to uses not specifically enumerated in the interim final rule as eligible responses to a negative economic impact of the public health emergency, the interim final rule stated that “[e]ligible uses that respond to the negative economic impacts of the public health emergency must be designed to address an economic harm resulting from or exacerbated by the public health emergency. In considering whether a program or service would be eligible

under this category, the recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID–19 public health emergency and whether, and the extent to which, the use would respond to or address this harm.¹⁷ A recipient should first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID–19 public health emergency.” The interim final rule went on to say that: “In addition, the eligible use must ‘respond to’ the identified negative economic impact. Responses must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses.”

Throughout this final rule, Treasury refers to households, communities, small businesses, nonprofits, and industries that experienced public health or negative economic impacts of the pandemic as “impacted.” The first section in the interim final rule under this eligible use category included public health responses for these impacted classes. The second category in the interim final rule under this eligible use category included responses to the negative economic impacts that were experienced by these impacted classes as a result of the pandemic.

The interim final rule further recognized that certain populations have experienced disproportionate health or negative economic impacts during the pandemic, as pre-existing disparities in these communities amplified the impacts of the pandemic. For example, the interim final rule recognized that the negative economic effects of the pandemic were particularly pronounced among lower-income families, who were more likely to experience income loss and more likely to have a job that required in-person work. The interim final rule recognized the role of pre-existing social vulnerabilities and disparities in driving the disparate health and economic outcomes and presumed that programs designed to address these health or economic disparities are responsive to the public health or negative economic impacts of the COVID–19 public health emergency, when provided in disproportionately impacted communities. In addition to identifying certain populations and communities

¹⁴ Treasury uses “underserved” to refer to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life. In the interim final rule, Treasury generally used the term “disadvantaged” to refer to these same populations and communities.

¹⁵ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited December 7, 2021).

¹⁶ Tracy Gordon, State and Local Budgets and the Great Recession, Brookings Institution (Dec. 31, 2012), <http://www.brookings.edu/articles/state-and-local-budgets-and-the-great-recession>.

¹⁷ In some cases, a use may be permissible under another eligible use category even if it falls outside the scope of section (c)(1)(A) of section 602 and 603 of the Social Security Act.

presumed to be disproportionately impacted, it also empowered recipients to identify other disproportionately impacted households, populations, communities, or small businesses. The interim final rule provided that, in identifying these disproportionately impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served.

Throughout this final rule, Treasury refers to those households, communities, small businesses, and nonprofits that experienced disproportionate public health or negative economic impacts of the pandemic as “disproportionately impacted.” The third category in the interim final rule under this eligible use included public health responses and responses to the negative economic impacts for these disproportionately impacted classes.

The interim final rule provided significant flexibility for recipients to determine which households, populations, communities, or small businesses have been impacted and/or disproportionately impacted by the pandemic and to identify appropriate responses. The interim final rule included several provisions to provide simple methods for recipients to identify impacts and design programs to address those impacts. First, the interim final rule allowed recipients to demonstrate a negative economic impact on a population or class and provide assistance to households or small businesses that fall within that population or class. In such cases, the recipient need only demonstrate that an individual household or business is within the class that experienced a negative economic impact, rather than requiring a recipient to demonstrate that each individual household or small business experienced a negative economic impact, because the impact was already identified for the class.

Second, in the interim final rule, Treasury presumed that certain populations have been impacted or disproportionately impacted and are thus eligible for services that respond to these impacts or disproportionate impacts. Specifically, the interim final rule permitted recipients to presume that households that experienced unemployment, increased food or housing insecurity, or are low- or moderate-income experienced a negative economic impact from the pandemic. The interim final rule also permitted recipients to presume that

certain services provided in Qualified Census Tracts (QCTs), to individuals living in QCTs, or by Tribal governments are responsive to disproportionate impacts of the pandemic. In addition to the populations presumed to be impacted or disproportionately impacted, under the interim final rule, recipients could identify other impacted households or classes, as described above, as well as other populations, households, or geographic areas that are disproportionately impacted by the pandemic.

Third, as mentioned previously, the interim final rule included a non-exhaustive list of uses of funds that Treasury identified as responsive to the impacts or disproportionate impacts of the pandemic. Treasury refers to these as “enumerated eligible uses.”

To summarize, the interim final rule identified certain populations that are presumed to be impacted by the pandemic (and specific enumerated uses of funds that are responsive to that impact) and populations that are presumed to be disproportionately impacted by the pandemic (and specific enumerated uses of funds that are responsive to those disproportionate impacts). In addition, the interim final rule provided standards for recipients to assess whether additional uses of funds, beyond the enumerated eligible uses, are eligible for impacted and disproportionately impacted populations and permitted recipients to identify other households or classes that experienced impacts of the pandemic or disproportionate impacts of the pandemic.

Rule Structure

Public Comment: Many commenters expressed concern regarding the structure of the eligible uses, indicating they found the structure of the public health and negative economic impacts section of the interim final rule to be confusing or difficult to navigate. Other commenters indicated that they understood the enumerated uses to be the only eligible uses and/or the presumed eligible populations to be the only eligible populations. Several commenters expressed frustration about the number of eligible uses specifically enumerated in the interim final rule, which they considered too few, and commenters proposed a wide range of additional enumerated eligible uses (for further discussion, see the section Public Health and section Negative Economic Impacts). Commenters expressed concern with pursuing uses of funds not explicitly enumerated in the eligible use section or uncertainty

regarding the broad flexibility provided under the interim final rule to pursue additional programs that respond to the public health or negative economic impacts of the pandemic or the process for doing so.

Treasury Response: Treasury recognizes that many commenters felt the structure of the interim final rule could be clarified. These comments are consistent with many of the questions that Treasury has received from recipients, which requested clarification regarding the category their desired response fits into. Treasury observes that these comments and questions generally fall into four categories: (1) How to identify the correct public health or negative economic impact category for a particular response, (2) how to identify whether a particular use is eligible, (3) how to identify an impacted or disproportionately impacted class, and (4) whether an enumerated use can be provided to a class other than those presumed impacted or disproportionately impacted. In response to comments, Treasury is adjusting the structure of the public health and negative economic impacts eligible use section of the final rule to improve clarity and make it easier for recipients to interpret and apply the final rule.

Specifically, Treasury is restructuring the rule to aid recipients in determining whether a particular response is eligible and how the particular response might be eligible under a particular category. This restructuring reinforces the fundamental criteria that a use of funds is eligible based on its responsiveness to a public health or negative economic impact experienced by individuals, households, small businesses, nonprofits, or impacted industries (together “beneficiaries”).¹⁸ This restructuring is intended to make the rule easier to navigate and to implement, including any criteria or conditions on particular uses of funds.

The reorganization of the public health and negative economic impacts section of the final rule is also intended to clarify the enumerated eligible uses described in the interim final rule. The reorganization itself is not intended to change the scope of the enumerated uses that were included in the interim final rule or that were allowable under the interim final rule. In some cases, specific enumerated uses are being altered, and those changes are discussed

¹⁸ Note that small businesses, nonprofits, and industries may also function as subrecipients. For additional information on these distinctions see section Distinguishing Subrecipients versus Beneficiaries.

as changes within the section on that enumerated use.

The final rule streamlines and aligns services and standards that are generally applicable or are provided for public health purposes. Under this approach, eligible uses to respond to the public health emergency are organized based on the type of public health problem: (1) COVID-19 mitigation and prevention, (2) medical expenses, (3) behavioral health care, and (4) preventing and responding to violence. Under this approach, eligible uses to respond to the negative economic impacts of the public health emergency are organized based on the type of beneficiary: (1) Assistance to households, (2) assistance to small businesses, and (3) assistance to nonprofits, alongside a fourth standalone eligibility category for aid to travel, tourism, hospitality, and other impacted industries. The first three categories, assistance to households, small businesses, and nonprofits, include enumerated eligible uses for impacted and disproportionately impacted beneficiaries. This change in structure is intended to provide a framework that clearly identifies the intended beneficiaries of uses of funds and provides clarity about what types of assistance are “responsive to the pandemic or its negative economic impacts” for these beneficiaries.

a. Standards for Identifying a Public Health or Negative Economic Impact

Standards: Designating a Public Health Impact

Public Comment: Many commenters expressed uncertainty about how to determine whether a use of funds, beyond those specifically enumerated as eligible, might be an eligible public health response. For example, many commenters submitted questions asking whether specific uses of funds would be eligible. Others described what they considered to be impacts of the pandemic and argued that uses of funds to respond to these issues should be eligible. Some commenters requested that Treasury provide additional detail to guide their assessments of eligible uses of funds. For example, a commenter requested more clarification around exactly what and whose medical expenses can be covered. These comments ranged in their specificity and covered the full range of the enumerated eligible uses.

Treasury Response: Treasury is clarifying that when assessing whether a program or service is an eligible use to respond to the public health impacts of the COVID-19 public health emergency, the Department will

consider the two eligibility requirements discussed below. These standards apply to all proposed public health uses.

First, there must be a negative public health impact or harm experienced by an individual or a class. For ease of administration, the interim final rule allowed, and the final rule maintains the ability for, recipients to identify a public health impact on a population or group of individuals, referred to as a “class,” and to provide assistance to that class. In determining whether an individual is eligible for a program designed to address a harm experienced by a class, the recipient need only document that the individual is within the class that experienced a public health impact, see section Standards: Designating Other Impacted Classes. In the case of some impacts, for example impacts of COVID-19 itself that are addressed by providing prevention and mitigation services, such a class could reasonably include the general public.

Second, the program, service, or other intervention must address or respond to the identified impact or harm. The final rule maintains the interim final rule requirement that eligible uses under this category must be in response to the disease itself or other public health harms that it caused.¹⁹

Responses must be reasonably designed to benefit the individual or class that experienced the public health impact or harm. Uses of funds should be assessed based on their responsiveness to their intended beneficiaries and the ability of the response to address the impact or harm experienced by those beneficiaries.

Responses must also be related and reasonably proportional to the extent and type of public health impact or harm experienced. Uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Reasonably proportional refers to the scale of the response compared to the scale of the harm. It also refers to the targeting of the response to beneficiaries compared to the amount of harm they experienced. In evaluating whether a

¹⁹ In designing an intervention to mitigate COVID-19, the recipient should consider guidance from public health authorities, particularly the Centers for Disease Control and Prevention (CDC), in assessing appropriate COVID-19 mitigation and prevention strategies (see Centers for Disease Control and Prevention, COVID-19, <https://www.cdc.gov/coronavirus/2019-ncov/index.html>). A program or service that imposes conditions on participation in or acceptance of the service that would undermine efforts to stop the spread of COVID-19 or discourage compliance with practices in line with CDC guidance for stopping the spread of COVID-19 is not a permissible use of funds.

use is reasonably proportional, recipients should consider relevant factors about the harm identified and the response. For example, recipients may consider the size of the population impacted and the severity, type, and duration of the impact. Recipients may also consider the efficacy, cost, cost-effectiveness, and time to delivery of the response.

If a recipient intends to fund capital expenditures in response to the public health impacts of the pandemic, recipients should refer to the section Capital Expenditures for details about the eligibility of capital expenditures.

Standards: Designating a Negative Economic Impact

Public Comment: Many commenters expressed uncertainty about how to determine whether uses of funds, beyond those specifically enumerated as eligible, might be eligible responses to negative economic impacts. For example, many commenters submitted questions asking whether specific uses of funds would be eligible. Others described what they considered to be impacts of the pandemic and argued that uses of funds to respond to these issues should be eligible. Some commenters requested that Treasury provide additional detail to guide their assessments of eligible uses of funds. These comments ranged in their specificity and covered the full range of eligible uses to respond to negative economic impacts. Several commenters asked for clarification about what types of food assistance would be considered eligible. Another commenter requested that the establishment of outdoor dining be eligible. Many commenters inquired about homeless shelters as an eligible use of SLFRF funds.

Commenters also expressed uncertainty about the ability to establish classes, including geographic areas, that experienced a negative economic impact or disagreed with the requirement that an individual entity be impacted by the pandemic in order to receive assistance. For example, a commenter argued that interventions should not be limited to individuals or businesses that experienced an economic impact and should instead be used broadly to support economic growth. These commenters argued that an expenditure that supports a more robust economy may help combat the pandemic's negative economic impacts, and it can do so even if funding is provided to individuals or entities that did not themselves experience a negative economic impact during the pandemic.

Treasury Response: The final rule maintains the standard articulated in

the interim final rule. For clarity, the final rule re-articulates that when assessing whether a program or service is an eligible use to respond to the negative economic impacts of the COVID-19 public health emergency, Treasury will consider the two eligibility requirements discussed below.

First, there must be a negative economic impact, or an economic harm, experienced by an individual or a class. The recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID-19 public health emergency. A recipient should first consider whether an economic harm exists and then whether this harm was caused or made worse by the COVID-19 public health emergency. This approach is consistent with the text of the statute, which provides that funds in this category must be used to “respond to the public health emergency with respect to . . . its negative economic impacts.”

While economic impacts may either be immediate or delayed, individuals or classes that did not experience a negative economic impact from the public health emergency would not be eligible beneficiaries under this category. As noted above, the interim final rule permitted recipients to presume that households that experienced unemployment, increased food or housing insecurity, or are low- or moderate-income experienced a negative economic impact from the pandemic. For discussion of the final rule’s approach to this presumption, see section Populations Presumed Eligible.

The final rule also maintains several provisions included in the interim final rule and subsequent guidance that are intended to ease administration of identifying that the beneficiary experienced a negative economic impact or harm. For example, the interim final rule allowed, and the final rule maintains the ability for, recipients to demonstrate a negative economic impact on a population or group, referred to as a “class,” and to provide assistance to households, small businesses, or nonprofits that fall within that class. In such cases, the recipient need only demonstrate that the household, small business, or nonprofit is within the class that experienced a negative economic impact, see section Standards: Designating Other Impacted Classes. This would allow, for example, an internet access assistance program for all households with children to support those households’ ability to participate in healthcare, work, and

educational activities like extending learning opportunities, among other critical activities. In that case, the recipient would only need to identify a negative economic impact to the class of “households with children” and would not need to document or otherwise demonstrate that each individual household served experienced a negative economic impact.

Second, the response must be designed to address the identified economic harm or impact resulting from or exacerbated by the public health emergency. In selecting responses, the recipient must assess whether, and the extent to which, the use would respond to or address this harm or impact. This approach is consistent with the text of the statute, which provides that funds may be used to “respond to” the “negative economic impacts” of the public health emergency “including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality.” The list of potential responses (“assistance” or “aid”) suggests that responses should address the “negative economic impacts” of particular types of beneficiaries (e.g., households or small businesses).

Responses must be reasonably designed to benefit the individual or class that experienced the negative economic impact or harm. Uses of funds should be assessed based on their responsiveness to their intended beneficiary and the ability of the response to address the impact or harm experienced by that beneficiary.²⁰

Responses must also be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses.²¹ Reasonably proportional refers to the scale of the response compared to the scale of the harm. It also refers to the targeting of the response to beneficiaries compared to the amount of harm they experienced; for example, it may not be reasonably proportional for a cash assistance program to provide assistance in a very small amount to a group that

experienced severe harm and in a much larger amount to a group that experienced relatively little harm. In evaluating whether a use is reasonably proportional, recipients should consider relevant factors about the harm identified and the response. For example, recipients may consider the size of the population impacted and the severity, type, and duration of the impact. Recipients may also consider the efficacy, cost, cost-effectiveness, and time to delivery of the response.

Finally, recipients should be aware of the distinction between beneficiaries of funds and subrecipients; a recipient may provide services to beneficiaries through subrecipients that did not experience a negative economic impact, see section Distinguishing Subrecipients versus Beneficiaries. That is, a recipient may award SLFRF funds to an entity that did not experience a negative economic impact in order to implement a program or provide a service to beneficiaries on its behalf. Such transfers, when implementing a public health or negative economic impact response, should be responsive to and designed to benefit individuals, households, small businesses, nonprofits, or impacted industries that did experience a public health or negative economic impact.

Determining the Appropriate Eligible Use Category

Public Comment: Some commenters expressed uncertainty about how to analyze negative economic impacts to different entities (e.g., households, small businesses, nonprofits). For example, commenters asked whether a nonprofit, which did not experience a negative economic impact itself, could be granted funds to provide services to individuals experiencing homelessness, who did experience negative economic impacts. Other commenters proposed providing assistance to support the expansion of small businesses, under the theory that this would create more job opportunities for unemployed workers who experienced negative economic impacts.

Treasury Response: In the final rule, Treasury is clarifying that recipients should assess a potential use of funds based on which beneficiary experienced the negative economic impact, in other words, the households, small businesses, nonprofits, or impacted industries that experienced the negative economic impact.

Treasury notes that recipients may award SLFRF funds to many different types of organizations to carry out eligible uses of funds and serve beneficiaries on behalf of a recipient.

²⁰ For example, expenses such as excessive compensation to employees or expenses which have already been reimbursed through another federal program, are not reasonably designed to address a negative economic impact to a beneficiary.

²¹ For example, a program or service that imposes conditions on participation in or acceptance of the service that would undermine efforts to stop the spread of COVID-19 or discourage compliance with practices in line with CDC guidance for stopping the spread of COVID-19 is not a permissible use of funds.

When a recipient provides funds to another entity to carry out eligible uses of funds and serve beneficiaries the entity becomes a subrecipient (see section Distinguishing a Subrecipient versus a Beneficiary). For example, a recipient may grant funds to a nonprofit organization to provide food assistance (an eligible use) to low-income households (the beneficiaries). Recipients only need to assess whether the beneficiaries experienced a negative economic impact and whether the eligible use responds to that impact, consistent with the two-part framework described above; the organization carrying out the eligible use does not need to have experienced a negative economic impact if it is serving as the vehicle for reaching the beneficiaries. When making determinations about how to implement a program, recipients should consider whether that method of program implementation is an effective and efficient method to implement the program and do so in accordance with the Uniform Guidance provisions that govern procurements and sub-granting of federal funds, as applicable.

As noted above, recipients should analyze eligible uses based on the beneficiary of the assistance or the entity that experienced a negative economic impact. Assistance to a small business or to an impacted industry must respond to a negative economic impact experienced by that small business or industry. Recipients may not provide assistance to small businesses or impacted industries that did not experience a negative economic impact, although recipients can identify negative economic impacts for classes, rather than individual businesses, and may also presume that small businesses in certain areas experienced impacts; see section General Provisions: Structure and Standards and section Assistance to Small Businesses for details.

Several examples illustrate the application of these concepts. For example, a recipient could provide assistance to households via a contract with a business to create subsidized jobs for the long-term unemployed; in this case the business is a subrecipient and need not have experienced a negative economic impact, but the recipient would need to identify a specific connection between the assistance provided and addressing the negative economic impact experienced by the unemployed households. The recipient could, for instance, document the subsidized jobs created under the contract and their reservation for long-term unemployed individuals. Similarly, a recipient might provide

assistance to a small business that experienced a pandemic-related loss of revenue. This small business is a beneficiary and may use those funds in many ways, potentially including hiring or retaining staff. However, general assistance to a business that did not experience a negative economic impact under the theory that this assistance generally grows the economy and therefore enhances opportunities for unemployed workers would not be an eligible use, because such assistance is not reasonably designed to impact the individuals or classes that experienced a negative economic impact. In other words, there is not a reasonable connection between the assistance provided and an impact on the beneficiaries. Such an activity would be attenuated from and thus not reasonably designed to benefit the households that experienced the negative economic impact.

b. Populations Presumed Eligible Presumed Eligibility: Impacted and Disproportionately Impacted Households and Communities

Background: As noted above, the interim final rule allowed recipients to presume that certain households were impacted or disproportionately impacted by the pandemic and thus eligible for responsive programs or services. Specifically, under the interim final rule, recipients could presume that a household or population that experienced unemployment, experienced increased food or housing insecurity, or is low- or moderate-income experienced negative economic impacts resulting from the pandemic, and recipients may provide services that respond to these impacts.

The interim final rule also recognized that pre-existing health, economic, and social disparities contributed to disproportionate pandemic impacts in certain communities and allowed for a broader list of enumerated eligible uses to respond to the pandemic in disproportionately impacted communities. Under the interim final rule, recipients were allowed to presume that families residing in QCTs or receiving services provided by Tribal governments were disproportionately impacted by the pandemic.

Definition of Low- and Moderate-Income

Public Comment: As noted earlier, many commenters sought a definition for “low- and moderate-income” to provide recipients greater clarity on which specific households could be

presumed to be impacted by the pandemic.

Treasury Response: The final rule maintains the presumptions identified in the interim final rule and defines low- and moderate-income for the purposes of determining which households and populations recipients may presume to have been impacted. To simplify the administration of this presumption, the final rule adopts a definition of low- and moderate-income based on thresholds established and used in other federal programs.

Definitions. The 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).²²

The final rule defines 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.²³

Recipients may determine whether to measure income levels for specific households or for a geographic area based on the type of service to be provided. For example, recipients developing a program that serves specific households (e.g., a subsidy for internet access, a childcare program) may measure income at the household level. Recipients providing a service that reaches a general geographic area (e.g., a park) may measure median income of that area.

Further, recipients should generally use the income threshold for the size of the household to be served (e.g., when providing childcare to a household of five, recipients should reference the income threshold for a household of five); however, recipients may use the income threshold for a default household size of three if providing

²² AMI is also often referred to as median family income for the area. Since AMI is synonymous with this term and used more generally, the final rule refers to AMI.

²³ For the six New England states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, HUD provides AMI for towns rather than counties. Recipients in these states should use the AMI corresponding to their town when determining thresholds for both low and moderate income.

services that reach a general geographic area or if doing so would simplify administration of the program to be provided (e.g., when developing a park, recipients should use the income threshold for a household size of three and compare it to median income of the geographic area to be served).

Note that recipients can also identify and serve other classes of households that experienced negative economic impacts or disproportionate impacts from the pandemic; recipients can identify these classes based on their income levels, including above the levels defined as low- and moderate-income in the final rule. For example, a recipient may identify that households in their community with incomes above the final rule threshold for low-income

nevertheless experienced disproportionate impacts from the pandemic and provide responsive services. See section General Provisions: Standards for Identifying Other Eligible Populations for details on applicable standards.

Applicable levels. For reference, the FPG is commonly referred to as the federal poverty level (FPL) and is related to—although distinct from—the U.S. Census Bureau’s poverty threshold. The final rule uses the FPG when referring specifically to the HHS guidelines, as these are the quantitative metrics used for determining low- and moderate-income households.

The FPG by household size for 2021 is included in the table below. Recipients should refer to HHS Poverty

Guidelines for this information, which is updated annually and available on the HHS website.²⁴ For calculating the thresholds of 40 percent and 65 percent of AMI, recipients should refer to the annual HUD Section 8 50 percent income limits by county and household size published by HUD and available on the HUD website; in particular, recipients should calculate the 40 percent threshold as 0.8 times the 50 percent income limit, and recipients should calculate the 65 percent threshold as 1.3 times the 50 percent income limit.²⁵ Finally, for median income of Census Tracts and other geographic areas, recipients should refer to the most recent American Community Survey 5-year estimates available through the Census website.²⁶

2021 FEDERAL POVERTY GUIDELINES

Household size	48 contiguous states and the District of Columbia	Alaska	Hawaii
1	\$12,880	\$16,090	\$14,820
2	17,420	21,770	20,040
3	21,960	27,450	25,260
4	26,500	33,130	30,480
5	31,040	38,810	35,700
6	35,580	44,490	40,920
7	40,120	50,170	46,140
8	44,660	55,850	51,360

For families/households with more than 8 persons, add the following amounts for each additional person:
48 Contiguous States and the District of Columbia: \$4,540.

Alaska: \$5,680.

Hawaii: \$5,220.

Source: “HHS Poverty Guidelines for 2021,” available at <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

Rationale. In defining low income, the final rule uses both the FPG and AMI to account for national trends and regional differences. The metric of 185 percent of FPG aligns with some other programs; for instance, under the National School Lunch Program, students with household incomes under 185 percent of FPG qualify for free or reduced-price lunch, and schools often use eligibility for free or reduced-price lunch as an indicator of low-income status under Title 1–A of the Elementary and Secondary Education Act. Eligibility for other programs, such as the Federal Communications Commission’s e-Rate

program and the Special Supplemental Nutrition Program for Women, Infants and Children employ this metric as well. In addition, 185 percent of the FPG for a family of four is \$49,025, which is approximately the wage earnings for a two-earner household in which both earners receive the median wage in occupations, such as waiters and waitresses and hotel clerks, that were heavily impacted by COVID-19.²⁷ This measure is targeted toward those at the bottom of the income distribution and thus helps to promote use of SLFRF funds towards populations with the greatest needs. At the same time, with

approximately one-quarter of Americans below 185 percent of the poverty threshold, this approach is broad enough to facilitate use of SLFRF funds across many jurisdictions.²⁸ Because regions have different cost and income levels, this definition also allows for upward adjustment based on AMI for those regions where 40 percent of AMI exceeds 185 percent of FPG. The metric of 40 percent of AMI is based on the midpoint of values often used to designate certain categories of low-income households; specifically, it is the midpoint of the 30 percent income limit and the 50 percent income limit

²⁴ U.S. Department of Health and Human Service, HHS Poverty Guidelines for 2021, available at <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

²⁵ U.S. Department of Housing and Urban Development, FY 2021 Section 8 Income Limits, available at <https://www.huduser.gov/portal/datasets/il/il21/Section8-FY21.xlsx>. Recipients may refer to the list of counties (and New England towns) identified by state and metropolitan area for identifying the appropriate area. U.S. Department of Housing and Urban Development, FY 2021 List of Counties (and New England Towns) Identified by

State and Metropolitan Area, available at <https://www.huduser.gov/portal/datasets/il/il21/area-definitions-FY21.pdf>.

²⁶ The U.S. Census Bureau provides an interactive map: U.S. Census Bureau, Median Household Income State Selection Map, available at https://data.census.gov/cedsci/map?q=Median%20Household%20Income&g=0100000US%2404000%24001&tid=ACST5Y2019.S1901&cid=S1901_C01_012E&vintage=2019. The U.S. Census Bureau also provides an interactive table: U.S. Census Bureau, Median Household Income In The Past 12 Months (In 2019 Inflation-Adjusted Dollars),

available at <https://data.census.gov/cedsci/table?q=b19013&tid=ACSDT5Y2019.B19013&hidePreview=true>.

²⁷ See U.S. Bureau of Labor Statistics, Occupational Employment and Wage Estimates, https://www.bls.gov/oes/current/oes_nat.htm (last visited December 7, 2021).

²⁸ U.S. Census Bureau, Poverty Status by State, <https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pov/pov-46.html> (last visited December 7, 2021).

used in programs such as the Community Development Block Grant (CDBG) Program.

In defining moderate income, the final rule uses both the FPG and AMI to account for national trends and regional differences. While there are different definitions of moderate income, 300 percent of FPG falls within the range commonly used by researchers.²⁹ Analysis of median wages among a sample of occupations likely impacted by the pandemic also suggests that an income cutoff of 300 percent of FPG would include many households with workers in such occupations.³⁰ Moreover, the metric of 300 percent of FPG covers households that, while above the poverty line, often lack economic security.³¹ Treasury determined the AMI threshold for moderate income by maintaining the same ratio of FPG multiplier to AMI multiplier as in the definition of low income. This anchors the threshold to the existing definitions of moderate income from the literature while taking into account geographical variation in income and expenses in the same manner as the definition of low income.

Eligibility Presumptions

Public Comment: Many commenters believed that a broader range of groups should be considered presumptively impacted and disproportionately impacted, arguing that many households had been affected by the pandemic and that broader presumed eligibility would help recipients provide assistance quickly and effectively.

Treasury also received many comments on the presumption that

families living in QCTs or receiving services from Tribal governments were disproportionately impacted by the pandemic. While many commenters supported the interim final rule's recognition of disproportionate impacts of the pandemic on low-income communities, many commenters disagreed with treating QCTs as the only presumed eligible group of disproportionately impacted households, apart from households served by Tribal governments. While acknowledging a potential increase in administrative burden, commenters recommended that Treasury presume other households or geographic areas, in addition to QCTs, were disproportionately impacted; suggestions included all low- and moderate-income households, geographic areas designated as Opportunity Zones, Difficult Development Areas (DDAs), areas with a certain amount of Real Estate Advantage Program (REAP) recipients, or use of eligibility criteria from the Community Reinvestment Act. One commenter generally recommended that a clearer definition of "disproportionately impacted" should be provided and that any definition should include communities of color and people of limited means. Another recommended specific eligibility for people that had recently interacted with the criminal justice system. Many commenters representing Tribal governments and groups recommended a presumption of eligibility for all Tribal uses of funds, clarification that off reservation members remained eligible, and broad flexibility on use of funds.

Additionally, commenters noted that some areas are technically eligible to be QCTs but fall short because of the aggregate population of eligible tracts. One commenter noted that these areas should be considered the same as QCTs for the purpose of SLFRF funds. Some commenters argued that rural counties typically have few QCTs despite high levels of poverty and disruption caused by the COVID-19 pandemic. Other rural commenters recommended that the designation be by county rather than at a more granular level, arguing that the QCT designation is biased towards urban areas and understates the harm done to rural America. Many commenters representing Tribal governments supported the presumption that services provided by Tribal governments respond to disproportionate impacts.

Treasury Response

Summary: While households residing in QCTs or served by Tribal

governments were presumed to be disproportionately impacted, Treasury emphasizes that under the interim final rule recipients could also identify other households, populations, or geographic areas that were disproportionately impacted by the pandemic and provide services to respond.

The final rule maintains the presumptions identified in the interim final rule, as well as recipients' ability to identify other impacted or disproportionately impacted classes. The final rule also allows recipients to presume that low-income households were disproportionately impacted, and as discussed above, defines low- and moderate-income. Finally, under the final rule recipients may also presume that households residing in the U.S. territories or receiving services from territorial governments were disproportionately impacted.

Households presumed to be impacted: Impacted households are those that experienced a public health or negative economic impact from the pandemic.

With regard to public health impacts, recipients may presume that the general public experienced public health impacts from the pandemic for the purposes of providing services for COVID-19 mitigation and behavioral health. In other words, recipients may provide a wide range of enumerated eligible uses in these categories to the general public without further analysis. As discussed in the introduction, COVID-19 as a disease has directly affected the health of tens of millions of Americans, and efforts to prevent and mitigate the spread of the disease are needed and in use across the country. Further, the stress of the pandemic and resulting recession have affected nearly all Americans. Accordingly, the final rule presumes that the general public are impacted by and eligible for services to respond to COVID-19 mitigation and prevention needs, as well as behavioral health needs.

With regard to negative economic impacts, as with the interim final rule, under the final rule recipients may presume that a household or population that experienced unemployment, experienced increased food or housing insecurity, or is low- or moderate-income experienced negative economic impacts resulting from the pandemic. The final rule's definition of low- and moderate-income, by providing standard metrics based on widely available data, is intended to simplify administration for recipients.

Households presumed to be disproportionately impacted: Disproportionately impacted households are those that experienced a

²⁹ For instance, Melissa Kearney et al. (2013) cap the "struggling lower middle-income class" at 250 percent of the federal poverty level, while Isabel Sawhill and Edward Rodrigue (2015) define the "middle class" as those with incomes of at least 300 percent of the poverty line. Melissa Kearney et al., "A Dozen Facts about America's Struggling Lower-Middle Class," The Hamilton Project (December 2013), https://www.hamiltonproject.org/assets/legacy/files/downloads_and_links/THP_12LowIncomeFacts_Final.pdf; Isabel Sawhill and Edward Rodrigue, "An Agenda for Reducing Poverty and Improving Opportunity," Brookings Institution, https://www.brookings.edu/wp-content/uploads/2016/07/Sowhill_FINAL.pdf.

³⁰ Data on median annual wages from: U.S. Bureau of Labor and Statistics, Occupational Employment and Wage Statistics, available at https://www.bls.gov/oes/current/oes_nat.htm (last visited December 7, 2021).

³¹ For instance, households earning between 200 and 300 percent of the FPG have significantly higher rates of food and housing insecurity than those earning above 300 percent of the FPG. Table 1, Kyle J. Caswell and Stephen Zuckerman, Food Insecurity, Housing Hardship, and Medical Care Utilization, Urban Institute (June 2018), https://www.urban.org/sites/default/files/publication/98701/2001896_foodinsecurity_housinghardship_medicalcareutilization_finalized.pdf.

disproportionate, or meaningfully more severe, impact from the pandemic. As discussed in the interim final rule, pre-existing disparities in health and economic outcomes magnified the impact of the COVID-19 public health emergency on certain households and communities. As with the interim final rule, under the final rule recipients may presume that households residing in QCTs or receiving services provided by Tribal governments were disproportionately impacted by the pandemic. In addition, under the final rule recipients may presume that low-income households were disproportionately impacted by the pandemic. Finally, under the final rule recipients may also presume that households residing in the U.S. territories or receiving services from territorial governments were disproportionately impacted.

Treasury notes that households presumed to be disproportionately impacted would also be presumptively impacted, as these households have not only experienced pandemic impacts but have experienced disproportionate pandemic impacts; as a result, these households are presumptively eligible for responsive services for both impacted and disproportionately impacted households.

Many different geographic, income-based, or poverty-based presumptions could be used to designate disproportionately impacted populations. The combination of permitting recipients to use QCTs, low-income households, and services provided by Tribal or territorial governments as presumptions balances these varying methods. Specifically, QCTs are a commonly used designation of geographic areas based on low incomes or high poverty rates of households in the community; for recipients providing geographically targeted services, QCTs may provide a simple metric with readily available maps for use. However, Treasury recognizes that QCTs do not capture all underserved populations, including for reasons noted by commenters. By allowing recipients to also presume that low-income households were disproportionately impacted, the final rule provides greater flexibility to serve underserved households or communities. Data on household incomes is also readily available at varying levels of geographic granularity (e.g., Census Tracts, counties), again permitting flexibility to adapt to local circumstances and needs. Finally, Treasury notes that, as discussed further below, recipients may also identify other households, populations, and

communities disproportionately impacted by the pandemic, in addition to those presumed to be disproportionately impacted.

Additionally, Tribal and territorial governments may face both disproportionate impacts of the pandemic and administrability challenges with operationalizing the income-based standard; therefore, Treasury has presumed that services provided by these governments respond to disproportionate pandemic impacts. Given a lack of regularly published data on household incomes in most territories,³² as well as a lack of poverty guidelines developed for these jurisdictions,³³ it may be highly challenging to assess disproportionate impact in these communities according to an income- or poverty-based standard. Similarly, data on incomes in Tribal communities are not readily available.³⁴ Finally, as described in the sections on Public Health and Negative Economic Impacts, Tribal communities have faced particularly severe health and economic impacts of the pandemic. Similarly, available research suggests that preexisting health and economic disparities in the territories amplified the impact of the pandemic on these communities.³⁵

Categorical Eligibility

Public Comment: Several commenters suggested that the final rule permit recipients to rely on a beneficiary's eligibility for other federal benefits programs as an easily administrable proxy for identifying a group or population that experienced a negative economic impact as a result of the COVID-19 public health emergency (i.e., categorical eligibility). In other words, a recipient would determine that individuals or households are eligible for an SLFRF-funded program based on the individual or household's eligibility in another program, typically another federal benefit program. Commenters noted that categorical eligibility is a common policy in program

administration that can significantly ease administrative burden on both program administrators and beneficiaries.

Treasury Response: Treasury agrees that allowing recipients to identify impacted and disproportionately impacted beneficiaries based on their eligibility for other programs with similar income tests would ease administrative burden. To the extent that the other program's eligibility criteria align with a population or class that experienced a negative economic impact of the pandemic, this approach is also consistent with the process allowed under the final rule for recipients to determine that a class has experienced a negative economic impact, and then document that an individual receiving services is a member of the class. For these reasons, the final rule recognizes categorical eligibility for the following programs and populations:

- **Impacted households.** Treasury will recognize a household as impacted if it otherwise qualifies for any of the following programs:
 - Children's Health Insurance Program (CHIP)
 - Childcare Subsidies through the Child Care and Development Fund (CCDF) Program
 - Medicaid
 - National Housing Trust Fund (HTF), for affordable housing programs only
 - Home Investment Partnerships Program (HOME), for affordable housing programs only
- **Disproportionately impacted households.** Treasury will recognize a household as disproportionately impacted if it otherwise qualifies for any of the following programs:
 - Temporary Assistance for Needy Families (TANF)
 - Supplemental Nutrition Assistance Program (SNAP)
 - Free and Reduced-Price Lunch (NSLP) and/or School Breakfast (SBP) programs
 - Medicare Part D Low-income Subsidies
 - Supplemental Security Income (SSI)
 - Head Start and/or Early Head Start
 - Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
 - Section 8 Vouchers
 - Low-Income Home Energy Assistance Program (LIHEAP)
 - Pell Grants
 - For services to address educational disparities, Treasury will recognize Title

³² For instance, the American Community Survey does not include all territories. U.S. Census Bureau, Areas Published, <https://www.census.gov/programs-surveys/acs/geography-acs/areas-published.html> (last visited November 9, 2021).

³³ U.S. Department of Health and Human Services, *supra* note 24.

³⁴ For instance, data from the American Community Survey is based on geographical location rather than Tribal membership. U.S. Census Bureau, My Tribal Area, https://www.census.gov/Tribal/Tribal_glossary.php.

³⁵ Lina Stoylar et. al., Challenges in the U.S. Territories: COVID-19 and the Medicaid Financing Cliff, Kaiser Family Foundation (May 18, 2021), <https://www.kff.org/coronavirus-covid-19/issue-brief/challenges-in-the-u-s-territories-covid-19-and-the-medicaid-financing-cliff/>.

Eligible schools³⁶ as disproportionately impacted and responsive services that support the school generally or support the whole school as eligible

c. Standards for Identifying Other Eligible Populations

Standards: Designating Other Impacted Classes

Public Comment: Treasury received multiple comments requesting additional clarification about how classes of impacted individuals may be designated, as well as questions asking whether recipients must demonstrate a specific public health or negative economic impact to each entity served (e.g., each household receiving assistance under a program). There were several comments requesting that specific geographic designations, like a county or Impact Zone, be eligible to use as a determining boundary.

Treasury Response: The interim final rule allowed, and the final rule maintains, the ability for recipients to demonstrate a public health or negative economic impact on a class and to provide assistance to beneficiaries that fall within that class. Consistent with the scope of beneficiaries included in sections 602(c)(1)(A) and 603(c)(1)(A) of the Social Security Act, Treasury is clarifying that a recipient may identify such impacts for a class of households, small businesses, or nonprofits. In such cases, the recipient need only demonstrate that the household, small business, or nonprofit is within the relevant class. For example, a recipient could determine that restaurants in the downtown area had generally experienced a negative economic impact and provide assistance to those small businesses to respond. When providing this assistance, the recipient would only need to demonstrate that the small businesses receiving assistance were restaurants in the downtown area. The recipient would not need to demonstrate that each restaurant served experienced its own negative economic impact.

In identifying an impacted class and responsive program, service, or capital expenditure, recipients should consider the relationship between the definition of the class and proposed response. Larger and less-specific classes are less likely to have experienced similar harms and thus the responses are less

likely to be responsive to the harms identified. That is, as the group of entities being served by a program has a wider set of fact patterns, or the type of entities, their circumstances, or their pandemic experiences differ more substantially, it may be more difficult to determine that the class has actually experienced the same or similar negative economic impact and that the response is appropriately tailored to address that impact.

Standard: Designating Other Disproportionately Impacted Classes

Summary of Interim Final Rule: As noted above, the interim final rule provided a broad set of enumerated eligible uses of funds in disproportionately impacted communities, including to address pre-existing disparities that contributed to more severe pandemic impacts in these communities. The interim final rule presumed that these services are eligible uses when provided in a QCT, to families and individuals living in QCTs, or when these services are provided by Tribal governments. Recipients may also provide these services to “other populations, households, or geographic areas disproportionately impacted by the pandemic” and, in identifying these disproportionately impacted communities, should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the group identified.

Public Comment: A significant number of commenters expressed uncertainty regarding the process for determining eligibility for disproportionately impacted communities beyond QCTs. A commenter noted that a clearer definition of “disproportionately impacted” should be delineated and that any definition should include communities of color and people of limited means. Some commenters suggested a template or checklist to see if an area meets the standard for disproportionately impacted communities outside of QCTs. Some commenters stated that QCT and non-QCT beneficiaries should be treated the same.

Treasury Response: Under the interim final rule, presuming eligibility for services in QCTs, for populations living in QCTs, and for Tribal governments was intended to ease administrative burden, providing a simple path for recipients to offer services in underserved communities, and is not an exhaustive list of disproportionately impacted communities. To further clarify, the final rule codifies the

interpretive framework discussed above, including presumptions of groups disproportionately impacted, as well as the ability to identify other disproportionately impacted populations, households, or geographies (referred to here as disproportionately impacted classes).

As discussed in the interim final rule, in identifying other disproportionately impacted classes, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served. For example, the interim final rule considered data regarding the rate of COVID-19 infections and deaths in low-income and socially vulnerable communities, noting that these communities have experienced the most severe health impacts, compared to national averages. Similarly, the interim final rule considered the high concentration of low-income workers performing essential work, the reduced ability to socially distance, and other pre-existing public health challenges, all of which correlate with more severe COVID-19 outcomes. The interim final rule also considered the disproportionate economic impacts of the pandemic, citing, for example, the rate of job losses among low-income persons as compared to the general population. The interim final rule then identified QCTs, a common, readily accessible, and geographically granular method of identifying communities with a large proportion of low-income residents, as presumed to be disproportionately impacted by the pandemic.

In other words, the interim final rule identified disproportionately impacted populations by assessing the impacts of the pandemic and finding that some populations experienced meaningfully more severe impacts than the general public. Similarly, to identify disproportionately impacted classes, recipients should compare the impacts experienced by that class to the typical or average impacts of the pandemic in their local area, state, or nationally.

Recipients may identify classes of households, communities, small businesses, nonprofits, or populations that have experienced a disproportionate impact based on academic research or government research publications, through analysis of their own data, or through analysis of other existing data sources. To augment their analysis, or when quantitative data is not readily available, recipients may also consider qualitative research and sources like resident interviews or

³⁶ Title I eligible schools means schools eligible to receive services under section 1113 of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6313), including schools served under section 1113(b)(1)(C) of that Act.

feedback from relevant state and local agencies, such as public health departments or social services departments. In both cases, recipients should consider the quality of the research, data, and applicability of analysis to their determination.

In designing a program or service that responds to a disproportionately impacted class, a recipient must first identify the impact and then identify an appropriate response. To assess disproportionate impact, recipients should rely on data or research that measures the public health or negative economic impact. An assessment of the effects of a response (e.g., survey data on levels of resident support for various potential responses) is not a substitute for an assessment of the impact experienced by a particular class. Data about the appropriateness or desirability of a response may be used to assess the reasonableness of a response, once an impact or disproportionate impact has been identified but should not be the basis for assessing impact.

2. Public Health

Background

On January 21, 2020, the Centers for Disease Control and Prevention (CDC) identified the first case of novel coronavirus in the United States.³⁷ Since that time, and through present day, the United States has faced numerous waves of the virus that have brought acute strain on health care and public health systems. At various points in the pandemic, hospitals and emergency medical services have seen significant influxes of patients; response personnel have faced shortages of personal protective equipment; testing for the virus has been scarce; and congregate living facilities like nursing homes have seen rapid spread.

Since the initial wave of the COVID-19 pandemic, the United States has faced several additional major waves that continued to impact communities and stretch public health services. The summer 2020 wave impacted communities in the south and southwest. As the weather turned colder and people spent more time indoors, a wave throughout fall and winter 2020 impacted communities in almost every region of the country as the virus reached a point of uncontrolled spread and over 3,000 people died per day due to COVID-19.³⁸

³⁷ Press Release, Centers for Disease Control and Prevention, First Travel-related Case of 2019 Novel Coronavirus Detected in United States (Jan. 21, 2020), <https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>.

³⁸ Centers for Disease Control and Prevention, COVID Data Tracker: Trends in Number of COVID-

In December 2020, the Food and Drug Administration (FDA) authorized COVID-19 vaccines for emergency use, and soon thereafter, mass vaccination in the United States began. At the time of the interim final rule publication in May 2021, the number of daily new infections was steeply declining as rapid vaccination campaigns progressed across the country. By summer 2021, COVID-19 cases had fallen to their lowest level since early months of the pandemic, when testing was scarce. However, throughout late summer and early fall, the Delta variant, a more infectious and transmissible variant of the SARS-CoV-2 virus, sparked yet another surge. From June to early September, the seven-day moving average of reported cases rose from 12,000 to 165,000.³⁹

As of December 2021, COVID-19 in total has infected over 50 million and killed over 800,000 Americans.⁴⁰ Preventing and mitigating the spread of COVID-19 continues to require a major public health response from federal, state, local, and Tribal governments.

First, state, local, and Tribal governments across the country have mobilized to support the national vaccination campaign. As of December 2021, more than 80 percent of adults have received at least one dose, with more than 470 million total doses administered.⁴¹ Additionally, more than 15 million children over the age of 12 have received at least one dose of the vaccine and over 47 million people have received a booster dose.⁴² Vaccines for younger children, ages 5 through 11, have been approved and are reaching communities and families across the country. As new variants continue to emerge globally, the national effort to administer vaccinations and other COVID-19 mitigation strategies will be a critical component of the public health response.

In early reporting on uses of SLFRF funds, recipients have indicated that they plan to put funds to immediate use to support continued vaccination campaigns. For example, one recipient has indicated that it plans to use SLFRF

19 Cases and Deaths in the US Reported to CDC, by State/Territory, https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases (last visited December 7, 2021).

³⁹ *Id.*

⁴⁰ Centers for Disease Control and Prevention, COVID Data Tracker, <http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited December 31, 2021).

⁴¹ Centers for Disease Control and Prevention, COVID Data Tracker: COVID-19 Vaccinations in the United States, <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last visited December 7, 2021).

⁴² *Id.*

funds to support a vaccine incentive program, providing \$100 gift cards to residents at community vaccination clinics. The program aimed to target communities with high public health needs.⁴³ Another recipient reported that it is partnering with multiple agencies, organizations, and providers to distribute COVID-19 vaccinations to homebound residents in assisted living facilities.⁴⁴

State, local, and Tribal governments have also continued to execute other aspects of a wide-ranging public health response, including increasing access to COVID-19 testing and rapid at-home tests, contact tracing, support for individuals in isolation or quarantine, enforcement of public health orders, new public communication efforts, public health surveillance (e.g., monitoring case trends and genomic sequencing for variants), enhancement to health care capacity through alternative care facilities, and enhancement of public health data systems to meet new demands or scaling needs.

State, local, and Tribal governments have also supported major efforts to prevent COVID-19 spread through safety measures at key settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and in other public facilities. This has included, for example, implementing infection prevention measures or making ventilation improvements.

In particular, state, local, and Tribal governments have mounted significant efforts to safely reopen schools. A key factor in school reopening is the ability to implement COVID-19 mitigation strategies such as providing masks and other hygiene resources, improving air-quality and ventilation, increasing outdoor learning and eating spaces, testing and contact tracing protocols, and a number of other measures.⁴⁵ For example, one recipient described plans to use SLFRF funds to further invest in school health resources that were critical components of school reopening and reducing the spread of COVID-19 in schools. Those investments include the increasing school nurses and social

⁴³ Columbus, Ohio Recovery Plan, <https://www.columbus.gov/recovery/>.

⁴⁴ Luzerne County, Pennsylvania Recovery Plan, <https://www.luzernecounty.org/DocumentCenter/View/26304/Final-Interim-Recovery-Plan-Performance-Report-83121>.

⁴⁵ This includes implementing mitigation strategies consistent with the Centers for Disease Control and Prevention's (CDC) Guidance for COVID-19 Prevention in K-12 Schools (November 5, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>.

workers, improved ventilation systems, and other health and safety measures.

The need for public health measures to respond to COVID-19 will continue moving forward. This includes the continuation of vaccination campaigns for the general public, booster doses, and children. This also includes monitoring the spread of COVID-19 variants, understanding the impact of these variants, developing approaches to respond, and monitoring global COVID-19 trends. Finally, the long-term health impacts of COVID-19 will continue to require a public health response, including medical services for individuals with “long COVID,” and research to understand how COVID-19 impacts future health needs and raises risks for the tens of millions of Americans who have been infected.

The COVID-19 pandemic also negatively impacted other areas of public health, particularly mental health and substance use. In January 2021, over 40 percent of American adults reported symptoms of depression or anxiety, up from 11 percent in the first half of 2019.⁴⁶ The mental health impacts of the pandemic have been particularly acute for adults ages 18 to 24, racial and ethnic minorities, caregivers for adults, and essential workers, with all reporting significantly higher rates of considering suicide.⁴⁷ The proportion of children’s emergency department visits related to mental health has also risen noticeably.⁴⁸ Similarly, rates of substance use and overdose deaths have spiked: Preliminary data from the CDC show a nearly 30 percent increase in drug overdose mortality from April 2020 to April 2021, bringing the estimated overdose death toll for a 12-month period over 100,000 for the first time ever.⁴⁹ The CDC also found that 13 percent of adults started or increased

substance use to cope with stress related to COVID-19 and 26 percent reported having symptoms of trauma- and stressor-related disorder (TRSD) related to the pandemic.⁵⁰

Another public health challenge exacerbated by the pandemic was violent crime and gun violence, which increased during the pandemic and has disproportionately impacted low-income communities.⁵¹ According to the Federal Bureau of Investigation (FBI), although the property crime rate fell 8 percent in 2020, the violent crime rate increased 6 percent in 2020 compared to 2019 data.⁵² In particular, the estimated number of aggravated assault offenses rose 12 percent, while murder and manslaughter increased 30 percent from 2019 to 2020.⁵³ The proportion of homicides committed with firearms rose from 73 percent in 2019 to 76 percent in 2020.⁵⁴ Exposure to violence can create serious short-term and long-term harmful effects to health and development, and repeated exposure to violence may be connected to negative health outcomes.⁵⁵ Addressing community violence as a public health issue may help prevent and even reduce additional harm to individuals, households, and communities.⁵⁶

Many communities are using SLFRF funds to invest in holistic approaches in violence prevention that are rooted in targeted outreach and addressing root causes. For example, the City of St. Louis is planning to invest in expanding a “community responder” model designed to provide clinical help and to divert non-violent calls away from the police department. Additionally, the city will expand access to mental health services, allowing residents to seek support at city recreation centers,

libraries, and other public spaces.⁵⁷ Similarly, Los Angeles County will further invest in its “Care First, Jails Last” program which seeks to replace “arrest and incarceration” responses with health interventions.⁵⁸

While the pandemic affected communities across the country, it disproportionately impacted some demographic groups and exacerbated health inequities along racial, ethnic, and socioeconomic lines.⁵⁹ The CDC has found that racial and ethnic minorities are at increased risk for infection, hospitalization, and death from COVID-19, with Hispanic or Latino and Native American or Alaska Native patients at highest risk.⁶⁰

Similarly, low-income and socially vulnerable communities have seen the most severe health impacts. For example, counties with high poverty rates also have the highest rates of infections and deaths, with 308 deaths per 100,000 compared to the U.S. average of 238 deaths per 100,000, as of December 2021.⁶¹ Counties with high social vulnerability, as measured by factors such as poverty and educational attainment, have also fared more poorly than the national average, with 325 deaths per 100,000 as of December 2021.⁶² Over the course of the

⁵⁷ St. Louis, MO Recovery Plan, <https://www.stlouis-mo.gov/government/recovery/covid-19/arpa/plan/>.

⁵⁸ Los Angeles County, CA Recovery Plan, <http://file.lacounty.gov/SDSInter/bos/supdocs/160391.pdf>.

⁵⁹ Office of the White House, National Strategy for the COVID-19 Response and Pandemic Preparedness (Jan. 21, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf>.

⁶⁰ In a study of 13 states from October to December 2020, the CDC found that Hispanic or Latino and Native American or Alaska Native individuals were 1.7 times more likely to visit an emergency room for COVID-19 than White individuals, and Black individuals were 1.4 times more likely to do so than White individuals. See Sebastian D. Romano et al., Trends in Racial and Ethnic Disparities in COVID-19 Hospitalizations, by Region—United States, March–December 2020, *MMWR Morb Mortal Wkly Rep* 2021, 70:560–565 (Apr. 16, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7015e2.htm?s_cid=mm7015e2_w.

⁶¹ Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID-19 Cases and Deaths in the United States, by County-level Population Factors, https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths (last visited December 7, 2021).

⁶² The CDC’s Social Vulnerability Index includes fifteen variables measuring social vulnerability, including unemployment, poverty, education levels, single-parent households, disability status, non-English speaking households, crowded housing, and transportation access.

Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID-19 Cases and Deaths in the United States, by Social

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⁴⁶ Nirmita Panchal et al., The Implications of COVID-19 for Mental Health and Substance Abuse (Feb. 10, 2021), [https://www.kff.org/coronavirus/covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/#:~:text=Older%20adults%20are%20also%20more,prior%20to%20the%20current%20crisis;Mark%20Czeisler%20et%20al.,Mental%20Health%20Abuse,and%20Suicidal%20Ideation%20During%20COVID-19%20Pandemic—United%20States,June%2024–30%2020,Morb.Mortal.Wkly.Rep.69\(32\):1049–57\(Aug.14,2020\),https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm](https://www.kff.org/coronavirus/covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/#:~:text=Older%20adults%20are%20also%20more,prior%20to%20the%20current%20crisis;Mark%20Czeisler%20et%20al.,Mental%20Health%20Abuse,and%20Suicidal%20Ideation%20During%20COVID-19%20Pandemic—United%20States,June%2024–30%2020,Morb.Mortal.Wkly.Rep.69(32):1049–57(Aug.14,2020),https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm).

⁴⁷ *Id.*

⁴⁸ Rebecca T. Leeb et al., Mental Health-Related Emergency Department Visits Among Children Aged <18 Years During the COVID Pandemic—United States, January 1–October 17, 2020, *Morb. Mortal. Wkly. Rep.* 69(45):1675–80 (Nov. 13, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm>.

⁴⁹ Centers for Disease Prevention and Control, National Center for Health Statistics, Provisional Drug Overdose Death Counts, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm> (last visited May 8 December 6, 2021).

⁵⁰ Panchal, *supra* note 46; Mark É. Czeisler et al., *supra* note 46.

⁵¹ The White House, FACT SHEET: More Details on the Biden-Harris Administration’s Investments in Community Violence Interventions (April 7, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/07/fact-sheet-more-details-on-the-biden-harris-administrations-investments-in-community-violence-interventions/>.

⁵² Federal Bureau of Investigation, FBI Releases 2020 Crime Statistics (September 27, 2021), <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2020-crime-statistics>.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ The Educational Fund to Stop Gun Violence, Community Gun Violence, <https://efsgv.org/learn/type-of-gun-violence/community-gun-violence/> (last visited November 9, 2021).

⁵⁶ Giffords Law Center, Healing Communities in Crisis: Lifesaving Solutions to the Urban Gun Violence Epidemic (March 2016), <https://giffords.org/wp-content/uploads/2019/01/Healing-Communities-in-Crisis.pdf>.

pandemic, Native Americans have experienced more than one and a half times the rate of COVID-19 infections, more than triple the rate of hospitalizations, and more than double the death rate compared to White Americans.⁶³ Low-income and minority communities also exhibit higher rates of pre-existing conditions that may contribute to an increased risk of COVID-19 mortality.⁶⁴ In addition, individuals living in low-income communities may have had more limited ability to socially distance or to self-isolate when ill, resulting in faster spread of the virus, and were over-represented among essential workers, who face greater risk of exposure.⁶⁵

Social distancing measures in response to the pandemic may have also exacerbated pre-existing public health challenges. For example, for children living in homes with lead paint, spending substantially more time at home raises the risk of developing elevated blood lead levels, while screenings for elevated blood lead levels declined during the pandemic.⁶⁶ The combination of these underlying social and health vulnerabilities may have contributed to more severe public health outcomes of the pandemic within these communities, resulting in an exacerbation of pre-existing disparities in health outcomes.⁶⁷

Vulnerability Index, https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths (last visited December 7, 2021).

⁶³ Centers for Disease Control and Prevention, Risk for COVID-19 Infection, Hospitalization, and Death By Race/Ethnicity, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html> (last visited December 7, 2021).

⁶⁴ See, e.g., Centers for Disease Control and Prevention, Risk of Severe Illness or Death from COVID-19 (Dec. 10, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-illness.html> (last visited December 7, 2021).

⁶⁵ Milena Almagro et al., Racial Disparities in Frontline Workers and Housing Crowding During COVID-19: Evidence from Geolocation Data (Sept. 22, 2020), NYU Stern School of Business (forthcoming), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3695249; Grace McCormack et al., Economic Vulnerability of Households with Essential Workers, JAMA 324(4):388–90 (2020), available at <https://jamanetwork.com/journals/jama/fullarticle/2767630>.

⁶⁶ See, e.g., Joseph G. Courtney et al., Decreases in Young Children Who Received Blood Lead Level Testing During COVID-19—34 Jurisdictions, January–May 2020, Morb. Mort. Wkly. Rep. 70(5):155–61 (Feb. 5, 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a2.htm>; Emily A. Benfer & Lindsay F. Wiley, Health Justice Strategies to Combat COVID-19: Protecting Vulnerable Communities During a Pandemic, Health Affairs Blog (Mar. 19, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200319.757883/full/>.

⁶⁷ See, e.g., Centers for Disease Control and Prevention, *supra* note 62; Benfer & Wiley, *supra* note 66; Nathaniel M. Lewis et al., Disparities in COVID-19 Incidence, Hospitalizations, and Testing,

Summary of the Interim Final Rule Approach to Public Health

Summary: As discussed above, the interim final rule provided flexibility for recipients to pursue a wide range of eligible uses to “respond to” the COVID-19 public health emergency. Uses of funds to “respond to” the public health emergency address the SARS-CoV-2 virus itself, support efforts to prevent or decrease spread of the virus, and address other impacts of the pandemic on public health. The interim final rule implemented these provisions by identifying a non-exhaustive list of programs or services that may be funded as responding to COVID-19 (“enumerated eligible uses”), along with considerations for evaluating other potential uses of funds not explicitly listed. Enumerated eligible uses are discussed below. For guidance on how to determine whether a particular use is allowable, beyond those enumerated, see section Standards: Identifying a Public Health Impact.

Enumerated eligible uses under this section built and expanded upon permissible expenditures under the Coronavirus Relief Fund; for clarity, the interim final rule expressly listed as eligible uses the uses permissible under the Coronavirus Relief Fund, with minor exceptions.⁶⁸ The interim final rule also recognized that the nature of the COVID-19 public health emergency, and responsive policy measures, programs, and services, had changed over time and is expected to continue evolving.

The interim final rule categorized enumerated eligible uses to respond to the public health emergency into several categories: (1) COVID-19 mitigation and prevention, (2) medical expenses, (3) behavioral health care, (4) public health and safety staff, (5) expenses to improve the design and execution of health and public health programs, and (6) eligible uses to address disparities in public health outcomes. For each category in turn, this section describes public comments received and Treasury’s responses, as well as comments received

by Area-Level Deprivation—Utah, March 3–July 9, 2020, Morb. Mort. Wkly. Rep. 69(38):1369–73 (Sept. 25, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6938a4.htm>.

⁶⁸ Generally, funding uses eligible under CRF as a response to the direct public health impacts of COVID-19 will continue to be eligible under the ARPA, including those not explicitly listed in the final rule, with the following two exceptions: (1) The standard for eligibility of public health and safety payrolls has been updated (see section Public Sector Capacity and Workforce in General Provisions: Other) and (2) expenses related to the issuance of tax-anticipation notes are no longer an eligible funding use (see section Restrictions on Use: Debt Service).

proposing additional enumerated eligible uses.

Reorganizations and Cross-References: In some cases, enumerated eligible uses included in the interim final rule under responding to the public health emergency have been re-categorized in the organization of the final rule to enhance clarity. For discussion of eligible uses for public health and safety staff and to improve the design and execution of public health programs, please see section Public Sector Capacity and Workforce in General Provisions: Other. For discussion of eligible uses to address disparities in public health outcomes, please see section Assistance to Households in Negative Economic Impacts.

Conversely, discussion of eligible assistance to small businesses and nonprofits to respond to public health impacts has been moved from Assistance to Small Businesses and Assistance to Nonprofits in Negative Economic Impacts to this section. This change is consistent with the interim final rule, which provides that appropriate responses to address the public health impacts of COVID-19 may be provided to any type of entity.

a. COVID-19 Mitigation and Prevention

COVID-19 public health response and mitigation tactics. Recognizing the broad range of services and programming needed to contain COVID-19, the interim final rule provided an extensive list of enumerated eligible uses to prevent and mitigate COVID-19 and made clear that the public health response to the virus is expected to continue to evolve over time, necessitating different uses of funds.

Enumerated eligible uses of funds in this category included: Vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (e.g., monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (e.g., nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools; ventilation improvements in congregate settings, health care settings, or other key locations; enhancement of

public health data systems; other public health responses; and capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics. These enumerated uses are consistent with guidance from public health authorities, including the CDC.

Public Comment: Many commenters were supportive of expansive enumerated eligible uses for mitigating and preventing COVID-19, noting the wide range of activities that governments may undertake and the continued changing landscape of pandemic response. Some commenters requested that Treasury engage in ongoing consideration of and consultation on evolving public health needs and resulting eligible expenses. Some commenters noted that their jurisdiction does not have an official public health program, for example smaller jurisdictions or those that do not have a health department, and requested clarification on whether their public health expenses would still be eligible in compliance with program rules.

Treasury Response: In the final rule, Treasury is maintaining an expansive list of enumerated eligible uses to mitigate and prevent COVID-19, given the wide-ranging activities that governments may take to further these goals, including “other public health responses.” Note that the final rule discusses several of these enumerated uses in more detail below.

Treasury is further clarifying that when providing COVID-19 prevention and mitigation services, recipients can identify the impacted population as the general public. Treasury presumes that all enumerated eligible uses for programs and services, including COVID-19 mitigation and prevention programs and services, are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. Note that capital expenditures are not considered “programs and services” and are not presumed to be reasonably proportional responses to an identified harm except as provided in section Capital Expenditures in General Provisions: Other. In other words, recipients can provide any COVID-19 prevention or mitigation service to members of the general public without any further analysis of impacts of the pandemic on those individuals and whether the service is responsive.

This approach gives recipient governments an extensive set of eligible

uses that can adapt to local needs, as well as evolving response needs and developments in understanding of transmission of COVID-19. Treasury emphasizes how the enumerated eligible uses can adapt to changing circumstances. For example, when the interim final rule was released, national daily COVID-19 cases were at relatively low levels and declining;⁶⁹ as the Delta variant spread and cases peaked in many areas of the country, particularly those with low vaccination rates, government response needs and tactics evolved, and the SLFRF funds provided the ability to quickly and nimbly adapt to new public health needs. Treasury also notes that funds may be used to support compliance with and implementation of COVID-19 safety requirements, including vaccination requirements, testing programs, or other required practices.

Recipient governments do not need to have an official health or public health program in order to utilize these eligible uses; any recipient can pursue these eligible uses, though Treasury recommends consulting with health and public health professionals to support effective implementation.

The CDC has provided recommendations and guidelines to help mitigate and prevent COVID-19. The interim final rule and final rule help support recipients in stopping the spread of COVID-19 through these recommendations and guidelines.⁷⁰ The final rule reflects changing circumstances of COVID-19 and provides a broad range of permissible uses for mitigating and preventing the spread of the disease, in a manner consistent with CDC guidelines and recommendations.

The purpose of the SLFRF funds is to mitigate the fiscal effects stemming from the COVID-19 public health emergency, including by supporting efforts to stop the spread of the virus. The interim final rule and final rule implement this objective by, in part, providing that recipients may use SLFRF funds for COVID-19 mitigation and prevention.⁷¹ A program or service that imposes conditions on participation in or acceptance of the service that would undermine efforts to stop the spread of COVID-19 or discourage compliance with recommendations and guidelines

in CDC guidance for stopping the spread of COVID-19 is not a permissible use of funds. In other words, recipients may not use funds for a program that undermines practices included in the CDC’s guidelines and recommendations for stopping the spread of COVID-19. This includes programs that impose a condition to discourage compliance with practices in line with CDC guidance (e.g., paying off fines to businesses incurred for violation of COVID-19 vaccination or safety requirements), as well as programs that require households, businesses, nonprofits, or other entities not to use practices in line with CDC guidance as a condition of receiving funds (e.g., requiring that businesses abstain from requiring mask use or employee vaccination as a condition of receiving SLFRF funds).

Vaccination programs and vaccine incentives. At the time of the interim final rule release, many vaccination programs were using mass vaccination tactics to rapidly reach Americans en masse for first vaccine doses.⁷² Since that time, the FDA has authorized booster vaccine doses for certain groups and certain vaccines and has also authorized vaccines for youths.^{73 74} The inclusion of “vaccination programs” as an eligible use allows for adaptation as the needs of programs change or new groups become eligible for different types of vaccinations.

Public Comment: Since the release of the interim final rule, many recipient governments have also requested clarification on whether vaccine incentives are a permissible use of funds.

Treasury Response: Treasury issued guidance clarifying that “[vaccine] programs that provide incentives reasonably expected to increase the number of people who choose to get vaccinated, or that motivate people to get vaccinated sooner than they otherwise would have, are an allowable

⁶⁹ See Centers for Disease Control and Prevention, COVID Data Tracker, https://covid.cdc.gov/covid-data-tracker/#trends_dailycases (last visited December 7, 2021).

⁷⁰ See Centers for Disease Control and Prevention, COVID-19, <https://www.cdc.gov/coronavirus/2019-ncov/index.html> (last visited November 8, 2021).

⁷¹ See § 35.6(b); Coronavirus State and Local Fiscal Recovery Funds, 86 FR at 26786.

⁷² Centers for Disease Control and Prevention, COVID Data Tracker: COVID-19 Vaccinations in the United States, <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last visited October 18, 2021).

⁷³ U.S. Food and Drug Administration, Coronavirus (COVID-19) Update: FDA Takes Additional Actions on the Use of a Booster Dose for COVID-19 Vaccines, <https://www.fda.gov/news-events/press-announcements/fda-authorizes-pfizer-biontech-covid-19-vaccine-emergency-use-children-5-through-11-years-age> (last visited November 8, 2021).

⁷⁴ U.S. Food and Drug Administration, FDA Authorizes Pfizer-BioNTech COVID-19 Vaccine for Emergency Use in Children 5 through 11 Years of Age, <https://www.fda.gov/news-events/press-announcements/fda-authorizes-pfizer-biontech-covid-19-vaccine-emergency-use-children-5-through-11-years-age> (last visited November 8, 2021).

use of funds so long as such costs are reasonably proportional to the expected public health benefit.”⁷⁵ This use of funds remains permissible under the final rule.

Capital Expenditures

Public Comment: Many commenters requested clarification around the types and scope of permissible capital investments in public facilities to meet pandemic operational needs; ventilation improvements in congregate settings, health care settings, or other key locations; and whether support for prevention and mitigation in congregate facilities could include facilities renovations, improvements, or construction of new facilities, or if the facilities must solely be used for COVID-19 response.

Treasury Response: For clarity, Treasury has addressed the eligibility standard for capital expenditures, or investments in property, facilities, or equipment, in one section of this Supplementary Information; see section Capital Expenditures in General Provisions: Other. In recognition of the importance of capital expenditures in the COVID-19 public health response, Treasury enumerates that the following projects are examples of eligible capital expenditures, as long as they meet the standards for capital expenditures in section Capital Expenditures in General Provisions: Other:

- Improvements or construction of COVID-19 testing sites and laboratories, and acquisition of related equipment;
- Improvements or construction of COVID-19 vaccination sites;
- Improvements or construction of medical facilities generally dedicated to COVID-19 treatment and mitigation (e.g., emergency rooms, intensive care units, telemedicine capabilities for COVID-19 related treatment);
- Expenses of establishing temporary medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs;
- Acquisition of equipment for COVID-19 prevention and treatment, including ventilators, ambulances, and other medical or emergency services equipment;
- Improvements to or construction of emergency operations centers and acquisition of emergency response

equipment (e.g., emergency response radio systems);

- Installation and improvements of ventilation systems;
- Costs of establishing public health data systems, including technology infrastructure;
- Adaptations to congregate living facilities, including skilled nursing facilities, other long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities, as well as public facilities and schools (excluding construction of new facilities for the purpose of mitigating spread of COVID-19 in the facility); and
- Mitigation measures in small businesses, nonprofits, and impacted industries (e.g., developing outdoor spaces).

Other clarifications on COVID-19 mitigation: Medical care, supports for vulnerable populations, data systems, carceral settings. Based on public comments and questions received from recipients following the interim final rule, Treasury is making several further clarifications on enumerated eligible uses in this category.

Public Comment: Several commenters requested clarification on eligible uses of funds for medical care; Treasury addresses those comments in the section Medical Expenses below.

Public Comment: Recipients posed questions on the type and scope of activities eligible as “supports for vulnerable populations to access medical or public health services.”

Treasury Response: Enumerated eligible uses should be considered in the context of the eligible use category or section where they appear; in this case, “supports for vulnerable populations to access medical or public health services” appears in the section COVID-19 Mitigation and Prevention. As such, these eligible uses should help vulnerable or high-risk populations access services that mitigate COVID-19, for example, transportation assistance to reach vaccination sites, mobile vaccination or testing programs, or on-site vaccination or testing services for homebound individuals, those in group homes, or similar settings.

Public Comment: Some commenters asked whether “enhancement of public health data systems” could include investments in software, databases, and other information technology resources that support responses to the COVID-19 public health emergency but also provide benefits for other use cases and long-term capacity of public health departments and systems.

Treasury Response: These are permissible uses of funds under the interim final rule and remain eligible under the final rule.

Assistance to Businesses and Nonprofits To Implement COVID-19 Mitigation Strategies

Background: As detailed above, Treasury received many public comments describing uncertainty about which eligible use category should be used to assess different potential uses of funds. As a result, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity, consistent with the principle that uses of funds should be assessed based on their intended beneficiary. For example, COVID-19 mitigation and prevention serves the general public or specific populations within the public. However, in the interim final rule, assistance to small businesses, nonprofits, and impacted industries to implement COVID-19 mitigation and prevention strategies was categorized in the respective sections within Negative Economic Impacts. The final rule consolidates all COVID-19 mitigation and prevention within Public Health.

Public Comment: Treasury has received multiple comments and questions about which eligible use permits the recipient to provide assistance to businesses and nonprofits to address the public health impacts of COVID-19.

Treasury Response: In the final rule, these services have been re-categorized under COVID-19 mitigation and prevention to reflect the fact that this assistance responds to public health impacts of the pandemic rather than the negative economic impacts to a small business, nonprofit, or impacted industry. When providing COVID-19 mitigation and prevention services, recipients can identify the impacted entity as small businesses, nonprofits, or businesses in impacted industries in general. As with all enumerated eligible uses, recipients may presume that all COVID-19 mitigation and prevention programs and services are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. Note that capital expenditures are not considered “programs and services” and are not presumed to be reasonably proportional responses to an identified harm except as provided in section Capital Expenditures in General Provisions: Other. In other words, recipients can provide any COVID-19 prevention or mitigation service to small businesses, nonprofits, and businesses in impacted

⁷⁵ Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRFAQ.pdf>. Note that programs may provide incentives to individuals who have already received a vaccination if the incentive is reasonably expected to increase the number of people who choose to get vaccinated or motivate people to get vaccinated sooner and the costs are reasonably proportional to the expected public health benefit.

industries without any further analysis of impacts of the pandemic on those entities and whether the service is responsive.

In some cases, this means that an entity not otherwise eligible to receive assistance to respond to negative economic impacts of the pandemic, for example an entity that did not experience a negative economic impact, may still be eligible to receive assistance under this category for COVID-19 mitigation and prevention services.

Uses of funds can include loans, grants, or in-kind assistance to small businesses, nonprofits, or other entities to implement COVID-19 prevention or mitigation tactics, such as vaccination; testing; contact tracing programs; physical plant changes to enable greater use of outdoor spaces or ventilation improvements; enhanced cleaning efforts; and barriers or partitions. For example, this would include assistance to a restaurant to establish an outdoor patio, given evidence showing much lower risk of COVID-19 transmission outdoors.⁷⁶ Uses of funds can also include aid to travel, tourism, hospitality, and other impacted industries to implement COVID-19 mitigation and prevention measures to enable safe reopening, for example, vaccination or testing programs, improvements to ventilation, physical barriers or partitions, signage to facilitate social distancing, provision of masks or personal protective equipment, or consultation with infection prevention professionals to develop safe reopening plans.

Recipients providing assistance to small businesses, nonprofits, or impacted industries that includes capital expenditures (*i.e.*, expenditures on property, facilities, or equipment) should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards for these expenditures. Recipients providing assistances in the form of loans should review the section Treatment of Loans Made with SLFRF Funds in General Provisions: Other.

Recipients should also be aware of the difference between beneficiaries of assistance and subrecipients when working with small businesses, nonprofits, or impacted industries. As noted above, Treasury presumes that the general public, as well as small businesses, nonprofits, and impacted industries in general, has been impacted by the COVID-19 disease itself and is

eligible for services that mitigate or prevent COVID-19 spread. As such, a small business, nonprofit, or impacted industry receiving assistance to implement COVID-19 mitigation measures is a beneficiary of assistance (*e.g.*, granting funds to a small business to develop an outdoor patio to reduce transmission). In contrast, if a recipient contracts with, or grants funds to, a small business, nonprofit, or impacted industry to carry out an eligible use for COVID-19 mitigation on behalf of the recipient, the entity is a subrecipient (*e.g.*, contracting with a small business to operate COVID-19 vaccination sites). For further information on distinguishing between beneficiaries and subrecipients, as well as the impacts of the distinction on reporting and other requirements, see section Distinguishing Subrecipients versus Beneficiaries.

b. Medical Expenses

Background: The interim final rule also included as an enumerated eligible use medical expenses, including medical care and services to address the near-term and potential longer-term impacts of the disease on individuals infected.

Public Comment: Some commenters sought clarification on the types of medical expenses eligible and for whom, including whether funds could be used under this category for expanding health insurance coverage (*e.g.*, subsidies for premiums, expanding a group health plan), improvements to healthcare facilities or establishment of new medical facilities, direct costs of medical services, and costs to a self-funded health insurance plan (*e.g.*, a county government health plan) for COVID-19 medical care.

Treasury Response: In the final rule, Treasury is maintaining this enumerated eligible use category and clarifying that it covers costs related to medical care provided directly to an individual due to COVID-19 infection (*e.g.*, treatment) or a potential infection (*e.g.*, testing). This can include medical costs to uninsured individuals; deductibles, co-pays, or other costs not covered by insurance; costs for uncompensated care at a health provider; emergency medical response costs; and, for recipients with a self-funded health insurance plan, excess health insurance costs due to COVID-19 medical care. These are medical expenses due to COVID-19 and distinguish this category of eligible uses from other related eligible uses, like COVID-19 mitigation and prevention and health insurance expenses to households, to provide greater clarity for recipients in determining which

category of eligible uses they should review to assess a potential use of funds. For discussion of eligibility for programs to expand health insurance coverage, see section Assistance to Households.

c. Behavioral Health Care

Background: Recognizing that the public health emergency, necessary mitigation measures like social distancing, and the economic downturn have exacerbated mental health and substance use challenges for many Americans, the interim final rule included an enumerated eligible use for mental health treatment, substance use treatment, and other behavioral health services, including a non-exhaustive list of specific services that would be eligible under this category.

Public Comment: Many commenters expressed support for the interim final rule's recognition of behavioral health impacts of the pandemic and eligible uses under this category. Several commenters requested clarification on the types of eligible services under this category, specifically whether both acute and chronic care are included as well as services that often do not directly accept insurance payments, like peer support groups. Some commenters highlighted the importance of cultural competence in providing effective behavioral health services. Some commenters suggested that funding should be available broadly and quickly for this purpose, recommending that funding available for behavioral health not be tied to the amount of revenue loss experienced by the recipient.

Treasury Response: In the final rule, Treasury is maintaining this enumerated eligible use category and clarifying that it covers an expansive array of services for prevention, treatment, recovery, and harm reduction for mental health, substance use, and other behavioral health challenges caused or exacerbated by the public health emergency. The specific services listed in the interim final rule also remain eligible.⁷⁷

Treasury is further clarifying that when providing behavioral health services, recipients can identify the impacted population as the general public and, as with all enumerated eligible uses, presume that all programs and services are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. In contrast, capital expenditures are not

⁷⁶ See Centers for Disease Control and Prevention, Participate in Outdoor and Indoor Activities, <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/outdoor-activities.html> (last visited November 8, 2021).

⁷⁷ Hotlines or warmlines, crisis intervention, overdose prevention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.

considered “programs and services” and are not presumed to be reasonably proportional responses to an identified harm except as provided in section Capital Expenditures in General Provisions: Other.

In other words, recipients can provide behavioral health services to members of the general public without any further analysis of impacts of the pandemic on those individuals and whether the service is responsive. Recipients may also use this eligible use category to respond to increased rates of behavioral health challenges at a population level or, at an individual level, new behavioral health challenges or exacerbation of pre-existing challenges, including new barriers to accessing treatment.

Services that respond to these impacts of the public health emergency may include services across the continuum of care, including both acute and chronic care, such as prevention, outpatient treatment, inpatient treatment, crisis care, diversion programs (e.g., from emergency departments or criminal justice system involvement), outreach to individuals not yet engaged in treatment, harm reduction, and supports for long-term recovery (e.g., peer support or recovery coaching, housing, transportation, employment services).

Recipients may also provide services for special populations, for example, enhanced services in schools to address increased rates of behavioral health challenges for youths, mental health first responder or law enforcement-mental health co-responder programs to divert individuals experiencing mental illness from the criminal justice system, or services for pregnant women with substance use disorders or infants born with neonatal abstinence syndrome. Finally, recipients may use funds for programs or services to support equitable access to services and reduce racial, ethnic, or socioeconomic disparities in access to high-quality treatment.

Eligible uses of funds may include services typically billable to insurance⁷⁸ or services not typically billable to insurance, such as peer support groups, costs for residence in supportive housing or recovery housing, and the 988 National Suicide Prevention Lifeline or other hotline services. Recipients may also use funds in conjunction with other federal grants or programs (see section Program Administration Provisions), though

eligible services under SLFRF are not limited to those eligible under existing federal programs.

Given the public health emergency’s exacerbation of the ongoing opioid and overdose crisis, Treasury highlights several ways that funds may be used to respond to opioid use disorder and prevent overdose mortality.⁷⁹ Specifically, eligible uses of funds include programs to expand access to evidence-based treatment like medications to treat opioid use disorder (e.g., direct costs or incentives for emergency departments, prisons, jails, and outpatient providers to offer medications and low-barrier treatment), naloxone distribution, syringe service programs, outreach to individuals in active use, post-overdose follow up programs, programs for diversion from the criminal justice system, and contingency management interventions.

Finally, for clarity, Treasury has addressed the eligibility standard for capital expenditures, or investments in property, facilities, or equipment, in one section of this Supplementary Information; see section Capital Expenditures in General Provisions: Other. Examples of capital expenditures related to behavioral health that Treasury recognizes as eligible include behavioral health facilities and equipment (e.g., inpatient or outpatient mental health or substance use treatment facilities, crisis centers, diversion centers), as long as they adhere to the standards detailed in the Capital Expenditures section.

d. Preventing and Responding to Violence

Background: The interim final rule highlighted that some types of violence had increased during the pandemic and that the ability of victims to access services had decreased, noting as an example the challenges that individuals affected by domestic violence face in accessing services. Accordingly, the interim final rule enumerated as an eligible use, in disproportionately impacted communities, evidence-based community violence intervention programs. Following the release of the interim final rule, Treasury received several recipient questions regarding whether and how funds may be used to respond to an increase in crime,

violence, or gun violence in some communities during the pandemic. Treasury released further guidance identifying how enumerated eligible uses and eligible use categories under the interim final rule could support violence reduction efforts, including rehiring public sector staff, behavioral health services, and services to address negative economic impacts of the pandemic that may aid victims of crime. The guidance also identified an expanded set of enumerated eligible uses to address increased gun violence.

Public Comment: Several commenters expressed support for this use of funds.

Treasury Response: In the final rule, Treasury is maintaining enumerated eligible uses in this area and clarifying how to apply eligibility standards. Throughout the final rule, enumerated eligible uses should respond to an identified impact of the COVID-19 public health emergency in a reasonably proportional manner to the extent and type of harm experienced. Many of the enumerated eligible uses—like behavioral health services, services to improve employment opportunities, and services to address educational disparities in disproportionately impacted communities—that respond to the public health and negative economic impacts of the pandemic may also have benefits for reducing crime or aiding victims of crime. For example, the pandemic exacerbated the impact of domestic violence, sexual assault, and human trafficking; enumerated eligible uses like emergency housing assistance, cash assistance, or assistance with food, childcare, and other needs could be used to support survivors of domestic violence, sexual assault, or human trafficking who experienced public health or economic impacts due to the pandemic.

Public Comment: Several commenters expressed support for community violence intervention programs or argued that traditional public safety approaches had negatively impacted the social determinants of health in their communities. Several commenters recommended inclusion of approaches like mental health or substance use diversion programs.

Treasury Response: Treasury recognizes the importance of comprehensive approaches to challenges like violence. The final rule includes an enumerated eligible use for community violence intervention programs in all communities, not just the disproportionately impacted communities eligible under the interim final rule. Given the increased rate of violence during the pandemic, Treasury has determined that this enumerated

⁷⁸ However, SLFRF funds may not be used to reimburse a service that was also billed to insurance.

⁷⁹ In line with the Department of Health and Human Services, Overdose Prevention Strategy, <https://www.hhs.gov/overdose-prevention/>, and the Office of National Drug Control Policy, Administration’s Statement on Drug Policy Priorities for Year One (April 1, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/03/BidenHarris-Statement-of-Drug-Policy-Priorities-April-1.pdf>.

eligible use is responsive to the impacts of the pandemic in all communities. The final rule incorporates guidance issued after the interim final rule on specifically types of services eligible, including:

- Evidence-based practices like focused deterrence, street outreach, violence interrupters, and hospital-based violence intervention models, complete with wraparound services such as behavioral therapy, trauma recovery, job training, education, housing and relocation services, and financial assistance; and
- Capacity-building efforts at community violence intervention programs like funding more intervention workers, increasing their pay, providing training and professional development for intervention workers, and hiring and training workers to administer the programs.

Public Comment: Some commenters sought further clarification on whether some of the enumerated eligible uses are considered responsive to all crime, violent crime, or gun violence.

Treasury Response: Enumerated eligible uses that respond to an increase in gun violence may be pursued in communities experiencing an increase in gun violence associated with the pandemic, specifically: (1) Hiring law enforcement officials—even above pre-pandemic levels—or paying overtime where the funds are directly focused on advancing community policing strategies for gun violence, (2) additional enforcement efforts to reduce gun violence exacerbated by the pandemic, including prosecuting gun traffickers, dealers, and other parties contributing to the supply of crime guns, as well as collaborative federal, state, and local efforts to identify and address gun trafficking channels, and (3) investing in technology and equipment to allow law enforcement to more efficiently and effectively respond to the rise in gun violence resulting from the pandemic, for example technology to assist in the identification of guns whose serial numbers have been damaged.

3. Negative Economic Impacts

a. Assistance to Households Background

While the U.S. economy is now on the path to a strong recovery, the public health emergency, including the necessary measures taken to protect public health, resulted in significant economic and financial hardship for many Americans. As businesses closed, consumers stayed home, schools shifted to remote education, and travel declined

precipitously, over 22 million jobs were lost in March and April 2020.⁸⁰ One year later, in April 2021, the economy still remained over 8 million jobs below its pre-pandemic peak,⁸¹ and the unemployment rate hovered around 6 percent.⁸²

In the months since Treasury issued the interim final rule in May 2021, the economy has made large strides in its recovery. The economy gained over 4 million jobs in the seven months from May to November 2021;⁸³ the unemployment rate fell more than 1.5 percentage points to 4.2 percent, which is the lowest rate since February 2020;⁸⁴ and the size of the nation's economy surpassed the pre-pandemic peak in the second quarter of 2021.⁸⁵

While the economy has made immense progress in its recovery since May 2021, the economy has also faced setbacks that illustrate the continued risks to the recovery. As the Delta variant spread across the country this summer and fall, the United States faced another severe wave of cases, deaths, and strain on the healthcare system, which contributed to a slowdown in the pace of recovery in the third quarter.⁸⁶ Supply chain disruptions have also demonstrated the difficulties of restarting a global economy.⁸⁷ Moreover, although many Americans have returned to work as of November 2021, the economy remains 3.9 million jobs below its pre-pandemic peak,⁸⁸ and 2.4 million workers have dropped out of the labor market altogether relative to February 2020.⁸⁹ Thus, despite much

progress, there is a continued need to respond to the pandemic's economic effects to ensure a full, broad-based, and equitable recovery.

Indeed, the pandemic's economic impacts continue to affect some demographic groups more than others. Rates of unemployment remain particularly severe among workers of color and workers with lower levels of educational attainment; for example, the overall unemployment rate in the United States was 4.2 percent in November 2021, but certain groups saw much higher rates: 6.7 percent for Black workers, 5.2 percent for Hispanic or Latino workers, and 5.7 percent for workers without a high school diploma.⁹⁰ Job losses have also been particularly steep among low-wage workers, with these workers remaining furthest from recovery as of the end of 2020.⁹¹ A severe recession, and its concentrated impact among low-income workers, has amplified food and housing insecurity, with an estimated nearly 20 million adults living in households where there is sometimes or often not enough food to eat and an estimated 12 million adults living in households that were not current on rent.⁹²

While economic effects have been seen across many communities, there are additional disparities by race and income. For example, approximately

Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CLF16OV> (last visited December 7, 2021).

⁸⁰ U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian population by sex and age (December 6, 2021), <https://www.bls.gov/news.release/empsit.t01.htm> (last visited December 7, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population by race, Hispanic or Latino ethnicity, sex, and age (December 6, 2021), <https://www.bls.gov/web/empsit/cpseee04.htm> (last visited December 7, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population 25 years and over by educational attainment (December 6, 2021), <https://www.bls.gov/web/empsit/cpseee05.htm> (last visited December 7, 2021).

⁹¹ Elise Gould & Jori Kandra, Wages grew in 2020 because the bottom fell out of the low-wage labor market, Economic Policy Institute (Feb. 24, 2021), <https://files.epi.org/pdf/219418.pdf>. See also, Michael Dalton et al., The K-Shaped Recovery: Examining the Diverging Fortunes of Workers in the Recovery from the COVID-19 Pandemic using Business and Household Survey Microdata, U.S. Bureau of Labor Statistics Working Paper Series (July 2021), <https://www.bls.gov/osmr/research-papers/2021/pdf/ec210020.pdf>.

⁹² Center on Budget and Policy Priorities, Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economys-effects-on-food-housing-and> (last visited December 17, 2021).

⁸⁰ U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/PAYEMS> (last visited December 7, 2021).

⁸¹ *Id.*

⁸² U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/UNRATE> (last visited December 7, 2021).

⁸³ U.S. Bureau of Labor Statistics, *supra* note 80.

⁸⁴ U.S. Bureau of Labor Statistics, *supra* note 82.

⁸⁵ U.S. Bureau of Economic Analysis, Real Gross Domestic Product [GDP1], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/GDP1> (last visited December 7, 2021).

⁸⁶ U.S. Department of the Treasury, Economy Statement by Catherine Wolfram, Acting Assistant Secretary for Economy Policy, for the Treasury Borrowing Advisory Committee (November 1, 2021), available at <https://home.treasury.gov/news/press-releases/jy0453>.

⁸⁷ Yuka Hayashi, IMF Cuts Global Growth Forecast Amid Supply-Chain Disruptions, Pandemic Pressures, Wall Street Journal (October 12, 2021), available at <https://www.wsj.com/articles/imf-cuts-global-growth-forecast-amid-supply-chain-disruptions-warns-of-inflation-risks-11634043601>.

⁸⁸ U.S. Bureau of Labor Statistics, *supra* note 80.

⁸⁹ U.S. Bureau of Labor Statistics, Civilian Labor Force Level [CLF16OV], retrieved from FRED,

half of low-income, Black, and Hispanic parents reported difficulty covering costs related to food, housing, utility, or medical care.⁹³ Over the course of the pandemic, inequities also manifested along gender lines, as schools closed to in-person activities, leaving many working families without childcare during the day.⁹⁴ Women of color have been hit especially hard: The labor force participation rate for Black women has fallen by 3.6 percentage points⁹⁵ during the pandemic as compared to 1.3 percentage points for Black men⁹⁶ and 1.7 percentage points for White women.⁹⁷

As the economy recovers, the effects of the pandemic-related recession may continue to impact households, including a risk of longer-term effects on earnings and economic potential. For example, unemployed workers, especially those who have experienced longer periods of unemployment, earn lower wages over the long term once rehired.⁹⁸ In addition to the labor market consequences for unemployed workers, recessions can also cause longer-term economic challenges

through, among other factors, damaged consumer credit scores⁹⁹ and reduced familial and childhood wellbeing.¹⁰⁰ These potential long-term economic consequences underscore the continued need for robust policy support.

Low- and moderate-income households, those with income levels at or below 300 percent of the federal poverty level (FPL), face particular hardships and challenges. These households report much higher rates of food insecurity and housing hardships than households with higher incomes. For example, households with incomes at or below 300 percent FPL are several times more likely to have reported struggling with food insecurity compared to households with income above 300 percent FPL.¹⁰¹ Similarly, low- and moderate-income households reported being housing insecure¹⁰² at rates more than twice as high as higher-income households, and low- and moderate-income households reported housing quality hardship¹⁰³ at rates statistically significantly greater than the rate for higher-income households.¹⁰⁴ The economic crisis caused by the pandemic worsened economic outcomes for workers in many low- and moderate-income households. Industries that employed low-wage workers experienced a disproportionate level of job loss. For example, from February 2020 to February 2021, the hospitality and leisure industry lost nearly 3.5 million jobs.¹⁰⁵ While the

entire industry was impacted, 72 percent of the job losses occurred in the lowest wage service occupations compared to only a 6 percent rate of job loss in the highest wage management and finance jobs.¹⁰⁶ Similar trends exist in other heavily impacted industries. In public education, the lowest wage occupations, service and transportation jobs, saw a job loss rate of 20 and 26 percent, respectively.¹⁰⁷ During that same time period, the highest wage occupations in public education, management, actually saw jobs increase by 7 percent.¹⁰⁸

While many households suffered negative economic outcomes as a result of the COVID-19 pandemic and economic recession, households with low incomes were impacted in disproportionate and exceptional ways. From January 2020 to March 2021, low-wage workers experienced job loss at a rate five times higher than middle-wage workers, and high-wage workers actually experienced an increase in job opportunities.¹⁰⁹ Because workers in low-income households were more likely to lose their job or experience reductions in pay, those same households were also more likely to experience economic hardships like trouble paying utility bills, affording rent or mortgage payments, purchasing food, and paying for medical expenses.¹¹⁰ The disproportionate negative impacts the pandemic has had on low-income families extend beyond financial insecurity. For example, low-income families have reported higher levels of social isolation, stress, and other negative mental health outcomes during the pandemic. While over half of all U.S. adults report that their mental health was negatively affected by the pandemic, adults with low incomes reported major negative mental health impacts at a rate nearly twice that of adults with high incomes.¹¹¹

⁹³ Michael Karpman, Dulce Gonzalez, Genevieve M. Kenney, Parents Are Struggling to Provide for Their Families during the Pandemic, Urban Institute (May 2020), https://www.urban.org/research/publication/parents-are-struggling-provide-their-families-during-pandemic?utm_source=urban_researcher&utm_medium=email&utm_campaign=covid_parents&utm_term=hhp.

⁹⁴ Women have carried a larger share of childcare responsibilities than men during the COVID-19 crisis. See, e.g., Gema Zamarró & María J. Prados, Gender differences in couples' division of childcare, work and mental health during COVID-19, *Rev. Econ. Household* 19:11–40 (2021), available at <https://link.springer.com/article/10.1007/s11150-020-09534-7>; Titan Alon et al., The Impact of COVID-19 on Gender Equality, National Bureau of Economic Research Working Paper 26947 (April 2020), available at <https://www.nber.org/papers/w26947>.

⁹⁵ U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Women [LNS11300032], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300032> (last visited December 7, 2021).

⁹⁶ U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Men [LNS11300031], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300031> (last visited December 7, 2021).

⁹⁷ U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, White Women [LNS11300029], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300029> (last visited December 7, 2021).

⁹⁸ See, e.g., Michael Greenstone & Adam Looney, Unemployment and Earnings Losses: A Look at Long-Term Impacts of the Great Recession on American Workers, Brookings Institution (Nov. 4, 2011), <https://www.brookings.edu/blog/jobs/2011/11/04/unemployment-and-earnings-losses-a-look-at-long-term-impacts-of-the-great-recession-on-american-workers/>.

⁹⁹ Chi Chi Wu, Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession, National Consumer Law Center (Dec. 2013), https://www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.

¹⁰⁰ Irwin Garfinkel, Sara McLanahan, Christopher Wimer, eds., *Children of the Great Recession*, Russell Sage Foundation (Aug. 2016), available at <https://www.russellsage.org/publications/children-great-recession>.

¹⁰¹ Kyle J. Casewell and Stephen Zuckerman, Food Insecurity, Housing Hardship, and Medical Care Utilization, Urban Institute (June 2018), available at https://www.urban.org/sites/default/files/publication/98701/2001896_foodinsecurity_housinghardship_medicalcareutilization_finalized.pdf.

¹⁰² Housing insecurity is defined as not paying the full amount of rent or mortgage and/or utility bills (gas, oil, or electricity) sometime in the previous 12 months.

¹⁰³ Housing quality hardship is defined as an affirmative response to one or more questions related to problems with a respondent's physical dwelling: Pests and/or insects; leaking roof or ceiling; windows that are broken or cannot shut; exposed electrical wires; broken plumbing (toilet, hot water, other); holes in walls, ceiling, or floor; no appliances (refrigerator or stove); and no phone (of any kind).

¹⁰⁴ *Id.*

¹⁰⁵ Elise Gould and Melat Kassa, Low-wage, low-hours workers were hit hardest in the COVID-19 recession: The State of Working America 2020 employment report, Economic Policy Institute (May

2021), available at <https://www.epi.org/publication/swa-2020-employment-report/>.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ R. Chetty, J. Friedman, N. Hendren, M. Stepner, & Team, T. O. I., The Economic Impacts of COVID-19: Evidence from a New Public Database Built Using Private Sector Data (No. w27431; p. w27431) (2020), National Bureau of Economic Research, <https://doi.org/10.3386/w27431>.

¹¹⁰ M. Despard, Michal Grinstein-Weiss, Yung Chun, and Stephen Roll, COVID-19 job and income loss leading to more hunger and financial hardship, Brookings Institute (July 13, 2020), <https://www.brookings.edu/blog/upfront/2020/07/13/covid-19-job-and-income-loss-leading-to-more-hunger-and-financial-hardship/>.

¹¹¹ N. Panchal, R. Kamal, C. Muñana, & P. Chidambaram, The Implications of COVID-19 for Mental Health and Substance Use, Kaiser Family Foundation (February 10, 2021), <https://www.kff.org/coronavirus/covid-19-implications-for-mental-health-and-substance-use/>.

Summary of Interim Final Rule and Final Rule Structure

Summary: The interim final rule provided a non-exhaustive list of enumerated eligible uses to respond to the negative economic impacts of the pandemic through assistance to households, as well as a standard for assessing whether uses of funds beyond those enumerated are eligible.

The interim final rule described enumerated eligible uses for assistance to households in several categories: (1) Assistance to unemployed workers, (2) state Unemployment Insurance Trust Funds, (3) assistance to households, and (4) expenses to improve the efficacy of economic relief. Note that the interim final rule posed several questions to the public on enumerated eligible uses for assistance to households; comments on these questions are addressed in the relevant subject matter section below.

In addition, in recognition that pre-existing health, economic, and social disparities contributed to disproportionate pandemic impacts in certain communities, the interim final rule also provided a broader list of enumerated eligible uses to respond to the pandemic in disproportionately impacted communities, specifically: (1) Building stronger communities through investments in housing and neighborhoods, (2) addressing educational disparities, and (3) promoting healthy childhood environments. In the interim final rule, under the Public Health section, recipients could also provide services to address health disparities and increase access to health and social services; these eligible uses have been re-organized into the Assistance to Households section to consolidate responses in disproportionately impacted communities and enhance clarity.

This section addresses enumerated eligible uses in the final rule to respond to negative economic impacts to households. As a reminder, recipients may presume that a household or population that experienced unemployment, experienced increased food or housing insecurity, or is low or moderate income experienced negative economic impacts resulting from the pandemic, and recipients may provide services to them that respond to these impacts, including these enumerated eligible uses.

For guidance on how to determine whether a particular use, beyond those enumerated, is eligible; further detail on

which households and communities are presumed eligible for services; and how to identify eligible households and communities beyond those presumed eligible, see section General Provisions: Structure and Standards.

Reorganizations and Cross-References: The final rule reorganizes all enumerated eligible uses for impacted and disproportionately impacted households into the section Assistance to Households, with the exception that expenses to improve the efficacy of economic relief has been re-categorized into a different section of the final rule for increased clarity; for discussion of that use category, see section General Provisions: Other.

Note that in conducting this reorganization, and based on further analysis and in response to comments, Treasury has determined that several enumerated uses included in the interim final rule for disproportionately impacted communities are directly responsive to negative economic impacts experienced by impacted households. In the final rule, these uses have been moved from “disproportionately impacted” to “impacted” households accordingly, making these services available to both disproportionately impacted and impacted households. These uses include assistance applying for public benefits or services; programs or services that address or mitigate the impacts of the COVID-19 public health emergency on childhood health or welfare, including childcare, early learning services, programs to provide home visits, and services for families involved in the child welfare system and foster youth; programs to address the impacts of lost instructional time for students;¹¹² and programs or services that address housing insecurity, lack of affordable housing, or homelessness.

The following activities remain enumerated eligible uses for disproportionately impacted households: Remediation of lead paint or other lead hazards; housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity; and programs or services that address educational disparities, including assistance to high-poverty school districts to advance equitable funding across districts and geographies and evidence-based services to address the academic, social, emotional, and mental health needs of students.

¹¹² For which recipients may presume that any student who did not have access to in-person instruction for a significant period of time was impacted by the pandemic.

Enumerated Eligible Uses for Impacted Households

The interim final rule included several enumerated eligible uses to provide assistance to households or populations facing negative economic impacts due to COVID-19. Enumerated eligible uses included: Food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; cash assistance; or job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training. It also posed a question as to what other types of services or costs Treasury should consider as eligible uses to respond to the negative economic impacts of COVID-19.

This section addresses each of these enumerated eligible uses in turn, with the exception of job training, which has been re-categorized for increased clarity to the eligible use for “assistance to unemployed and underemployed workers.” In general, commenters supported inclusion of these enumerated eligible uses to address key economic needs among households due to the pandemic, and Treasury is maintaining these eligible uses in the final rule, in line with commenters' recommendations.

1. Food assistance. The interim final rule included an enumerated eligible use for food assistance. Some commenters expressed support for this eligible use and emphasized the importance of aid to address food insecurity. Some commenters raised questions as to whether food assistance funds could be used to augment services provided through organizations like food banks, churches, and other food delivery services, or generally be sub-awarded to these organizations.

Treasury Response: Treasury is maintaining this enumerated eligible use without change. Recipients may, as was the case under the interim final rule, administer programs through a wide range of entities, including nonprofit and for-profit entities, to carry out eligible uses on behalf of the recipient government (see section Distinguishing Subrecipients versus Beneficiaries). Further, Treasury is clarifying that capital expenditures related to food banks and other facilities primarily dedicated to addressing food insecurity are eligible; recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General

www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/.

Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

2. *Emergency housing assistance.* The interim final rule included an enumerated eligible use for rent, mortgage, or utility assistance and counseling and legal aid to prevent eviction or homelessness.

Public Comment: Several commenters supported the inclusion of eviction prevention activities as an eligible use given the high number of households behind on rent and potentially at risk of eviction. Following release of the interim final rule, Treasury had also received requests for elaboration on the types of eligible services in this category. Some commenters also recommended including assistance to households for delinquent property taxes, for example to prevent tax foreclosures on homes, as an enumerated eligible use.

Treasury Response: In response to requests for elaboration on the types of eligible services for eviction prevention, Treasury has provided further guidance that these services include “housing stability services that enable eligible households to maintain or obtain housing, such as housing counseling, fair housing counseling, case management related to housing stability, outreach to households at risk of eviction or promotion of housing support programs, housing related services for survivors of domestic abuse or human trafficking, and specialized services for individuals with disabilities or seniors that support their ability to access or maintain housing,” as well as “legal aid such as legal services or attorney’s fees related to eviction proceedings and maintaining housing stability, court-based eviction prevention or eviction diversion programs, and other legal services that help households maintain or obtain housing.”¹¹³ Treasury also emphasized that recipients may work with court systems, nonprofits, and a wide range of other organizations to implement strategies to support housing stability and prevent evictions.

In the final rule, Treasury is maintaining these enumerated eligible uses, including those described in the interim final rule and later guidance, in line with commenters’ recommendations. To enhance clarity, Treasury is also elaborating on some types of services included under this eligible use category; this remains a

non-exhaustive list of eligible services. For example, eligible services under this use category include: Rent, rental arrears, utility costs or arrears (e.g., electricity, gas, water and sewer, trash removal, and energy costs, such as fuel oil), reasonable accrued late fees (if not included in rental or utility arrears), mortgage payment assistance, financial assistance to allow a homeowner to reinstate a mortgage or to pay other housing-related costs related to a period of forbearance, delinquency, or default, mortgage principal reduction, facilitating mortgage interest rate reductions, counseling to prevent foreclosure or displacement, relocation expenses following eviction or foreclosure (e.g., rental security deposits, application or screening fees). Treasury is clarifying that assistance to households for delinquent property taxes, for example to prevent tax foreclosures on homes, was permissible under the interim final rule and continues to be so under the final rule. In addition, Treasury is also clarifying that recipients may administer utility assistance or address arrears on behalf of households through direct or bulk payments to utility providers to facilitate utility assistance to multiple consumers at once, so long as the payments offset customer balances and therefore provide assistance to households.

This eligible use category also includes emergency assistance for individuals experiencing homelessness, either individual-level assistance (e.g., rapid rehousing services) or assistance for groups of individuals (e.g., master leases of hotels, motels, or similar facilities to expand available shelter).

Further, Treasury is clarifying that transitional shelters (e.g., temporary residences for people experiencing homelessness) are eligible capital expenditures. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

Note that this enumerated eligible use describes “emergency housing assistance,” or assistance for responses to the immediate or near-term negative economic impacts of the pandemic. The final rule also clarifies and expands the ability of recipients to use SLFRF funds to address the general lack of affordable housing and housing challenges underscored by the pandemic. For discussion of affordable housing eligible uses, including services that primarily increase access to affordable, high-quality housing and support stable

housing and homeownership over the long term, see the eligible use for “promoting long-term housing security: Affordable housing and homelessness.”

3. *Emergency assistance for pressing needs: Burials, home repairs, weatherization, or other needs.* The interim final rule included an enumerated eligible use for emergency assistance for burials, home repairs, weatherization, and other needs; these types of programs may provide emergency assistance for pressing and unavoidable household needs. Treasury did not receive comments on this eligible use and is maintaining it in the final rule.

Background on Home Repairs and Weatherization: The economic downturn has meant fewer households had the resources needed to make necessary home repairs and improvements. In May 2021, 28 percent of landlords reported deferring maintenance and 27 percent of tenants reported maintenance requests going unanswered.¹¹⁴ While small and cosmetic repairs can often wait, deferring major repairs, such as plumbing needs, can result in unsafe and unhealthy living environments and, eventually, the need for more expensive repairs and fixes.

In addition to repairs, many homes are in need of weatherization. Weatherization assistance helps low- and moderate-income Americans save energy, reduce their utility bills, and keeps them and their homes safe. One in three households is energy insecure,¹¹⁵ meaning they do not have the ability to meet their energy needs.¹¹⁶ Weatherization efforts are particularly important for low- and moderate-income households. Households of color, renters, and households with low or moderate incomes are all more likely to report energy insecurity.¹¹⁷ These

¹¹⁴ Jung Hyun Choi, Laurie Goodman, and Daniel Pang, *The Pandemic Is Making It Difficult for Mom-and-Pop Landlords to Maintain Their Properties*, Urban Institute (July 23, 2021), <https://www.urban.org/urban-wire/pandemic-making-it-difficult-mom-and-pop-landlords-maintain-their-properties>.

¹¹⁵ U.S. Energy Information Administration, *Residential Energy Consumption Survey (2017)*, Retrieved from <https://www.eia.gov/consumption/residential/data/2015/hc/php/hc11.1.php>.

D. Hernández, *Understanding ‘energy insecurity’ and why it matters to health*, *Social Science & Medicine*, 167, 1–10 (2016), <https://doi.org/10.1016/j.socscimed.2016.08.029>.

¹¹⁶ Hernández, D. (2016). *Understanding ‘energy insecurity’ and why it matters to health*. *Social Science & Medicine*, 167, 1–10. <https://doi.org/10.1016/j.socscimed.2016.08.029>.

¹¹⁷ U.S. Energy Information Administration, *Residential Energy Consumption Survey (RECS)* <https://www.eia.gov/consumption/residential/data/2015/hc/php/hc11.1.php>. (last visited November 9, 2021)

¹¹³ See FAQ 2.21. Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

disparities are partially a result of economic hardship but are also caused by inequitable access to housing with proper insulation, up to date heating, cooling, and ventilation systems, and functioning and up to date lighting and appliances.¹¹⁸ While programs that address the effects of energy hardships, like the Low-Income Home Energy Assistance Program (LIHEAP), are critical, weatherization attempts to address root causes by addressing issues that lead to energy insecurities.

4. *Internet access or digital literacy assistance.* The interim final rule included an enumerated eligible use for assistance to households for internet access or digital literacy assistance. This enumerated eligible use, which responds to the negative economic impacts of the pandemic on a household by providing assistance that helps them secure internet access or increase their ability to use computers and the internet, is separate from the eligible use category for investments in broadband infrastructure, under Sections 602(c)(1)(D) and 603(c)(1)(D), which is used to build new broadband networks through infrastructure construction or modernization. For discussion of broadband infrastructure investment in the final rule, see section Broadband Infrastructure in Infrastructure.

Background: The COVID-19 public health emergency has underscored the importance of universally available, high-speed, reliable, and affordable broadband coverage as millions of Americans rely on the internet to participate in, among other critical activities, school, healthcare, and work. Recognizing the need for such connectivity, SLFRF funds can be used to make necessary investments in broadband infrastructure that increase access over the long term, as well as the necessary supports to purchase internet access or gain digital literacy skills needed to complete activities of daily living during the pandemic.

The National Telecommunications and Information Administration (NTIA) highlighted the growing necessity of broadband in daily lives through its analysis of NTIA internet Use Survey data, noting that Americans turn to broadband internet service for every facet of daily life including work, study, and healthcare.¹¹⁹ With increased use of

technology for daily activities and the movement by many businesses and schools to operating remotely during the pandemic, broadband has become even more critical for people across the country to carry out their daily lives.

However, even in areas where broadband infrastructure exists, broadband access may be out of reach for millions of Americans because it is unaffordable, as the United States has some of the highest broadband prices in the Organisation for Economic Co-operation and Development (OECD).¹²⁰ According to a 2021 Pew Research Center study, 20 percent of non-broadband users say that the monthly cost of home broadband is the primary reason they do not have broadband at home, and 40 percent say that cost is one reason for their lack of home broadband.¹²¹ Further, according to another survey, 22 percent of parents with homebound schoolchildren during the COVID-19 pandemic say that it is very or somewhat likely that their children will have to rely on public wi-fi to finish their schoolwork because there is no reliable internet connection at home; this percentage nearly doubles for lower-income parents, 40 percent of whom noted that their children will have to rely on public wi-fi.¹²² The same survey showed that 36 percent of lower-income parents with homebound children say their child will not be able to complete their schoolwork because they do not have access to a computer at home.¹²³

Public Comment: Many commenters highlighted the importance of broadband access during the pandemic, including for remote work and

education, and argued that affordability presents a major barrier to broadband adoption by households; in other words, many households live in areas that have broadband infrastructure and service available but are unable to purchase service for their household due to the high cost. These commenters argued that broadband must be affordable to be accessible.

Commenters proposed several potential responses to affordability concerns. Some commenters recommended that building “gap networks,” or broadband networks built at low cost to provide affordable service in areas where it is lacking, be eligible as assistance to households to respond to the negative economic impacts of the pandemic, even if they do not meet the technical standards for eligibility under the eligible use category of broadband infrastructure investment, especially the required speed standards for new service. These commenters argued that the networks have shown promise as a timely means to expand access to affordable broadband internet during the pandemic, even if they may not provide service speeds needed for more intensive internet uses. Another commenter requested eligible uses include funding cellular towers to decrease costs. One commenter recommended that affordability should be addressed through other programs but not SLFRF given that affordability and availability may require nuanced solutions that would be complex to combine.

Treasury Response: The interpretive framework and enumerated eligible uses allow recipients flexibility to address identified pandemic impacts, including through solutions that take into account the particularized issues in their community. Given extensive commenter feedback on the importance of affordability to achieving broadband access, and the centrality of broadband to participating in work, education, healthcare, and other activities during the pandemic, affordability programs are an appropriate eligible use to respond to the negative economic impacts of the pandemic and Treasury is maintaining the enumerated eligible use for assistance to households for internet access and digital literacy programs in the final rule.

Building or constructing new broadband networks is an infrastructure investment and is governed by a separate clause in the statute. Treasury has addressed comments on “gap networks” that require infrastructure build-out in the section Broadband Infrastructure in Infrastructure.

American Households Used the Internet for Health-Related Activities in 2019, NTIA Data Show (December 7, 2020), <https://www.ntia.gov/blog/2020/more-half-american-households-used-internet-health-related-activities-2019-ntia-data-show>; Nation Telecommunications and Information Administration, Nearly a Third of American Employees Worked Remotely in 2019, NTIA Data Show (September 3, 2020) <https://www.ntia.gov/blog/2020/nearly-third-american-employees-worked-remotely-2019-ntia-data-show>; and generally, Nation Telecommunications and Information Administration, Digital Nation Data Explorer (June 10, 2020), <https://www.ntia.gov/data/digital-nation-data-explorer>.

¹²⁰ BroadbandSearch Blog Post, How Do U.S. Internet Costs Compare To The Rest Of The World?, available at <https://www.broadbandsearch.net/blog/internet-costs-compared-worldwide>.

¹²¹ Pew Research Center, Mobile Technology and Home Broadband 2021 (June 3, 2021), <https://www.pewresearch.org/internet/2021/06/03/mobile-technology-and-home-broadband-2021/>.

¹²² Pew Research Center, 53% of Americans Say the internet Has Been Essential During the COVID-19 Outbreak (April 30, 2020), <https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/>.

¹²³ *Id.*

¹¹⁸ A. Dreihobl, & L. Ross, Lifting the high energy burden in America's largest cities: How energy efficiency can improve low income and underserved communities, American Council for an Energy Efficient Economy (2016), <https://www.aceee.org/sites/default/files/publications/researchreports/u1602.pdf>.

¹¹⁹ See, e.g., Nation Telecommunications and Information Administration, More than Half of

Public Comment: Some commenters also use the term “gap networks” to refer to equipment installed as part of wi-fi systems, such as routers, repeaters, and access points; this equipment provides consumer access to an existing broadband network and does not require new network build-out or construction. These commenters recommended that Treasury permit, as assistance to households for internet access, investments in public wi-fi networks, free wi-fi in public housing communities, and other equipment that offers internet access to end users by utilizing existing broadband networks.

Other commenters recommended that eligible uses in this category include providing devices and equipment necessary to access the internet, like computers and routers, directly to low-income households.

Treasury Response: Treasury has determined that these services, which expand internet access without constructing new networks, are an appropriate enumerated eligible use as assistance to households to respond to a negative economic impact, and they are permitted under the final rule. Treasury is clarifying that eligible uses under this category can also include a wide range of programs and services to expand internet access and digital literacy, such as subsidies for the cost of internet service, other programs that support adoption of internet service where available, digital literacy programs, or programs that provide devices and equipment to access the internet (e.g., programs that provide equipment like tablets, computers, or routers) to households. Recipients seeking to use funds for equipment should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures (e.g., equipment, property, and facilities).

5. Cash assistance. The interim final rule included as an enumerated eligible use cash assistance and provided that cash transfers must be “reasonably proportional” to the negative economic impact they address and may not be “grossly in excess of the amount needed to address” the impact. In assessing whether a transfer is reasonably proportional, recipients may “consider and take guidance from the per person amounts previously provided by the Federal Government in response to the COVID-19 crisis,” and transfers “grossly in excess of such amounts” are not eligible.

Public Comment: Several commenters expressed support for this eligible use, noting that this is a common policy tool

for some governments to support the well-being of households and individuals in their communities. Some commenters requested that Treasury set a specific dollar amount for permissible cash transfers, and Treasury has also received recipient questions on whether specific types of transfers, such as those to a substantial share of the population in the jurisdiction, would be a permissible use of funds.

Treasury Response: Treasury is maintaining this enumerated eligible use in the final rule, in line with commenters’ recommendations. Because the final rule is intended to provide flexibility to recipients to respond to the particularized pandemic impacts in their communities, which may vary in type and intensity, setting a specific dollar threshold for eligible cash transfers would fail to recognize the particularized needs of communities and limit recipients’ flexibility to tailor their response to those needs.

To provide greater clarity, Treasury is elaborating on the analysis that recipients may undertake to assess the eligibility of specific cash assistance programs or transfers. Cash transfers, like all eligible uses in this category, must respond to the negative economic impacts of the pandemic on a household or class of households. For the reasons discussed above, recipients may presume that low- and moderate-income households (as defined in the final rule), as well as households that experienced unemployment, food insecurity, or housing insecurity, experienced a negative economic impact due to the pandemic.

Recipients may also identify other households or classes of households that experienced a negative economic impact of the pandemic and provide cash assistance that is reasonably proportional to, and not grossly in excess of, the amount needed to address the negative economic impact. For example, in the ARPA, Congress authorized Economic Impact Payments to households at certain income levels, identifying and responding to a negative economic impact of the pandemic on these households.

Finally, Treasury has reiterated in the final rule that responses to negative economic impacts should be reasonably proportional to the impact that they are intended to address. Uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Reasonably proportional refers to the scale of the response compared to the scale of the harm. It also refers to the targeting of the response to beneficiaries compared to the amount of harm they

experienced; for example, it may not be reasonably proportional for a cash assistance program to provide assistance in a very small amount to a group that experienced severe harm and in a much larger amount to a group that experienced relatively little harm.

6. Survivor’s benefits. The interim final rule included an enumerated eligible use for survivor’s benefits to surviving family members of individuals who have died from COVID-19, including cash assistance to widows, widowers, or dependents.

Public Comment: Treasury did not receive any comments on the inclusion of survivor’s benefits as an enumerated use for impacted households in the interim final rule.

Treasury Response: This use of funds remains eligible under the final rule. Consistent with the general reorganization noted above, the final rule organizes survivor’s benefits under assistance to households to clarify that households are the intended beneficiaries of survivor’s benefits.

7. Assistance accessing or applying for public benefits or services.

Recognizing that eligible households often face barriers to accessing public benefits or services that improve health and economic outcomes, the interim final rule included as an enumerated eligible use in disproportionately impacted communities, public benefits navigators to assist community members with navigating and applying for available federal, state, and local public benefits or services. Treasury also clarified in subsequent guidance after the interim final rule that this eligible use category would include outreach efforts to increase uptake of the Child Tax Credit.

Background: The under-enrollment of eligible households in social assistance programs is a well-recognized and persistent challenge. There are many reasons why a household may not be receiving a particular benefit even though they are eligible. For many federal programs, enrollment processes vary from state-to-state. Sometimes, households are simply unaware that they are eligible for a particular benefit.¹²⁴ For example, despite having one of the highest rates of participation of any benefits program, nearly 20 percent of eligible individuals do not participate in the Supplementary Nutritional Assistance Program

¹²⁴ Amy Finkelstein & Matthew J Notowidigdo, Take-Up and Targeting: Experimental Evidence from SNAP, *The Quarterly Journal of Economics*, vol. 134(3), pages 1505–1556 (2019), <https://www.nber.org/papers/w24652>.

(SNAP).¹²⁵ In other cases, policies like public charge and asset testing can discourage otherwise eligible households.¹²⁶ While the gap between households that need assistance and the number of households participating in public benefit programs has always existed, narrowing that gap and ensuring households receive the support they need is critical in mitigating the negative economic impacts of the pandemic.

Public Comment: Treasury has also received feedback from recipients and stakeholders noting the need to increase awareness and uptake of assistance programs, including gaps that remain in enrollment of eligible households in programs to address the negative economic impacts of the pandemic.¹²⁷

Treasury Response: Treasury has determined that this impact of the pandemic is widely experienced across many jurisdictions and programs or services to increase awareness and uptake of assistance programs would respond to the pandemic's negative economic impact in all communities. As such, in the final rule, this use is eligible for any impacted household or class of households, not only in disproportionately impacted communities.

8. *Promoting healthy childhood environments.* The interim final rule included programs and services that promote healthy childhood environments as an enumerated eligible use for disproportionately impacted households. The interim final rule listed three programs or services included under this use: Childcare; programs to provide home visits by health professionals, parent educators, and social service professionals to individuals with young children to provide education and assistance for economic support, health needs, or child development; and services for child welfare-involved families and foster youth to provide support and

education on child development, positive parenting, coping skills, or recovery for mental health and substance use. The interim final rule also included an enumerated eligible use for early learning services in disproportionately impacted communities, to address disparities in education.

Public Comment: Childcare and Early Learning: Treasury received multiple comments that were supportive of the provision of childcare. Treasury has also received multiple comments and questions indicating that recipients have identified a need for childcare for a broader range of households and communities, for example those that may need childcare in order to return to work, in addition to households and communities disproportionately impacted by the pandemic. Several commenters expressed uncertainty about how childcare facilities should interact with the boundaries of a QCT. Finally, one commenter recommended that pre-K or early learning services encompass care for infants and toddlers, arguing that these types of care are often more expensive or challenging to access for families.

Background: Childcare and Early Learning: As daycares and schools closed in-person activities during the pandemic, many working families were left without childcare during the day.¹²⁸ Although daycare centers and schools have since reopened in many communities, there remains a persistent childcare shortage as childcare employment levels have not fully rebounded since the sharp decline in childcare employment at the beginning of the pandemic.¹²⁹ As a result, working parents in communities across the country, and more specifically women, may face challenges entering or reentering the labor force.¹³⁰

¹²⁸ Women have carried a larger share of childcare responsibilities than men during the COVID-19 crisis. See, e.g., Gema Zammaro & Mari'a J. Prados, Gender differences in couples' division of childcare, work and mental health during COVID-19, *Rev. Econ. Household* 19:11–40 (2021), available at <https://link.springer.com/article/10.1007/s11150-020-09534-7>; Titan Alon et al., The Impact of COVID-19 on Gender Equality, National Bureau of Economic Research Working Paper 26947 (April 2020), available at <https://www.nber.org/papers/w26947>.

¹²⁹ See, e.g., Center For The Study Of Child Care Employment (CSCCE), Child Care Sector Jobs: BLS Analysis (November 8, 2021), <https://cscce.berkeley.edu/child-care-sector-jobs-bls-analysis/>; Emma K. Lee, and Zachary Parolin, The Care Burden during COVID-19: A National Database of Child Care Closures in the United States, *Socius* (January 2021), doi:10.1177/23780231211032028.

¹³⁰ Jason Furman, Melissa Schettini Kearney, and Wilson Powell, The Role of Childcare Challenges in the US Jobs Market Recovery During the COVID-19 Pandemic, NBER Working Paper No. 28934 (June 2021), <https://www.nber.org/papers/w28934>.

Low-income households are also more likely to lose access to quality childcare.¹³¹ The widespread closure of childcare centers combined with a lack of access to paid family leave means parents in low-income households are more likely to experience a reduction of income or leave their jobs due to a lack of childcare options.¹³²

Additionally, childcare providers serving primarily low-income families were less likely to remain open during the pandemic because of tighter profit margins and general community financial insecurity, compared to childcare providers serving primarily high-income families.^{133 134}

In addition to disruptions to childcare, early learning services were also significantly impacted by the pandemic, and the disruption of these services had widespread ramifications for learning loss, parental support, and equity. Early learning centers have seen declined enrollment across the board, though there was a larger dip in enrollment for low-income households.¹³⁵ This lower enrollment coincides with a diminishing workforce, as similarly to childcare, early childhood educators have been leaving the profession due to long hours, low pay,¹³⁶ and health and safety concerns.¹³⁷ As a result, children's school readiness has suffered, leading to potential long-term impacts on life outcomes.¹³⁸ The impact also extended

¹³¹ U.S. Census Bureau, Phase 3.2 Household Pulse Survey: Table 2. Childcare Arrangements in the Last 4 Weeks for Children Under 5 Years Old, by Selected Characteristics, (Washington: 2021), available at <https://www.census.gov/programs-surveys/household-pulse-survey/data.html>.

¹³² *Id.*

¹³³ N. Kalluri, C. Kelly, & A. Garg, Child Care During the COVID-19 Pandemic: A Bad Situation Made Worse, *Pediatrics* (2021), <https://doi.org/10.1542/peds.2020-041525>.

¹³⁴ National Association for the Education of Young Children, Am I Next? Sacrificing to Stay Open, Child Care Providers Face a Bleak Future Without Relief (December 2020), <https://www.naeyc.org/sites/default/files/globally-shared/downloads/PDF>.

¹³⁵ G. G. Weisenfeld, Impacts of Covid-19 on Preschool Enrollment and Spending, New Brunswick, NJ: National Institute for Early Education Research (2021), https://nieer.org/wp-content/uploads/2021/03/NIEER_Policy_Brief_Impacts-of-Covid-19-on-Preschool-Enrollment-and-Spending_3_16_21.pdf.

¹³⁶ Heather Long, 'The pay is absolute crap': Child-care workers are quitting rapidly, a red flag for the economy, *Washington Post* (September 19, 2021), <https://www.washingtonpost.com/business/2021/09/19/childcare-workers-quit/>.

¹³⁷ Monash University, The emotional toll of COVID-19 among early childhood educators (August 5, 2020) <https://lens.monash.edu/@education/2020/08/05/1381001/the-emotional-toll-of-covid-19-among-early-childhood-educators>.

¹³⁸ Daphna Bassok and Anna Shapiro, Understanding COVID-19-era enrollment drops

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¹²⁵ United States Department of Agriculture, Trends in Supplemental Nutrition Assistance Program Participation Rates: Fiscal Year 2016 to Fiscal Year 2018 (May 2021), <https://fns-prod.azureedge.net/sites/default/files/resource-files/Trends2016-2018.pdf>.

¹²⁶ Jeremy Barofsky et al., Spreading Fear: The Announcement Of The Public Charge Rule Reduced Enrollment In Child Safety-Net Programs, *Health Affairs* (October 2020), <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.00763>.

¹²⁷ See, e.g., U.S. Department of the Treasury, By ZIP Code: Number of Children under Age 18 with a Social Security Number Who Are Not Found on a Tax Year 2019 or 2020 Tax Return but who Appear on a Tax Year 2019 Form 1095 and Associated Number of Policy Holders (June 2021), <https://home.treasury.gov/system/files/131/Estimated-Counts-of-Children-Unclaimed-for-CTC-by-ZIP-Code-2019.pdf>.

to parents. Parents, especially mothers, may face challenges reentering or remaining in the workforce if early learning services are unavailable.

Treasury Response: Childcare and Early Learning Services: Treasury agrees with commenters' analysis that challenges accessing or affording childcare have been widespread during the pandemic, affecting many jurisdictions and populations across the country. Disruptions to early care and learning services similarly have had broad impact and likely result in negative impacts for young children and their parents. As such, these enumerated eligible uses are generally responsive to the negative economic impacts of the pandemic in all communities, not just in disproportionately impacted communities. Under the final rule, childcare and early learning services are available to impacted households or classes of households, not just those disproportionately impacted. These eligible uses can include new or expanded services, increasing access to services, efforts to bolster, support, or preserve existing providers and services, and similar activities.

Further, Treasury is clarifying that improvements to or new construction of childcare, daycare, and early learning facilities are eligible capital expenditures. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

Public Comment: Home Visiting: Treasury has also received questions about whether the provision of home visiting services would be responsive to the health and mental health needs of impacted new mothers, citing the positive mental health impacts shown on the mother as well as improved outcomes for children.

Background: Home Visiting: Pregnant and recently pregnant individuals are at an increased risk for serious illness from COVID-19.¹³⁹ Furthermore, pregnant individuals with COVID-19 are more likely to experience preterm birth (delivering the baby earlier than 37

weeks).¹⁴⁰ In addition to heightened health risks from COVID-19, pregnant individuals may have experienced significant changes to their prenatal care during the pandemic¹⁴¹ or may also have experienced increased mental health challenges, including high levels of depression, anxiety, loneliness, and post-traumatic stress during the pandemic.¹⁴²

Home visiting services provided to families, particularly new mothers and newborns, feature regular home visits from trained nurses, social workers, and/or counselors who provide health care, mental health resources, positive parenting support, support in making personal health decisions, and awareness of other potentially helpful services. These functions have become even more essential at mitigating negative factors associated with the pandemic. Home visits give professionals a chance to flag potential domestic violence, which has risen worldwide over the course of the pandemic.¹⁴³ Racial health disparities can also be driven down by home visits. For example, Black women are more likely to avoid hospitals during the pandemic, and home visitors can help either assuage concerns around hospitals or give effective advice for alternative methods of childbirth.¹⁴⁴ Given the disproportionate effect of the pandemic on people of color, home visits are an essential equity tool that tackle major negative effects of the pandemic. These are just a few selections from the evidence that suggests many home visiting models can have a positive effect on maternal physical and mental health.¹⁴⁵

Treasury Response: Home Visiting: Given the widespread impact of

COVID-19 on pregnant and recently pregnant individuals, Treasury is re-categorizing home visiting services as an eligible use for impacted communities, not just disproportionately impacted communities. Under the final rule, these eligible uses are available to impacted households or classes of households.

Public Comment: Child Welfare:

While the interim final rule noted that certain types of assistance, particularly around child development and parenting, were eligible for child welfare-involved families, Treasury has received some recipient questions asking whether financial, educational, housing, or other supports and services are eligible uses for foster youth, including those aging out of the system, and child welfare-involved families. Other commenters asked about whether funding for kinship care would be eligible.

Background: Child Welfare: The COVID-19 pandemic placed meaningful strain on the child welfare and foster care system. Court hearings were delayed,¹⁴⁶ essential mental health care was shifted to a virtual environment, and attendance and performance in school among foster children dropped sharply.¹⁴⁷ Additionally, there was a nationwide rise of new children entering the foster care system and many states placed temporary moratoria on children aging out of the foster care system.¹⁴⁸ As these temporary moratoria expire, additional support will be needed to assist children exiting the system.

Additionally, financial and material hardship are causal factors in the increase of new children entering the foster care system, whether through loss of a caregiver, domestic violence,¹⁴⁹ or other associated costs of the pandemic. Therefore, support to decrease these hardships will support families and increase positive outcomes for youth

among early-grade public school students, Brookings Institution (February 22, 2021), <https://www.brookings.edu/blog/brown-center-chalkboard/2021/02/22/understanding-covid-19-era-enrollment-drops-among-early-grade-public-school-students/>.

¹³⁹ Centers for Disease Control and Prevention, Pregnant and Recently Pregnant People, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/pregnant-people.html> (last visited November 9, 2021).

¹⁴⁰ *Id.*

¹⁴¹ Sarah Javaid, Sarah Barringer, Sarah D. Compton, Elizabeth Kaselitz, Maria Muzik, Cheryl A. Moyer, The impact of COVID-19 on prenatal care in the United States: Qualitative analysis from a survey of 2519 pregnant women, *Midwifery*, Volume 98, 2021, 102991, ISSN 0266-6138, <https://doi.org/10.1016/j.midw.2021.102991>.

¹⁴² A. Basu, H.H. Kim, R. Basaldna, K.W. Choi, L. Charron, et al., A cross-national study of factors associated with women's perinatal mental health and wellbeing during the COVID-19 pandemic, *PLOS ONE* 16(4): e0249780, (2021), <https://doi.org/10.1371/journal.pone.0249780>.

¹⁴³ Amanda Taub, A New Covid-19 Crisis: Domestic Abuse Rises Worldwide, *New York Times* (April 6, 2020), <https://www.nytimes.com/2020/04/06/world/coronavirus-domestic-violence.html>.

¹⁴⁴ Xenia Shih Bion, Efforts to Reduce Black Maternal Mortality Complicated by COVID-19, California Health Care Foundation (April 20, 2020), <https://www.chcf.org/blog/efforts-reduce-black-maternal-mortality-complicated-covid-19/>.

¹⁴⁵ U.S. Department of Health and Human Services, Home Visiting Evidence of Effectiveness, <https://homvee.acf.hhs.gov/outcomes/maternal%20health/In%20Brief>.

¹⁴⁶ National Conference of State Legislatures, Criminal Justice System Responses to COVID-19 (November 16, 2020), <https://www.ncsl.org/research/civil-and-criminal-justice/criminal-justice-and-covid-19.aspx>.

¹⁴⁷ John Burton Advocates for Youth, The Cumulative Impact of the Pandemic on Youth Who Have Been in Foster Care or Homeless (May 2020) <https://jbyay.org/wp-content/uploads/2021/04/JBAY-COVID-19-Impact.pdf>.

¹⁴⁸ John Kelly, Next Week, Thousands of Foster Youth Will Age Out on the Same Day (September 21, 2021), <https://imprintnews.org/subscribe-content/thousands-of-foster-youth-will-age-out-on-the-same-day/59006>.

¹⁴⁹ Conrad-Hiebner, Aislinn, and Elizabeth Byram, The Temporal Impact of Economic Insecurity on Child Maltreatment: A Systematic Review. *Trauma, Violence, & Abuse*, vol. 21, no. 1, Jan. 2020, pp. 157-178, doi:10.1177/1524838018756122.

and families that may otherwise become involved in the child welfare system.

Treasury Response: In the final rule, Treasury is clarifying that services to foster youth, including those aging out of the system, and child welfare-involved families may encompass a wide array of financial, educational, child development, or health supports, or other supports necessary, including supports for kinship care.

9. Addressing the impacts of lost instructional time.

Public Comment: The interim final rule included an enumerated eligible use to address educational disparities in disproportionately impacted communities, recognizing that underserved students have been more severely impacted by the pandemic and including responsive services for early learning, enhance funding to high-poverty districts, and providing evidence-based services to address the academic, social, emotional, and mental health needs of students. Some commenters expressed concerns that learning loss or the negative impacts of lost instructional time due to school closures or remote education during the pandemic had affected a significant share of students in grades kindergarten through twelve (K–12), including students who may not fall within a disproportionately impacted group.

Background: The COVID–19 pandemic resulted in the widespread closure of schools across the nation. While many schools and districts reopened to in-person instruction or implemented remote learning, the shift was not immediate or without consequence. Children who received virtual only or combined remote and in-person instruction were more likely to report experiencing negative mental- and physical health outcomes than children who received in-person instruction.¹⁵⁰

Treasury Response: Under the final rule, addressing the impact of lost instructional time and/or learning loss is an enumerated eligible use for impacted households. When providing services to address lost instructional time, recipients may presume that any K–12 student who lost access to in-person instruction for a significant period of time has been impacted by the pandemic and is thus eligible for responsive services.

Interventions or services that address the impact of lost instructional time may include offering high-quality tutoring and other extended learning opportunities, providing differentiated instruction, implementing activities to meet the comprehensive needs of students, expanding and improving language access for parents and families, providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment, improving student engagement in distance education, and administering and using high-quality assessments to assess students' academic progress, among others. In designing services under this eligible use, recipients may wish to reference guidance from the Department of Education on strategies for addressing lost instructional time.¹⁵¹

The final rule also maintains a separate enumerated eligible use for addressing educational disparities in disproportionately impacted communities. This eligible use includes services to address disparities in educational outcomes that predate the pandemic and amplified its impact on underserved students; these include, for example, enhanced funding to high-poverty districts and providing evidence-based services to address the academic, social, emotional, and mental health needs of students.

Finally, as described in the section Public Health, recipients can provide a broad range of behavioral health services, including services for children and youth in schools, to respond to the impacts of the pandemic on mental health and other behavioral health issues. When providing behavioral health services, recipients may presume that the general public was impacted by the pandemic and provide behavioral health services to members of the general public, including children and youth in schools, without any further analysis of impacts of the pandemic on those individuals and whether the service is responsive.

10. Promoting long-term housing security: affordable housing and homelessness. Under the interim final rule, recipients may use SLFRF funds to provide a set of housing services to communities that have been disproportionately impacted by the pandemic. Specifically, the interim final rule provided that programs or services that address housing insecurity, lack of affordable housing, or homelessness,

were responsive to the negative economic impacts of the pandemic when provided to disproportionately impacted households and communities. The enumerated uses included supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless and development of affordable housing to increase supply of affordable and high-quality living units. Many recipients have already announced plans to use SLFRF funds for affordable housing interventions in all of these categories. Treasury received many comments asking for additional clarity or flexibility in these uses.

As detailed below, based on multiple public comments and questions and Treasury's subsequent analysis, Treasury has determined that supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless, and the development of affordable housing to increase supply of affordable and high-quality living units are responsive to the needs of impacted populations, not only disproportionately impacted populations. This final rule reflects this clarification and builds on the objectives stated in the interim final rule to improve access to stable, affordable housing, including through interventions that increase the supply of affordable and high-quality living units, improve housing security, and support durable and sustainable homeownership.

Finally, note that "emergency housing assistance," or assistance for responses to the immediate negative economic impacts of the pandemic through services like financial assistance for rental arrears or mortgage payments, is also an eligible use category for assistance to households under the final rule; see the eligible use for "emergency housing assistance" above. The provision of housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity remains an eligible use under assistance to disproportionately impacted households; for discussion, see the eligible use for "housing vouchers and assistance relocating" below.

Background: Affordable Housing: It is clear that the ongoing pandemic and resulting economic crisis are having a profound, long-term negative effect on the pre-existing affordable housing crisis facing low-income households.¹⁵²

¹⁵⁰ Verlenden JV, Pampati S, Rasberry CN, et al. Association of Children's Mode of School Instruction with Child and Parent Experiences and Well-Being During the COVID–19 Pandemic—COVID Experiences Survey, United States, October 8–November 13, 2020. *MMWR Morb Mortal Wkly Rep* 2021;70:369–376. DOI: <http://dx.doi.org/10.15585/mmwr.mm7011a1external icon>.

¹⁵¹ U.S. Department of Education, Strategies for Using American Rescue Plan Funding to Address the Impact of Lost Instructional Time, August 2021. Retrieved from <https://www2.ed.gov/documents/coronavirus/lost-instructional-time.pdf>.

¹⁵² Consumer Financial Protection Bureau, Housing Insecurity and the COVID–19 pandemic

Continued

The combination of a large number of higher-income households who have weathered the pandemic without significant income losses, low interest rates, and housing supply constraints exacerbated by the pandemic, have driven a sharp increase in the sale price of homes.¹⁵³ Meanwhile, many low-income renters and homeowners are struggling with lost employment and income and are behind on their housing payments.¹⁵⁴

Public Comment: Affordable Housing Outside of Low-Income Geographies: A major theme in comments was that affordable housing interventions, especially development of affordable housing, should be allowed outside of QCTs, as concentrating the supply of affordable housing in low-income geographies can have the effect of increasing both concentrated poverty and racial and economic segregation, while locking lower-income households in need of housing support out of high-opportunity neighborhoods with access to employment and amenities.

Treasury Response: Affordable Housing Outside Low-Income Geographies: As previously stated, affordable housing is not confined to low-income geographies under the interim final rule. As discussed elsewhere, the interim final rule presumed that QCTs, as well as communities served by Tribal governments, were disproportionately impacted for administrative convenience, but recipients may identify other populations, households, or geographic areas with disparate impacts of COVID-19 and provide affordable housing services to them. For example, under the interim final rule, a city could determine that its low-income residents faced disproportionate impacts of COVID-19 and develop affordable housing targeted to these households. Such a scenario could include, for example, affordable projects

in higher-income neighborhoods that would allow residents to live closer to jobs and well-resourced schools.

Additionally, as noted above, Treasury is finalizing the rule with some changes to the treatment of affordable housing development designed to clarify that permanent supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless, and the development of affordable housing to increase supply of affordable and high-quality living units, are responsive to individuals and households that were impacted by the pandemic in addition to those that were disproportionately impacted. This shift is in line with commenters' recommendations and consistent with the facts described above, which demonstrate that lack of supply of affordable housing units contributed to the pandemic's impact on housing insecurity and unsustainable housing cost burdens and that these impacts were experienced broadly across the country.

Public Comment: Eligible Activities: Many commenters asked for clarity on what types of activities (e.g., land acquisition, construction, pre-construction costs, operating costs, etc.) are eligible uses of SLFRF, and what affordability criteria must be applied to affordable housing development. Commenters encouraged Treasury to allow the full array of affordable housing activities, including particular requests for broad flexibility for Tribal communities, and to specify that "development" should include construction, preservation, rehabilitation, and operation. Other commenters requested clarification about permissible program administration approaches for affordable housing, such as contracting methods and distribution of funds.

Some commenters asked that Treasury require SLFRF funds to be focused on the lowest-income households, who suffer the most severe rent burdens and risks of housing instability, and whose housing situation has left them particularly vulnerable to COVID-19. For example, one commenter argued that SLFRF funds should only be used to support affordable housing for households making 50 percent of AMI or less and that recipients should be required to set aside significant portions of any developments for renters making 30 percent of AMI or less and persons with physical and sensory disabilities. Other commenters requested a more flexible approach to affordable housing definitions.

Treasury Response: Eligible Activities:

The final rule clarifies eligibility of affordable housing development for recipients; these uses were eligible under the interim final rule, but Treasury is providing further guidance to enhance clarity and respond to recipient and commenter questions.

As with all interventions to address the negative economic impacts of the pandemic, affordable housing projects must be responsive and proportional to the harm identified. This test may be met by affordable housing development projects—which may involve large expenditures and capital investments—if the developments increase the supply of long-term affordable housing for low-income households. While there may be less costly (or non-capital) alternatives to affordable housing development, a comprehensive response to the widespread housing challenges underscored by the pandemic will require the production of additional affordable homes, and targeted affordable housing development is a cost-effective and proportional response to this need.

For purposes of this test, Treasury will presume that any projects that would be eligible for funding under either the National Housing Trust Fund (HTF) or the Home Investment Partnerships Program (HOME) are eligible uses of SLFRF funds. Note that these programs use different income limits than the definition of low- and moderate-income adopted by Treasury. Given the severity of the affordable housing shortage, and the ways in which the pandemic has exacerbated the need for affordable, high-quality dwelling units, Treasury has determined that the households served by these federal housing programs have been impacted by the pandemic and its negative economic impacts and that development of affordable housing consistent with these programs is a related and reasonably proportional response to those impacts. Additionally, affordable housing projects provided by a Tribal government are eligible uses of SLFRF if they would be eligible for funding under the Indian Housing Block Grant program, the Indian Community Development Block Grant program, or the Bureau of Indian Affairs Housing Improvement Program. Alignment with these programs, which define "affordable housing" in a manner consistent with a proportionate response to the affordable housing challenges faced by low- and moderate-income households as a result of the negative economic impacts of the pandemic, is intended to give recipients comfort and clarity as they design a

(March 2020), https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf.

¹⁵³ Joint Center For Housing Studies Of Harvard University, *The State of the Nation's Housing* (June 2021), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Notions_Housing_2021.pdf.

¹⁵⁴ Davin Reed and Eileen Divringi, *Household Rental Debt During COVID-19: Update for 2021*, Federal Reserve Bank of Philadelphia (2020), available at: <https://www.philadelphiafed.org/community-development/housing-and-neighborhoods/household-rental-debt-during-covid-19-update-for-2021>. Further, some research suggests that liquidity may be a more important predictor of default than other factors, including income or equity. See *Trading Equity for Liquidity* (June 2019), available at <https://www.jpmmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/institute/pdf/institute-trading-equity-for-liquidity.pdf>.

wide variety of affordable housing interventions, including production, rehabilitation, and preservation of affordable rental housing and, in some cases, affordable homeownership units. These programs allow the financing of a wide range of affordable housing activities and set clear eligibility criteria that many recipients are already familiar with.

Finally, to further support sustainable and durable homeownership, recipients may consider offering down payment assistance, such as through contributions to a homeowner's equity at origination or that establish a post-closing, mortgage reserve account on behalf of the borrower that may be utilized to make a missed or partial mortgage payment at any point during the life of the loan (e.g., if the borrower faces financial stress). Homeownership assistance that would be eligible under the Community Development Block Grant (at 24 CFR 507.201(n)) is also an eligible use of SLFRF funds.

Public Comment: Permanent Supportive Housing: Treasury has received comments encouraging the use of SLFRF funds for permanent supportive housing. This is an eligible use under the interim final rule: Both the development of affordable housing (including operating subsidies) and wraparound services such as behavioral health services, employment services, and other supportive services, are eligible responses to the public health crisis or its negative economic impacts.

Treasury Response: The final rule maintains the eligibility of permanent supportive housing as an enumerated use. Treasury is also clarifying that other affordable housing developments targeted to specialized populations are also eligible, for example recovery housing for individuals in recovery from substance use.

Public Comment: Operating Expenses: Commenters specifically asked that Treasury allow the use of SLFRF funds for operating expenses of affordable housing units, as operating subsidies are typically required to reach extremely low-income households, whose affordable rents may be lower than the ongoing cost of operating their unit.

Treasury Response: Operating expenses for eligible affordable housing were an eligible use of funds under the interim final rule and the final rule maintains this treatment. This may include capitalized operating reserves.

Rehabilitation and repair of public housing will also be considered an eligible use of SLFRF funds.

Public Comment: Affordable Housing Loans and Revolving Loan Funds: Some commenters requested that loans with

maturities beyond the period of performance or revolving loan funds that revolve beyond the period of performance be eligible uses of SLFRF funds if used for affordable housing. Some commenters pointed out that for-profit developers of low-income housing through the Low-Income Housing Tax Credit (LIHTC) may be deterred from accepting grants to bridge funding gaps in current LIHTC deals by the treatment of grants to for-profit entities in the calculation of eligible basis for the LIHTC.

Treasury Response: The final rule does not change the treatment of loans from the interim final rule. For more details see section Treatment of Loans in Program Administration Provisions. Similarly, the final rule does not change the treatment of grants to support affordable housing development, including developments supported by the LIHTC: such grants are an eligible use of funds.

Additional enumerated eligible uses for assistance to impacted households. As noted above, the interim final rule posed a question on what other types of services or costs Treasury should consider as eligible uses to respond to the negative economic impacts of COVID-19. In response, commenters proposed a wide variety of additional recommended enumerated eligible uses to assist households, ranging from general categories of services (e.g., legal and social services) to services that respond to needs widely experienced across the country (e.g., access to and affordability of health insurance) to services that are most applicable to the particularized needs of certain populations or geographic areas of the United States (e.g., senior citizens, SNAP recipients, immigrants, formerly-incarcerated individuals, responding to environmental issues in certain geographic regions). Other commenters generally requested a high degree of flexibility to respond to the particular needs of their communities.

Treasury Response: Given the large number and diversity of SLFRF recipients, Treasury's approach to assistance to households in the final rule aims to clarify additional enumerated eligible uses that respond to negative economic impacts of the pandemic experienced widely in many jurisdictions across the country, making it clear and simple for recipients to pursue these enumerated eligible uses under the final rule. In the final rule, Treasury is clarifying several additional uses, which generally respond to pandemic impacts experienced broadly across jurisdictions and populations, are eligible under the interim final rule as

assistance to households and continue to be so under the final rule, as outlined below.

11. Paid sick, medical, or family leave.

Public Comment: Some commenters argued that the pandemic increased the need for paid sick or medical leave, as staying home when ill is recommended by the CDC to prevent spread of the virus but lack of access to paid sick leave often prevents workers from staying home. Other commenters recommended paid family leave as an eligible use, arguing that shortages in access to childcare or home health assistance, as well as school closures, may increase the need for family members to serve as caretakers.

Background: The COVID-19 pandemic highlighted the importance of paid leave as well as the number of workers who do not have access to paid sick and/or family leave. When workers have access to paid leave, they are less likely to report to work sick, and therefore less likely to spread illnesses in the workplace: One study demonstrates that the emergency sick leave provision of the Families First Coronavirus Response Act (FFCRA) reduced the spread of COVID-19.¹⁵⁵

The lack of paid leave exacerbates financial hardships experienced as a result of the public health emergency. A 2018 survey by the Department of Labor found that two-thirds of employees that took unpaid or partial-paid leave experienced financial hardship.¹⁵⁶ Furthermore, because the Family and Medical Leave Act (FMLA) excludes small employers, part-time workers, and workers who have been with their employer for less than a year, 44 percent of workers do not have access to even unpaid leave.¹⁵⁷ Workers of color and workers with lower incomes are less likely to have access to paid leave.^{158 159}

¹⁵⁵ Stefan Pichler, Katherine Wen, and Nicolas R. Ziebarth, COVID-19 Emergency Sick Leave Has Helped Flatten The Curve In The United States: Study examines the impact of emergency sick leave on the spread of COVID-19, Health Affairs 39, no. 12 (2020): 2197–2204, <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00863>.

¹⁵⁶ Scott Brown et al., Employee and Worksites Perspectives of the Family and Medical Leave Act: Results from the 2018 Surveys, Abt Associates (July 2020), https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHDFMLA2018SurveyResults_FinalReport_Aug2020.pdf.

¹⁵⁷ *Id.*

¹⁵⁸ Ann P. Bartel et al., Racial and ethnic disparities in access to and use of paid family and medical leave: evidence from four nationally representative datasets, U.S. Bureau of Labor Statistics (BLS) (January 2019), <https://www.bls.gov/opub/mlr/2019/article/racial-and-ethnic-disparities-in-access-to-and-use-of-paid-family-and-medical-leave.htm>.

For workers that are also caregivers for children, seniors, or other family members, there may be a similar need for—and benefits of—paid family leave. For example, some workers may have struggled during the pandemic to balance caring for children, as schools and daycares closed, and working. For new parents, paid parental leave results in fewer infant hospitalizations, lowering parental stress, increasing parental involvement, and improving the overall health of parent and child.¹⁶⁰ COVID-19 has also increased the levels of “caregiving intensity”¹⁶¹ and “caregiving burden”¹⁶² for those providing care to seniors or older family members.¹⁶³ When surveyed, more than half of caregivers reported that COVID-19 increased both the amount of caregiving responsibilities they had as well as the negative physical and mental impacts their caregiving responsibilities had on themselves.¹⁶⁵

Treasury Response: Treasury agrees that these constitute impacts of the pandemic, and accordingly, under the final rule, creating, expanding, or financially supporting paid sick, medical, or family leave programs is an enumerated eligible use of funds to respond to the negative economic impacts of the pandemic.

12. Health insurance.

Public Comment: Several commenters recommended that uses of funds to expand access to health insurance be enumerated eligible uses; commenters believed that the heightened risk of

illness or hospitalization due to COVID-19 had increased the negative economic impacts of lacking health insurance.

Background: In 2019, prior to the pandemic, it was estimated that 11 percent of nonelderly adults lacked health insurance.¹⁶⁶ By mid-2020, job loss had resulted in an estimated 3.3 million people losing their employer sponsored insurance, resulting in an additional 2 million uninsured adults.¹⁶⁷ Participation in Medicaid, the Children’s Health Insurance Program (CHIP), and the Affordable Care Act (ACA) marketplace played an important role in minimizing the number of people who completely lost health insurance during the early phases of the pandemic; Medicaid and CHIP enrollment increased by 9 percent from February to September 2020¹⁶⁸ and 8.3 million people enrolled in insurance through the ACA marketplace.¹⁶⁹

Although the ACA, CHIP, and Medicaid have significantly reduced the number of uninsured Americans through the pandemic and the economic downturn, adequate coverage and affordability still remains an issue for many. In 2020, 21 percent of working-age adults were inadequately insured, meaning even if they had insurance, they incurred a significant amount of out-of-pocket costs.¹⁷⁰ Additionally, 37 percent of adults reported struggling with medical bills or medical debt and 71 percent of adults who did not purchase insurance cited affordability as the main factor.¹⁷¹

Treasury Response: Treasury agrees that loss of health insurance, increased financial risk from lacking health insurance, or excessive out-of-pocket healthcare costs constitute negative economic impacts of the pandemic. Under the final rule, programs or services to expand access to health insurance coverage are an enumerated eligible use as assistance to households, for example, subsidies for health insurance premiums or expansion of a recipient’s health insurance plan to cover additional employees who currently lack coverage.

13. Services for the unbanked and underbanked.

Public Comment: One commenter expressed support for the inclusion of services to increase banking access as an allowable expense under SLFRF. The commenter recommended that states be encouraged to offer opportunities for consumers to open safe and affordable accounts capable of receiving direct payments. The commenter emphasized that allowing unbanked and underbanked households to receive funds securely through no-fee, direct deposit will help connect or reconnect consumers to the mainstream financial system.

Background: Banking inequities can make it difficult for unbanked or underbanked households to access housing, jobs, and other important economic opportunities. Being unbanked or underbanked can also make it challenging for households to apply for and receive financial assistance, including services like pandemic emergency housing assistance.

Safe, affordable, and accessible financial services play a critical role in assisting households in the United States in managing income volatility and cash flow shortages.¹⁷² Currently, over 5 percent of families, or 7 million households are “unbanked,” meaning they do not have a bank account.¹⁷³ Low-income households, non-white households, and households with individuals with disabilities were even more likely to be unbanked. In 2019, 16 percent of Native American households, 14 percent of Black households, and 12 percent of Hispanic households were unbanked, compared to 2.5 percent of white households. Additionally,

¹⁵⁹ U.S. Bureau of Labor Statistics, Employee Benefits in the United States (March 2019), <https://www.bls.gov/ncs/ebs/benefits/2019/ownership/civilian/table31a.pdf>.

¹⁶⁰ Maya Rossin-Slater et al., Local exposure to school shootings and youth antidepressant use, *Proceedings of the National Academy of Sciences*, vol. 117(38), pages 23484–23489 (2020), <https://www.pnas.org/content/117/38/23484>; Ariel Marek Pihl and Gaetano Basso, Did California Paid Family Leave Impact Infant Health?, *Journal of Policy Analysis and Management*, <https://onlinelibrary.wiley.com/doi/abs/10.1002/pam.2210>.

¹⁶¹ J.C. Jacobs, A. Laporte, C.H. Van Houtven, P.C. Coyte, Caregiving intensity and retirement status in Canada. *Social Science & Medicine*, 102, 74–82 (2014), <https://www.sciencedirect.com/science/article/abs/pii/S0277953613006631>.

¹⁶² E. Lightfoot, R.P. Moone, Caregiving in times of uncertainty: Helping adult children of aging parents find support during the COVID-19 outbreak, *Journal of Gerontological Social Work*, 63(6–7), 542–552 (2020), <https://www.tandfonline.com/doi/abs/10.1080/01634372.2020.1769793>.

¹⁶³ Note: “Caregiving intensity” is defined as the amount and type of care provided by informal caregivers; “Caregiving burden” is defined as the impacts on physical and mental health, and health-related quality of life of informal caregivers.

¹⁶⁴ SA Cohen, ZJ Kunicki, MM Drohan, ML Greaney, Exploring Changes in Caregiver Burden and Caregiving Intensity due to COVID-19, *Gerontology and Geriatric Medicine* (January 2021), doi:10.1177/2333721421999279.

¹⁶⁵ *Id.*

¹⁶⁶ Jennifer Tolbert et al., Key Facts about the Uninsured Population, Kaiser Family Foundation (November 6, 2020), <https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/>.

¹⁶⁷ Joshua Aarons et al., As the COVID-19 Recession Extended into the Summer of 2020, More Than 3 Million Adults Lost Employer-Sponsored Health Insurance Coverage and 2 Million Became Uninsured, Urban Institute (September 18, 2020), <https://www.urban.org/research/publication/covid-19-recession-extended-summer-2020-more-3-million-adults-lost-employer-sponsored-health-insurance-coverage-and-2-million-became-uninsured>.

¹⁶⁸ Centers for Medicare and Medicaid Services, Medicaid and CHIP Enrollment Trends Snapshot through September 2020 (Washington: 2021), available at <https://www.medicare.gov/sites/default/files/2021-01/september-medicare-chip-enrollment-trend-snapshot.pdf>.

¹⁶⁹ Centers for Medicare and Medicaid Services, 2021 Federal Health Insurance Exchange Weekly Enrollment Snapshot: Final Snapshot (January 12, 2021) available at <https://www.cms.gov/newsroom/fact-sheets/2021-federal-health-insurance-exchange-weekly-enrollment-snapshot-final-snapshot>.

¹⁷⁰ Sara R. Collins, Munira Z. Gunja, and Gabriella N. Aboulafia, U.S. Health Insurance Coverage in 2020: A Looming Crisis in Affordability (New York: Commonwealth Fund, 2020), available at <https://www.commonwealthfund.org/publications/issue-briefs/2020/aug/looming-crisis-health-coverage-2020-biennial>.

¹⁷¹ *Id.*

¹⁷² Federal Deposit Insurance Corporation, FDIC National Survey of Unbanked and Underbanked Households (2015), <https://www.fdic.gov/household-survey/2015/2015execsum.pdf>.

¹⁷³ Federal Deposit Insurance Corporation, How America Banks: Household Use of Banking and Financial Services 2019 FDIC Survey, <https://www.fdic.gov/analysis/household-survey/2019report.pdf>.

underbanked households—those that have a bank account but rely on alternative financial services, such as money orders, payday loans, and check cashing services—account for 16 percent of all households in the United States.¹⁷⁴ As a result of the COVID-19 pandemic, new social distancing protocols have, in some instances, made it more difficult to perform financial transactions with paper instruments, like banknotes, coinage, paper checks, or money orders. Households constrained to these payment methods may face challenges receiving government assistance. Additionally, businesses have transitioned to cashless payments systems to promote contactless payments.¹⁷⁵ As a result, unbanked individuals may face additional challenges conducting financial transactions.

Treasury Response: Recognizing these challenges, Treasury is clarifying that recipients may use SLFRF funds to provide financial services that facilitate the delivery of federal, state, or local benefits (e.g., Child Tax Credit, Earned Income Tax Credit, tax refunds, or emergency housing or food assistance funds). The following includes a non-exhaustive list of uses to provide financial services to unbanked and underbanked households:

- Provide low or no cost financial services, including in conjunction with administration of benefits, such as pre-paid debit cards, e.g., via Economic Impact Payment or General Purpose Reloadable pre-paid cards or for the development of public banking infrastructure that can support benefit delivery.
- Provide transitional services to facilitate long-term access to banking and financial services.
- Provide financial literacy programs and conduct community outreach and deploy engagement resources to increase awareness about low-cost, no-overdraft fee accounts, pilot new strategies and approaches that help overcome barriers to banking access and support the gathering and sharing of information in ways that improve equity, such as community meetings, partnerships with community-based organizations, online surveys, focus groups, human-centered design

activities, and other community engagement activities.

Assistance to Unemployed and Underemployed Workers

The interim final rule included assistance to unemployed workers as an enumerated eligible use, including “services like job training to accelerate rehiring of unemployed workers.” Treasury provided further guidance, based on recipient questions after the interim final rule, that eligible uses under this section also include “other efforts to accelerate rehiring and thus reduce unemployment, such as childcare assistance, assistance with transportation to and from a jobsite or interview, and incentives for newly employed workers[.]” as well as assistance to unemployed workers seeking to start small businesses. Finally, further guidance also provided that “public jobs programs, subsidized employment, combined education and on-the-job training programs, or job training to accelerate rehiring or address negative economic or public health impacts experienced due to a worker’s occupation or level of training” are all enumerated eligible uses as assistance to unemployed or underemployed workers.

The interim final rule defined eligible beneficiaries of assistance as “individuals who want and are available for work, including those who have looked for work sometime in the past 12 months or who are employed part time but who want and are available for full-time work.” This definition is based on definitions used by the Bureau of Labor Statistics to define individuals currently unemployed, as well as persons marginally attached to the labor force and working part-time for economic reasons.¹⁷⁶ The latter two classifications are types of labor underutilization, or “underemployed” workers.¹⁷⁷ Finally, the interim final rule specified that assistance to unemployed workers included both workers who lost their job during the pandemic and resulting recession and workers unemployed when the pandemic began who saw further deterioration of their economic prospects due to the pandemic.

Public Comment: Commenters generally supported the inclusion of this enumerated eligible use. One commenter recommended including assistance for underemployed workers who took jobs due to the pandemic that

did not fully utilize their skillset or did not provide the hours, wages, or job quality desired. Treasury has also received recipient questions on whether job fairs or grants to businesses to hire underserved workers are eligible uses under this category. Another commenter recommended flexibility in eligible workforce development programs, arguing that rural areas may face particular challenges.

Treasury Response: Treasury is maintaining this eligible use in the final rule, including the enumerated eligible services in the interim final rule and subsequent guidance. Treasury is also confirming that job fairs or grants to businesses to hire underserved workers are eligible uses under this section.

Treasury is also enumerating that job and workforce training centers are eligible capital expenditures, so long as they adhere to the standards and presumptions detailed in the section Capital Expenditures in General Provisions: Other.

The final rule maintains the definition of eligible beneficiaries, which is aligned with the Bureau of Labor Statistics’ definitions of unemployed workers and other labor underutilization, using a common, widely known definition that incorporates a broad group of individuals both unemployed or whose skills are otherwise underutilized in the labor market.

In addition, recognizing that the pandemic has generated broad workforce disruption, in the final rule, Treasury is making clear that recipients may provide job training or other enumerated types of assistance to individuals that are currently employed but are seeking to move to a job that provides better opportunities for economic advancement, such as higher wages or more opportunities for career advancement.

Recipient Unemployment Insurance Trust Funds and Related Expenses

Under the interim final rule, a recipient may use funds to make deposits into its account of the Unemployment Trust Fund established under section 904 of the Social Security Act (42 U.S.C. 1104) up to the level needed to restore the pre-pandemic balance of such account as of January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021. These costs support the solvency of the unemployment insurance system and, ultimately, unemployment insurance benefits provided to unemployed

¹⁷⁴ Board of the Governors of the Federal Reserve System, Report on the Economic Well-Being of U.S. Households in 2018–May 2019, <https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-banking-and-credit.htm>.

¹⁷⁵ Zaheer Allam, The Forceful Reevaluation of Cash-Based Transactions by COVID-19 and Its Opportunities to Transition to Cashless Systems in Digital Urban Networks. Surveying the Covid-19 Pandemic and its Implications (2020): 107–117. doi:10.1016/B978-0-12-824313-8.00008-5.

¹⁷⁶ Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Concepts and Definitions, <https://www.bls.gov/cps/definitions.htm> (last visited November 9, 2021).

¹⁷⁷ *Id.*

workers during the pandemic.¹⁷⁸ The interim final rule also posed the question of what, if any, conditions should be considered to ensure that funds used under this eligible use category repair economic impacts of the pandemic and strengthen unemployment insurance systems.

Public Comment: Inclusion as an Eligible Use and Conditions: Commenters expressed mixed perspectives on this eligible use category. Some commenters supported its inclusion, arguing that unemployment insurance systems have faced significant costs to support unemployed workers during the pandemic and that this constitutes a negative economic impact that SLFRF funds should be able to address. Other commenters opposed this eligible use category, arguing that funds used under this category may not ultimately support unemployed workers. Some commenters noted that unemployment insurance taxes on businesses automatically increase when trust fund balances are low and suggested that permitting the deposit of funds into unemployment insurance trust funds prevents a tax increase on businesses, some of which may not have faced negative economic impacts from the pandemic, rather than providing assistance to unemployed workers. Other comments suggested that deposits are better thought of as savings for future needs than assistance to unemployed workers in the near term.

Responding to the interim final rule's question, several commenters suggested that, if Treasury maintains this eligible use, the final rule should require detailed reporting on funds used under this category or place conditions on this category to increase the likelihood that funds ultimately support unemployed workers. For example, some commenters suggested that recipients that deposit SLFRF funds into their trust fund should be barred from cutting unemployment insurance benefits for workers during the period of performance or from erecting new barriers to accessing benefits (e.g., through the application process and ongoing requirements to receive benefits). One commenter, noting that unemployment insurance benefits often provide low rates of wage replacement and do not cover some types of unemployed workers, argued that recipients should not be permitted to deposit funds into the trust fund unless

the recipient concurrently expands benefits. Finally, one commenter suggested a cap on the amount of funds that can be used for this purpose.

Treasury Response: Inclusion as an Eligible Use and Conditions: In the final rule, Treasury is maintaining the inclusion of this eligible use category. Because unemployment insurance trust funds directly fund benefits to unemployed workers, maintaining the solvency of the trust fund is critical to the continued provision of assistance to unemployed workers. Further, funds deposited into the trust fund must be used as assistance to unemployed workers, an eligible use of SLFRF funds. Finally, while, in the absence of the SLFRF, trust fund deposits would likely be funded through increases on employer payroll taxes, the eligibility of uses of SLFRF funds does not depend on how obligations would otherwise be satisfied if the SLFRF were not available for this use.

While deposits to unemployment insurance trust funds generally serve as assistance to unemployed workers, recipients that make deposits but also cut unemployment insurance benefits to workers substantially decrease the likelihood that the deposited funds will assist unemployed workers. In other words, SLFRF funds deposited into an unemployment insurance trust fund generally serve as assistance to unemployed workers, unless recipients take policy actions that substantially decrease the extent to which SLFRF funds would flow to unemployed workers. As such, through December 31, 2024, recipients that deposit SLFRF funds into an unemployment insurance trust fund or use SLFRF funds to repay principal on Title XII advances, may not take action to reduce benefits available to unemployed workers by changing the computation method governing regular unemployment compensation in a way that results in a reduction of average weekly benefit amounts or the number of weeks of benefits payable (i.e., the maximum benefit entitlement).

Finally, until the final rule becomes effective on April 1, 2022, the interim final rule remains binding and effective.¹⁷⁹ These requirements were not in effect under the interim final rule and do not apply to funds used (i.e., obligated or expended) under the interim final rule while it is in effect. In addition, recognizing that some recipients have taken significant steps

toward making a trust fund deposit or repaying principal on Title XII advances under the interim final rule, such as the legislative appropriation of funds for this purpose, even if a formal obligation has not occurred, Treasury will exercise enforcement discretion to not pursue violations of this final rule provision (i.e., the requirement not to reduce benefits) for recipients that have appropriated funds for this purpose prior to the date of adoption of the final rule consistent with the laws and procedures in their jurisdiction. Recipients should refer to Treasury's Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule, which provides additional detail on these issues.

Public Comment and Treasury Response: Technical Corrections and Amendments: Following the interim final rule, Treasury received recipient questions on whether paying interest on advances received under Title XII of the Social Security Act (42 U.S.C. 1321) is an eligible use of SLFRF funds; Treasury is clarifying that such use is permissible, consistent with Treasury's treatment of the eligibility of interest on Title XII advances under the Coronavirus Relief Fund.

Treasury is further clarifying that recipients may only use SLFRF funds for contributions to unemployment insurance trust funds and repayment of the principal amount due on advances received under Title XII of the Social Security Act up to an amount equal to (i) the difference between the balance in the recipient's unemployment insurance trust fund as of January 27, 2020 and the balance of such account as of May 17, 2021, plus (ii) the principal amount outstanding as of May 17, 2021 on any advances received under Title XII of the Social Security Act between January 27, 2020 and May 17, 2021. Further, recipients may use SLFRF funds for the payment of any interest due on such Title XII advances. In other words, excluding interest due on Title XII advances, the magnitude of the decrease of the balance in the unemployment insurance trust fund plus the principal outstanding on any Title XII borrowings made from the beginning of the public health emergency to the date of publication of the SLFRF interim final rule sets a cap on the amount of SLFRF funds a recipient may use for trust fund contributions and repayment of principal on Title XII advances. Further, a recipient that deposits SLFRF funds into its unemployment insurance trust fund to fully restore the pre-pandemic balance may not draw down that

¹⁷⁸ Note that, while the economic harm being addressed accrued before March 3, 2021, the cost incurred to address the harm occurs after March 3, 2021 and provides assistance to unemployed workers, an eligible use of SLFRF funds.

¹⁷⁹ See, e.g., U.S. Department of the Treasury, More Information on the Conclusion of the Public Comment Period and the Interim Final Rule on the Coronavirus State and Local Fiscal Recovery Funds, <https://home.treasury.gov/system/files/136/IFR-Explainer.pdf>.

balance and deposit more SLFRF funds, back up to the pre-pandemic balance.

Enumerated Eligible Uses for Disproportionately Impacted Households

Background

The COVID-19 pandemic has had disproportionately negative impacts on many households and communities that were already experiencing inequality related to race, gender, age, or income before the pandemic. People of color, low-income workers, and women disproportionately lost their jobs during the COVID-19 pandemic and experienced disproportionate rates of negative health outcomes.^{180 181}

These disproportionate negative impacts experienced by systemically underserved communities are not novel to the COVID-19 pandemic and the economic downturn. Research shows that historically underserved communities that are experiencing economic and social disparities typically experience disproportionate impacts of economic downturns and natural disasters.¹⁸² This pattern held true for the effects of COVID-19 and the economic downturn: Historically undeserved groups experienced amplified negative impacts, further widening inequality.¹⁸³

Many communities facing systemic barriers had not yet recovered from the impact of the Great Recession before experiencing the impacts of COVID-19 and the economic downturn. For example, in 2009, at the end of the Great Recession, households without a high school diploma had an average annual income of \$32,300 (measured in 2018 dollars). By 2018, nine years into the economic recovery, those same households saw their average income increase by \$600. During that same time period, households with a bachelor's degree saw an increase in their average

household income of \$6,100 (measured in 2018 dollars).¹⁸⁴

The impact pre-existing inequalities have on a household or community's ability to recover is intersectional. Research shows that pre-existing racial and gender disparities exacerbated the disproportionate economic and health impact COVID-19 and the economic downturn had on workers of color, and specifically, women of color.¹⁸⁵ Another study found that during the first six months of the pandemic counties that were both high-poverty and majority non-white experienced COVID-19 infection rates eight times higher than high-poverty, majority white counties.¹⁸⁶ Many residents in these communities are still coping with the negative health and economic impacts.

Summary of the Interim Final Rule and Final Rule Structure

As described previously, the interim final rule provided a broader list of enumerated eligible uses to respond to the pandemic in disproportionately impacted communities, in recognition that pre-existing health, economic, and social disparities contributed to disproportionate pandemic impacts in certain communities and that addressing the root causes of those disparities constitutes responding to the public health and negative economic impacts of the pandemic. The interim final rule described eligible uses in disproportionately impacted communities in four categories, spread across public health and negative economic impacts: (1) Addressing disparities in public health outcomes, (2) building stronger communities through investments in housing and neighborhoods, (3) addressing educational disparities, and (4) promoting healthy childhood environments. As described above, Treasury has moved eligible uses related to community violence intervention, assistance accessing or applying to public benefits and services, affordable housing development, healthy childhood environments, and addressing lost instructional time in K-

12 schools into the category "assistance to impacted households," recognizing that these pandemic impacts were widely shared across the country.

This section discusses enumerated eligible uses to address health disparities, to build stronger communities through investments in neighborhoods, to address educational disparities, to provide rental assistance vouchers or assistance relocating to areas of greater economic opportunity, and additional eligible uses to respond to negative economic impacts in disproportionately impacted communities. While many of these services impact both health and economic outcomes, Treasury has consolidated them into a single section for simplicity and clarity and to reflect the intertwined nature of these issues.

As a reminder, recipients can presume these uses are eligible when provided in a QCT, to families and individuals living in QCTs, by Tribal or territorial governments, or to low-income households or communities. As provided in section Standards: Designating Other Disproportionately Impacted Classes, recipients can also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. Recipients may also identify additional disproportionate impacts of the pandemic and design an appropriate response to address that harm. For details on eligibility standards and presumed eligible populations, see section General Provisions: Structure and Standards.

Enumerated Eligible Uses for Disproportionately Impacted Households

1. Addressing health disparities.

Public Comment: General: In general, commenters supported eligible uses to address health disparities and support health equity; several commenters highlighted the disparities faced by communities of color and low-income populations, as well as the importance of community engagement in developing effective programs to serve disproportionately impacted communities. Many commenters recommended additional enumerated eligible uses to address health disparities; these are discussed further below in this section.

Treasury Response: In line with commenters' recommendations, the final rule maintains several enumerated eligible uses to address health disparities, specifically:

a. Community health workers.

Treasury received few comments on community health workers, though one

¹⁸⁰ U.S. Department of Health and Human Services, COVID-19 and Economic Opportunity: Inequities in the Employment Crisis, April 2021. Retrieved from https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/199901/covid-economic-equity-brief.pdf.

¹⁸¹ Adelle Simmons et al., Health disparities by race and ethnicity during the COVID-19 pandemic: Current evidence and policy approaches. U.S. Department of Health and Human Services https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/199516/covid-equity-issue-brief.pdf.

¹⁸² Perry, Brea L., Brian Aronson, and Bernice A. Pescosolido, Pandemic precarity: COVID-19 is exposing and exacerbating inequalities in the American heartland, National Academy of Sciences (February 2021), <https://www.pnas.org/content/118/8/e2020685118>.

¹⁸³ *Id.*

¹⁸⁴ Jesse Bennet & Rakesh Kochhar, Two Recessions, Two Recoveries, Pew Research Center (December 13, 2019), <https://www.pewresearch.org/social-trends/2019/12/13/two-recessions-two-recoveries-2/>.

¹⁸⁵ Darrick Hamilton et al., Building an Equitable Recovery: The role of Race, Labor Markets, and Education, The New School's Institute on Race and Political Economy (February 2021).

¹⁸⁶ Adhikari S, Pantaleo NP, Feldman JM, Ogedegbe O, Thorpe L, Troxel AB. Assessment of Community-Level Disparities in Coronavirus Disease 2019 (COVID-19) Infections and Deaths in Large US Metropolitan Areas. JAMA Netw Open. 2020;3(7):e2016938. doi:10.1001/jamanetworkopen.2020.16938.

requested further clarification on their role.¹⁸⁷ Treasury is maintaining this eligible use in the final rule.

b. Remediation of lead paint or other lead hazards. The interim final rule included remediation of lead paint or other lead hazards as an enumerated eligible use to address health disparities.

Public Comment: Treasury received several comments asking for clarification on the eligibility of a particular use that would indirectly address lead pollution. For example, a commenter requested the ability to fund remedial actions, such as filtration and plumbing procedures to help address lead pollution. One commenter requested that private wells be eligible for funding to address contamination with substances such as lead. Other commenters requested that Treasury allow replacement of lead pipes as an eligible use of funds.

Treasury Response: Recipients may make a broad range of water infrastructure investments under section 602(c)(1)(d) and 603(c)(1)(d), which can include lead service line replacement and other activities to identify and remediate lead in water. These uses are discussed in greater detail in section Water and Sewer Infrastructure of this Supplemental Information.

Treasury has further determined that several of the services identified by commenters are appropriate responses to address health disparities in disproportionately impacted households. These services were eligible under the interim final rule and continue to be so under the final rule. These services include remediation to address lead-based public health risk factors, outside of lead in water, including evaluation and remediation of lead paint, dust, or soil hazards; testing for blood lead levels; public outreach and education; and emergency protection measures, like bottled water and water filters, in areas with an action level exceedance for lead in water in accordance with the Environmental Protection Agency's Lead and Copper Rule.¹⁸⁸

Further, Treasury had determined that certain capital expenditures, including improvements to existing facilities to remediate lead contaminants (e.g., removal of lead paint), are eligible responses, although this does not

include construction of new facilities for the purpose of lead remediation. Recipients should make sure that all capital expenditures adhere to the standards and presumptions detailed in section Capital Expenditures in General Provisions: Other.

c. Medical facilities. Treasury received a few comments from recipients seeking to use SLFRF funds to build new medical facilities, such as hospitals or public health clinics, to serve disproportionately impacted communities. Given the central role of access to high-quality medical care in reducing health disparities and addressing the root causes that led to disproportionate impact COVID-19 health impacts in certain communities, the final rule recognizes that medical equipment and facilities designed to address disparities in public health outcomes are eligible capital expenditures. This includes primary care clinics, hospitals, or integrations of health services into other settings. Recipients should make sure that all capital expenditures adhere to the standards and presumptions detailed in section Capital Expenditures in General Provisions: Other.

2. Housing vouchers and assistance relocating. In addition to other housing services, the interim final rule permitted a variety of rental assistance approaches to support low-income households in securing stable, long-term housing, including housing vouchers, residential counseling, or housing navigation assistance to facilitate household moves to neighborhoods with high levels of economic opportunity and mobility for low-income residents. Examples could include SLFRF-funded analogues to Section 8 Housing Choice vouchers; other kinds of rent subsidies, including shallow subsidies; and programs to help residents move to areas with higher levels of economic mobility.¹⁸⁹ Treasury did not receive public comments on these enumerated eligible uses.

Treasury Response: Treasury maintains the eligibility of vouchers and relocation assistance in the final rule.

3. Building strong, healthy communities through investments in neighborhoods. While the interim final rule included a category of enumerated eligible uses for "building stronger communities through investments in housing and neighborhoods," the examples of services provided generally focused on housing uses. In response to questions following release of the interim final rule, Treasury issued

further guidance clarifying that "investments in parks, public plazas, and other public outdoor recreation spaces may be responsive to the needs of disproportionately impacted communities by promoting healthier living environments."

Public Comment: General: A significant theme across many public comments was the importance of neighborhood environment to health and economic outcomes and the potential connections between residence in an underserved neighborhood and disproportionate impacts from the pandemic. Many commenters highlighted the connection between neighborhoods and health outcomes, including citing public health research linking neighborhood traits to health outcomes. For example, the CDC states that "neighborhoods people live in have a major impact on their health and well-being."¹⁹⁰ As such, CDC identifies "neighborhoods and built environment" as one of five key social determinants of health¹⁹¹ and includes "creat[ing] neighborhoods and environments that promote health and safety" as one of the agency's goals for social determinants of health outcomes.

a. Neighborhood features that promote improved health and safety outcomes. *Public Comment:* Commenters argued that neighborhoods impact physical health outcomes in several ways. First, some commenters reasoned that the physical environment and amenities in a community¹⁹² influence a person's level of physical activity, with features like parks, recreation facilities, and safe sidewalks promoting increased physical activity that improves health outcomes. Conversely, commenters argued that a lack of these features in a neighborhood could dampen physical activity and contribute to health conditions like obesity that are risk factors for more severe COVID-19 health outcomes.

Second, some commenters also suggested that access to healthy food in a neighborhood impacts health outcomes. These commenters reasoned

¹⁹⁰ U.S. Department of Health and Human Services, Neighborhood and Built Environment, <https://health.gov/healthypeople/objectives-and-data/browse-objectives/neighborhood-and-built-environment#cit1> (last visited November 9, 2021).

¹⁹¹ Social determinants of health are "the conditions in the places where people live, learn, work, and play that affect a wide range of health risks and outcomes." Centers for Disease Control and Prevention, About Social Determinants of Health (SDOH), <https://www.cdc.gov/social-determinants/about.html> (last visited November 9, 2021).

¹⁹² In public health, this is referred to as "built environment," or the man-made physical aspects of a community (e.g., homes, buildings, streets, open spaces, and infrastructure).

¹⁸⁷ See, e.g., Centers for Disease Control and Prevention, Community Health Worker (CHW) Toolkit, <https://www.cdc.gov/dhdp/pubs/toolkits/chw-toolkit.htm> (last visited November 9, 2021).

¹⁸⁸ Environmental Protection Agency, 40 CFR 141.80(c)(1), <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-141/subpart-I/section-141.80>.

¹⁸⁹ See, e.g., Opportunity Insights, Creating Moves To Opportunity (August 2019), <https://opportunityinsights.org/policy/cinto/>.

that lacking adequate access to affordable, healthy food or living in a “food desert” may contribute to disparities in diet that influence health outcomes, including contributing to pre-existing conditions that increased risk for severe COVID-19 outcomes. These commenters cited public health research finding “clear evidence for disparities in food access in the United States by income and race.”¹⁹³

Some commenters also suggested that neighborhood environment is connected to other public health outcomes, like mental health and public safety. For example, some research suggests that living in neighborhoods with green space and tree cover correlates with improved mental health outcomes.¹⁹⁴ Finally, some commenters argued that activities like installing streetlights, greening or cleanup of public spaces or land, and other efforts to revitalize public spaces would support improved public safety.^{195 196}

These commenters recommended that Treasury include as an enumerated eligible use in disproportionately impacted communities projects to develop neighborhood features that promote improved health and safety outcomes, such as parks, green spaces, recreational facilities, sidewalks, pedestrian safety features like crosswalks, projects that increase access to healthy foods, streetlights, neighborhood cleanup, and other projects to revitalize public spaces.

Background: Investments in neighborhood features, including parks, recreation facilities, sidewalks, and healthy food access, can work to improve physical and mental health outcomes. Allowing people access to nature, including parks, has been connected to decreased levels of

mortality and illness and increased well-being.¹⁹⁷ Urban park use during the COVID-19 pandemic may have declined among lower-income individuals.¹⁹⁸ Encouraging physical activity can also play a role in health outcomes, as a sedentary lifestyle is a risk factor for chronic diseases and more severe COVID-19 outcomes.¹⁹⁹ Parks, recreation facilities, and sidewalks can promote healthier living environments by allowing for safe and socially distanced recreation during the COVID-19 pandemic.

Additionally, food insecurity rates, which are higher among lower-income households and households of color, doubled among all households and tripled among households with children during the onset of COVID-19 from February 2020 to May 2020.²⁰⁰ Improving healthy food access supports public health, particularly among lower-income households and households of color that face disproportionate outcomes.

Treasury Response: Treasury recognizes the connection between neighborhood built environment and physical health outcomes as discussed in the research and analysis provided by commenters, including risk factors that may have contributed to disproportionate COVID-19 health impacts in low-income communities. The final rule also recognizes that the public health impacts of the pandemic are broader than just the COVID-19 disease itself and include substantial impacts on mental health and public safety challenges like rates of violent crime, which are correlated with a neighborhood’s built environment and features. As such, neighborhood features that promote improved health and safety outcomes respond to the pre-existing disparities that contributed to COVID-19’s disproportionate impacts on low-income communities.

The final rule includes enumerated eligible uses in disproportionately impacted communities for developing neighborhood features that promote improved health and safety outcomes, such as parks, green spaces, recreational facilities, sidewalks, pedestrian safety features like crosswalks,²⁰¹ projects that increase access to healthy foods, streetlights, neighborhood cleanup, and other projects to revitalize public spaces. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other, which describes additional eligibility standards that apply to uses of funds for capital expenditures.

b. Vacant or abandoned properties. As discussed above, the interim final rule included enumerated eligible uses for building stronger communities through investments in housing and neighborhoods in disproportionately impacted communities. The interim final rule also posed a question of whether other potential uses in this category, specifically “rehabilitation of blighted properties or demolition of abandoned or vacant properties,” address the public health or economic impacts of the pandemic.

Public Comment: Several commenters argued that programs or services to address vacant or abandoned property would respond to the public health and negative economic impacts of the pandemic in disproportionately impacted communities. Some commenters cited research suggesting that living near such property is correlated with worse physical health and mental health outcomes, noted that such properties pose an environmental hazard, or argued that such properties present a barrier to economic recovery. These commenters suggested that renovation or demolition of vacant or abandoned property could benefit community health and raise property values. Other commenters recommended that Treasury include an enumerated eligible use for the operation of land banks that redevelop or renew vacant properties and land.

Treasury Response: As noted throughout the final rule, the pandemic underscored the importance of safe, affordable housing and healthy

¹⁹³ J Beaulac, E Kristjansson, S Cummins, A systematic review of food deserts, 1966–2007, *Prev Chronic Dis* 2009;6(3):A105, http://www.cdc.gov/pcd/issues/2009/jul/08_0163.htm.

¹⁹⁴ See, e.g., Yijun Zhang et al. The Association between Green Space and Adolescents’ Mental Well-Being: A Systematic Review. *International journal of environmental research and public health* vol. 17, 18 6640 (Sep. 11 2020), doi:10.3390/ijerph17186640; EC South, BC Hohl, MC Kondo, JM MacDonald, CC Branas, Effect of Greening Vacant Land on Mental Health of Community-Dwelling Adults: A Cluster Randomized Trial, *JAMA Netw Open*. 2018;1(3):e180298 (2018), available at: doi:10.1001/jamanetworkopen.2018.0298.

¹⁹⁵ See, e.g., Yanqing Xu, Cong Fu, Eugene Kennedy, Shanhe Jiang, Samuel Owusu-Agyemang. The impact of street lights on spatial-temporal patterns of crime in Detroit, Michigan, Cities, Volume 79, Pages 45–52, ISSN 0264–2751 (2018), <https://doi.org/10.1016/j.cities.2018.02.021>.

¹⁹⁶ A. Chalfin, B. Hansen, J. Lerner et al., Reducing Crime Through Environmental Design: Evidence from a Randomized Experiment of Street Lighting in New York City, *Journal of Quantitative Criminology* (2021), <https://doi.org/10.1007/s10940-020-09490-6>.

¹⁹⁷ See, e.g., American Public Health Association, Improving Health and Wellness through Access to Nature (November 5, 2013), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/08/09/18/improving-health-and-wellness-through-access-to-nature>.

¹⁹⁸ LR Larson et al., Urban Park Use During the COVID-19 Pandemic: Are Socially Vulnerable Communities Disproportionately Impacted?, *Front. Sustain. Cities* 3:710243 (2021), <https://doi.org/10.3389/frsc.2021.710243>.

¹⁹⁹ JP Després, Severe COVID-19 outcomes—the role of physical activity, *Nat Rev Endocrinol* 17, 451–452 (2021). <https://doi.org/10.1038/s41574-021-00521-1>.

²⁰⁰ Caroline George and Adie Tomer, Beyond ‘food deserts’: America needs a new approach to mapping food, *Brookings Institution* (August 17, 2021), <https://www.brookings.edu/research/beyond-food-deserts-america-needs-a-new-approach-to-mapping-food-insecurity/>.

²⁰¹ However, Treasury cautions recipients that general infrastructure development, including street or road construction, remains a generally ineligible use of funds under the final rule. Sidewalks and pedestrian safety should be the predominant component of uses of funds in this category. While projects may include ancillary construction needed to execute the predominant component, a project that predominantly involves street construction or repair to benefit vehicular traffic would be ineligible.

neighborhood environments to public health and economic outcomes. Treasury agrees with commenters that high rates of vacant or abandoned properties in a neighborhood may exacerbate public health disparities, for example through environmental contaminants that contribute to poor health outcomes or by contributing to higher rates of crime. As such, certain services for vacant or abandoned properties are eligible to address the public health and negative economic impacts of the pandemic on disproportionately impacted households or communities. Eligible activities include:

- Rehabilitation, renovation, maintenance, or costs to secure vacant or abandoned properties to reduce their negative impact
- Costs associated with acquiring and securing legal title of vacant or abandoned properties and other costs to position the property for current or future productive use
- Removal and remediation of environmental contaminants or hazards from vacant or abandoned properties, when conducted in compliance with applicable environmental laws or regulations
- Demolition or deconstruction of vacant or abandoned buildings (including residential, commercial, or industrial buildings) paired with greening or other lot improvement as part of a strategy for neighborhood revitalization
- Greening or cleanup of vacant lots, as well as other efforts to make vacant lots safer for the surrounding community
- Conversion of vacant or abandoned properties to affordable housing
- Inspection fees and other administrative costs incurred to ensure compliance with applicable environmental laws and regulations for demolition, greening, or other remediation activities

Vacant or abandoned properties are generally those that have been unoccupied for an extended period of time or have no active owner.²⁰² Such

properties may be in significant disrepair (e.g., major structural defects; lack of weather tight conditions; or lack of useable plumbing, kitchen facilities, electricity, or heating infrastructure (not to include utilities currently out of service or disconnected but able to be reconnected and used)), or may be declared unfit for inhabitants by a government authority.

As noted above, demolition and greening (or other structure or lot remediation) of vacant or abandoned properties, including residential, commercial, or industrial buildings, is an eligible use of funds. Treasury encourages recipients to undertake these activities as part of a strategy for neighborhood revitalization and to consider how the cleared property will be used to benefit the disproportionately impacted community. Activities under this eligible use should benefit current residents and businesses, who experienced the pandemic's impact on the community.

Treasury encourages recipients to be aware of potential impacts of demolition of vacant or abandoned residential properties. Demolition activities that exacerbate the pandemic's impact on housing insecurity or lack of affordable housing are not eligible uses of funds. This risk is generally more acute in jurisdictions with low or reasonable vacancy rates and less acute in jurisdictions with high or hyper-vacancy.²⁰³

overview/#overview-of-the-ura (last visited November 9, 2021) and other state and local requirements like condemnation and code enforcement. U.S. Department of Housing and Urban Development, What is the definition of vacant properties as referenced in NSP Eligible Use E—Redevelop Demolished or Vacant Properties? (October 2012), <https://www.hudexchange.info/faqs/programs/neighborhood-stabilization-program-nsp/redevelopment/what-is-the-definition-of-vacant-properties-as-referenced-in-nsp-eligible/>. U.S. Department of Housing and Urban Development, What are the definitions of abandoned and foreclosed? (October 2012), <https://www.hudexchange.info/faqs/programs/neighborhood-stabilization-program-nsp/program-requirements/eligible-activities/what-are-the-definitions-of-abandoned-and-foreclosed/>.

²⁰³ For analysis of vacancy rates considered low or high, see, e.g., page 12 of Alan Mallach, The Empty House Next Door, Lincoln Institute (May 2018), <https://www.lincolninstitute.edu/publications/policy-focus-reports/empty-house-next-door#:~:text=E2%80%9CAlan%20Mallach%20is%20the%20sage,through%20data%20and%20model%20practices>. Recipients may determine the appropriate geographic unit for which to analyze vacancy rates (e.g., county, census tract) based on their circumstances. As needed, recipients may refer to the Current Population Survey/Housing Vacancy Survey data series on Housing Vacancies and Homeownership as one data source to assess vacancy rates. See <https://www.census.gov/housing/hvs/index.html>. Other data sources include the American Community Survey five-year estimates, for smaller geographic areas, or tabulations by the Department of Housing and Urban Development

Treasury presumes that demolition of vacant or abandoned residential properties that results in a net reduction in occupiable housing units for low- and moderate-income individuals in an area where the availability of such housing is lower than the need for such housing would exacerbate the impacts of the pandemic on disproportionately impacted communities and that use of SLFRF funds for such activities would therefore be ineligible. This includes activities that convert occupiable housing units for low- and moderate-income individuals into housing units unaffordable to current residents in the community. Recipients may assess whether units are "occupiable" and what the housing need is for a given area taking into account vacancy rates (as described above), local housing market conditions (including conditions for different types of housing like multi-family or single-family), and applicable law and housing codes as to what units are occupiable. Recipients should also take all reasonable steps to minimize the displacement of persons due to activities under this eligible use category, especially the displacement of low-income households or longtime residents.

Recipients engaging in these activities and other construction activities with SLFRF funds should be mindful of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601, and the Department of Transportation's implementing regulations, 49 CFR part 24, that apply to projects funded with federal financial assistance, such as SLFRF funds. Recipients should also be aware of federal, state, and local laws and regulations, outside of SLFRF program requirements, that apply to this activity. Recipients must comply with the applicable requirements of the Uniform Guidance regarding procurement, contracting, and conflicts of interest and must follow the applicable laws and regulations in their jurisdictions. Recipients must also comply with all federal, state, and local public health and environmental laws or regulations that apply to activities under this eligible use category,²⁰⁴ for example, requirements around the

based on United States Postal Service Vacancy Data. See, respectively, <https://data.census.gov/cedsci/table?q=DP04&tid=ACSDP5Y2019.DP04&hidePreview=true> or <https://www.huduser.gov/portal/datasets/usps.html>.

²⁰⁴ See U.S. Environmental Protection Agency, Large-Scale Residential Demolition, <https://www.epa.gov/large-scale-residential-demolition> (last visited November 9, 2021) for a primer on requirements that may apply.

²⁰² A state or locality may use its existing classifications of what is considered vacant or abandoned property under state law and local ordinances, as well as any corresponding processes for demolition, for these eligible uses. A recipient without a definition of vacant or abandoned property may refer to definitions used in the Department of Housing and Urban Development's Neighborhood Stabilization Program (available at the citations below); however, recipients should be aware that other federal, state, or local requirements may apply such as compliance with the Uniform Relocation Act (see U.S. Department of Housing and Urban Development, Real Estate Acquisition and Relocation Overview in HUD Programs, <https://www.hudexchange.info/programs/relocation/>

handling and disposal of asbestos-containing materials, lead paint, and other harmful materials may apply, as well as environmental standards for any backfill materials used at demolition sites. Treasury encourages recipients to consult and apply best practices from the Environmental Protection Agency as well.

Recipients must evaluate each subrecipient's risk of noncompliance with federal statutes, regulations, and the terms and conditions of the subaward related to safely and properly conducting activities under this eligible use. This may include checking for any past violations recorded by state or local environmental, workplace safety, licensing, and procurement agencies, as well as regular reviews for suspensions, debarments, or stop work orders. Recipients must establish rigorous oversight and internal controls processes to monitor compliance with any applicable requirements, including compliance by subrecipients.

4. Addressing educational disparities. The interim final rule included an enumerated eligible use for addressing educational disparities in disproportionately impacted communities and outlined some enumerated eligible services under this use. These enumerated uses included early learning services, assistance to high-poverty school districts to advance equitable funding across districts and geographies, and educational and evidence-based services to address the academic, social, emotional, and mental health needs of students. Addressing the many dimensions of resource equity—including equitable and adequate school funding; access to a well-rounded education; well-prepared, effective, and diverse educators and staff; and integrated support services—can also begin to mitigate the impact of COVID-19 on schools and students and can close long-standing gaps in educational opportunity. As discussed above, in the final rule, early learning services and addressing the impacts of lost instructional time for K-12 students are enumerated eligible uses for impacted communities, not just disproportionately impacted communities.

Public Comment: Treasury received some comments in this category. Generally, commenters expressed agreement with the elements of the interim final rule regarding use of funds for addressing educational disparities. Some commenters had questions about whether a few specific uses of funds qualified under this category. For example, commenters inquired about whether the funds could be used for

behavioral health in a school setting or cultural language classes.

Treasury Response: Treasury is maintaining these enumerated eligible uses in the final rule, which are now organized under the heading of “services to address educational disparities.” Treasury reiterates that these uses include addressing educational disparities exacerbated by COVID-19, including but not limited to: increasing resources for high-poverty school districts, educational services like tutoring or afterschool programs, summer education and enrichment programs, and supports for students’ social, emotional, and mental health needs. This also includes responses aimed at addressing the many dimensions of resource equity—including equitable and adequate school funding; access to a well-rounded education; well-prepared, effective, and diverse educators and staff; and integrated support services—in order to close long-standing gaps in educational opportunity.

Further, Treasury is clarifying that improvements or new construction of schools and other educational facilities or equipment are eligible capital expenditures for disproportionately impacted communities. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

Treasury notes that services to promote healthy childhood environments, including childcare, early learning services, and home visiting programs that serve infants and toddlers, is a separate category of enumerated eligible uses for households impacted by the pandemic (see eligible uses for “promoting healthy childhood environments”). Similarly, education services to address the impact of lost instructional time during the pandemic are a separate eligible use category for households impacted by the pandemic; when providing these services, recipients may presume that any K-12 student who lost access to in-person instruction for a significant period of time has been impacted by the pandemic and is thus eligible for responsive services (see eligible uses for “addressing the impact of lost instructional time”).

Proposed Additional Enumerated Eligible Uses Not Incorporated

The interim final rule posed a question on what other types of services or costs Treasury should consider as eligible uses to respond to the

disproportionate public health or negative economic impacts of COVID-19 on low-income populations and communities.

In response, commenters proposed a wide variety of additional recommended enumerated eligible uses to assist disproportionately impacted households, ranging from general categories of services (e.g., long-term investments to remediate long-term disparities) to highly specific examples of services (e.g., a specific type of healthcare equipment). As discussed above, Treasury is including several additional categories of enumerated eligible uses in the final rule in response to public comments.

Given the large number and diversity of SLFRF recipients, Treasury’s approach to assistance to households in disproportionately impacted communities in the final rule aims to provide enumerated eligible uses that respond to disproportionate impacts of the pandemic experienced widely in many jurisdictions across the country and are intended to simplify and clarify these enumerated eligible uses. At the same time, Treasury recognizes that the impacts of the pandemic vary over time, by jurisdiction, and by population; as such, the final rule provides flexibility for recipients to identify additional disproportionate impacts to additional households or classes of households and pursue programs and services that respond to those disproportionate impacts.

In the final rule, Treasury has not chosen to include as enumerated uses all uses proposed by commenters; given the significant range, and in some cases highly specific nature, of the proposed uses Treasury was not able to assess that the proposed uses would respond to disproportionate impacts experienced in many jurisdictions across the country, supporting an enumerated eligible use available to all recipients presumptively. However, the final rule continues to provide a framework to allow recipients to identify and respond to additional disproportionate impacts (for details, see section General Provisions: Structure and Standards). Some types of proposed additional enumerated eligible uses for assistance to households in disproportionately impacted communities were recommended by several commenters:

- **Capital expenditures.** Many commenters recommended that capital expenditures on many different types of public and private facilities be enumerated eligible uses. For clarity, Treasury has addressed all comments on the eligibility of capital expenditures on property, facilities, or equipment in one

section (see section Capital Expenditures in General Provisions: Other).

- **Equity funds.** Several commenters recommended that Treasury permit SLFRF funds to be deposited into an equity fund to support long-term racial and economic equity investments. The eligibility of such use would depend on the specific structure and uses of funds. Under the statute, SLFRF funds can only support costs incurred until December 31, 2024; see section Timeline for Use of SLFRF Funds in Program Administration Provisions. Further, recipients may calculate the cost incurred with respect to investments in revolving loan funds based on the methodology described in section Treatment of Loans in Program Administration Provisions. Projects funded by a revolving loan fund using SLFRF funds would also need to be eligible uses of SLFRF funds.

- **Environmental quality and climate resilience.** Several commenters recommended eligible uses to enhance environmental quality, remediate pollution, promote recycling or composting, or increase energy efficiency or electrical grid resilience. Whether these projects respond to the disproportionate impacts of the pandemic on certain communities would depend on the specific issue they address and its nexus to the public health and economic impacts of the pandemic.

b. Assistance to Small Businesses Background

The pandemic has severely impacted many businesses, with small businesses hit especially hard. Small businesses make up nearly half of U.S. private-sector employment²⁰⁵ and play a key role in supporting the overall economic recovery as they are responsible for two-thirds of net new jobs.²⁰⁶ Since the beginning of the pandemic, however, 400,000 small businesses have closed, with many more at risk.²⁰⁷ Sectors with a large share of small business employment have been among those with the most drastic drops in

employment.²⁰⁸ The negative outlook for small businesses has continued: As of November 2021, approximately 66 percent of small businesses reported that the pandemic has had a moderate or large negative effect on their business, and over a third expect that it will take over 6 months for their business to return to their normal level of operations.²⁰⁹

This negative outlook is likely the result of many small businesses having faced periods of closure and having seen declining revenues as customers stayed home.²¹⁰ In general, small businesses can face greater hurdles in accessing credit,²¹¹ and many small businesses were already financially fragile at the outset of the pandemic.²¹²

While businesses everywhere faced significant challenges during the pandemic, minority-owned and very small businesses have faced additional obstacles. Between February and April 2020, the number of actively self-employed Black business owners decreased by 41 percent.²¹³ During that same time period, Asian and Latino business owners decreased by 26 and 32 percent, respectively, compared to a 17 percent decrease in white business owners.²¹⁴ Female business owners also saw significant impacts, with businesses owned by women falling by 25 percent.²¹⁵

Many of the disparities in how minority business owners experienced

the pandemic are rooted in systemic issues present even before the pandemic. For example, before the economic downturn, only 12 percent of Black-owned businesses and 19 percent of Hispanic-owned businesses had annual earnings of over \$1 million compared to 31 percent of white-owned businesses.²¹⁶ Minority-owned businesses were also overrepresented in industries hit hardest by the economic downturn (*e.g.*, services, transportation and warehousing, healthcare and social assistance, administrative and support and waste management, and accommodation and food services).²¹⁷ Approximately 22 percent of all minority-owned business fell into the hardest hit industries compared to 13 percent of nonminority-owned businesses.²¹⁸

Although disparities in annual revenue are not a direct indication of a business's ability to weather an economic downturn, they do highlight other disparities that make it more challenging for these businesses to survive the effects of the pandemic. Black-owned startups, for example, face larger challenges in raising capital, including securing business loans.²¹⁹

Summary of the Interim Final Rule and Final Rule Structure

Summary of Interim Final Rule: As discussed above, small businesses faced significant challenges in covering payroll, mortgages or rent, and other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. Under Sections 602(c)(1)(A) and 603(c)(1)(A), recipients may "respond to the public health emergency or its negative economic impacts," by, among other things, providing "assistance to . . . small businesses." Accordingly, the interim final rule allowed recipients to provide assistance to small businesses to address the negative economic impacts faced by those businesses. A

²⁰⁸ Daniel Wilmoth, U.S. Small Business Administration Office of Advocacy, *The Effects of the COVID-19 Pandemic on Small Businesses*, Issue Brief No. 16 (Mar. 2021), available at <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf>.

²⁰⁹ U.S. Census Bureau, *Small Business Pulse Survey*, <https://portal.census.gov/pulse/data/> (last visited December 7, 2021).

²¹⁰ Olivia S. Kim et al., *Revenue Collapses and the Consumption of Small Business Owners in the Early Stages of the COVID-19 Pandemic* (Nov. 2020), <https://www.nber.org/papers/w28151>.

²¹¹ See, *e.g.*, Board of Governors of the Federal Reserve System, *Report to Congress on the Availability of Credit to Small Businesses* (Sept. 2017), available at <https://www.federalreserve.gov/publications/2017-september-availability-of-credit-to-small-businesses.htm>.

²¹² Alexander W. Bartik et al., *The Impact of COVID-19 on small business outcomes and expectations*, PNAS 117(30): 17656–66 (July 28, 2020), available at <https://www.pnas.org/content/117/30/17656>.

²¹³ Robert Fairlie, *The impact of COVID-19 on small business owners: Evidence from the first 3 months after widespread social-distancing restrictions*, *Journal of economics & management strategy* (August 27, 2020), <https://doi.org/10.1111/jems.12400>.

²¹⁴ U.S. Small Business Administration, *The Effects of the COVID-19 Pandemic on Small Businesses* (March 2021), <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf>.

²¹⁵ Robert Fairlie, *supra* note 213.

²¹⁶ Federal Reserve Bank of Atlanta. 2019. *Small Business Credit Survey 2019 Report on Minority-Owned Firms*. December. fedsmallbusiness.org/survey/2019/report-on-minority-owned-firms.

²¹⁷ Ding, Lei, and Alvaro Sanchez. 2020. *What Small Businesses Will Be Impacted by COVID-19?* Federal Reserve Bank of Philadelphia. philadelphiafed.org/covid-19/covid-19-equity-in-recovery/what-small-businesses-will-be-impacted.

²¹⁸ Lucas Misera, *An Uphill Battle: COVID-19's Outsized Toll on Minority-Owned Firms*, Federal Reserve Bank of Cleveland (October 8, 2020), <https://www.clevelandfed.org/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx>.

²¹⁹ Robert Fairlie, A. Robb, D. Robinson, Black and White: Access to Capital among Minority-Owned Startups, NBER Working Paper 28154 (November 2020), <https://www.nber.org/papers/w28154>.

²⁰⁵ Board of Governors of the Federal Reserve System, *Monetary Policy Report* (June 12, 2020), <https://www.federalreserve.gov/monetarypolicy/2020-06-mpr-summary.htm>.

²⁰⁶ U.S. Small Business Administration, Office of Advocacy, *Small Businesses Generate 44 Percent of U.S. Economic Activity* (Jan. 30, 2019), <https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/>.

²⁰⁷ Joseph R. Biden, Remarks by President Biden on Helping Small Businesses (Feb. 22, 2021), <https://www.whitehouse.gov/briefing-room/speechesremarks/2021/02/22/remarks-by-president-bidenon-helping-small-businesses/>.

“small business” is defined as a business concern or other organization that:

- (1) Has no more than 500 employees or, if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates; and
- (2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Specifically, the interim final rule provided that recipients may provide assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID-19 public health emergency, including:

- Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure;
- Loans, grants, or in-kind assistance to implement COVID-19 prevention or mitigation tactics; and
- Technical assistance, counseling, or other services to assist with business planning needs.

The interim final rule further provided that recipients may consider additional criteria to target assistance to businesses in need, including small businesses. Such criteria may include businesses facing financial insecurity, substantial declines in gross receipts (e.g., comparable to measures used to assess eligibility for the Paycheck Protection Program), or other economic harm due to the pandemic, as well as businesses with less capacity to weather financial hardship, such as the smallest businesses, those with less access to credit, or those serving underserved communities. The interim final rule also indicated that recipients should consider local economic conditions and business data when establishing such criteria. Finally, the interim final rule posed a question on whether there are other services or costs that Treasury should consider as eligible uses to respond to the disproportionate impacts of COVID-19 on low-income populations and communities.

Final Rule Structure: Consistent with the interim final rule approach, the final rule provides a non-exhaustive list of enumerated eligible uses for assistance to small businesses that are impacted or disproportionately impacted by the pandemic. Further, within Assistance to Small Business, a recipient may also identify a negative economic impact experienced by small businesses and design and implement a response to that negative economic impact, beyond the uses specifically enumerated in the final

rule, according to the standard described in the section Standards: Identifying a Negative Economic Impact. A recipient may also identify small businesses that have been disproportionately impacted by the public health emergency and design and implement a program that responds to the source of that disproportionate impact.

Consistent with other eligible use categories to respond to the public health and economic impacts of the pandemic, recipients may identify and serve small businesses that experienced a negative economic impact or disproportionate impact due to the pandemic, as described in the section Standards for Identifying Other Eligible Populations. For example, to identify impacted small businesses, a recipient may consider whether the small businesses faced challenges in covering payroll, mortgage or rent, or other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. In order to ease administrative burden, the final rule presumes that small businesses operating in QCTs, small businesses operated by Tribal governments or on Tribal Lands, and small businesses operating in the U.S. territories were disproportionately impacted by the pandemic.

Reorganizations and Cross-References: As detailed above, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity. For discussion of assistance to small businesses and impacted industries to implement COVID-19 mitigation and prevention strategies, see section COVID-19 Mitigation and Prevention in Public Health.

Small Businesses Eligible for Assistance

Public Comment: Treasury received many comments about the general benefits or drawbacks of use of SLFRF funds to provide assistance to small businesses. Some commenters suggested that SLFRF funds should be available to assist all small businesses, rather than only businesses that experienced direct negative economic impacts due to the public health emergency. Other commenters argued that aid to small businesses should be narrowed in the final rule, asserting that SLFRF funds should instead focus on assistance to households or building public sector capacity.

Treasury also received comments requesting clarification of the types of small businesses eligible for assistance. For example, some commenters requested clarification about whether microbusinesses were included in the

definition of small business. Comments also suggested that self-employed individuals and Tribal enterprises be classified as small businesses, respectively. Commenters argued that these types of small businesses are more common among low-income and minority businessowners and serve as important institutions in underserved communities.

Finally, some commenters suggested that Treasury permit broader enumerated eligible uses to assist small businesses in disproportionately impacted communities and generally strengthen economic growth in these communities. These commenters recommended that Treasury presume small businesses operating in QCTs are disproportionately impacted and eligible for broader enumerated uses.

Treasury Response: As discussed in the section Designating a Negative Economic Impact, in the final rule, recipients must identify an economic harm caused or exacerbated by the pandemic on a small business or class of small businesses to provide services that respond.

As discussed above, programs or services in this category must respond to a harm experienced by a small business or class of small businesses as a result of the public health emergency. To identify impacted small businesses and necessary response measures, recipients may consider impacts such as lost revenue or increased costs, challenges covering payroll, rent or mortgage, or other operating costs, the capacity of a small business to weather financial hardships, and general financial insecurity resulting from the public health emergency.

Recognizing the difficulties faced by small businesses in certain communities, the final rule presumes that small businesses operating in QCTs, small businesses operated by Tribal governments or on Tribal Lands, and small businesses operating in the U.S. territories were disproportionately impacted by the pandemic. This presumption parallels the final rule's approach to assistance to households, reflecting the more severe pandemic impacts in underserved communities and creating a parallel structure across different categories of eligible uses to make the structure simpler for recipients to understand and navigate.

Treasury notes that recipients may also designate a class of small businesses that experienced a negative economic impact or disproportionate negative economic impact (e.g., microbusinesses, small businesses in certain economic sectors), design an intervention to fit the impact, and

document that the individual entity is a member of the class. Additional information about this framework is included in the section General Provisions: Structure and Standards.

Further, Treasury is maintaining the interim final rule definition of “small business,” which used the Small Business Administration’s (SBA) definition of fewer than 500 employees, or per the standard for that industry, as defined by SBA. This definition includes businesses with very few employees, self-employed individuals, and Tribally owned businesses.²²⁰ Finally, Treasury notes that recipients may award SLFRF funds to many different types of organizations, including small businesses, to function as a subrecipient in carrying out eligible uses of funds on behalf of a recipient government. In this case, a small business need not have experienced a negative economic impact in order to serve as a subrecipient. See section Distinguishing Subrecipients versus Beneficiaries for more detailed discussion of interactions with subrecipients, in contrast to beneficiaries of assistance.

Enumerated Eligible Uses for Assistance to Small Businesses

Public Comment: Treasury received comments requesting clarification of the types of assistance available to small businesses. For example, one commenter suggested that outdoor dining be an eligible use for SLFRF funds as assistance to small businesses. Other commenters asked for clarification about how SLFRF funds could be used to support new businesses and start-ups.

Several commenters requested clarification of whether and how recipients may provide services to business districts or downtown areas, particularly those that exist in whole or in part within a QCT, and requested reduced documentation of the specific negative economic impact for the businesses operating within those areas. These commenters argued in favor of allowing redevelopment or other support, including capital investments, in business districts that were

negatively impacted by COVID-19. Several commenters also argued that funds should be available to support and grow microbusinesses, or businesses with five or fewer employees, which are more likely to be owned by women and people of color.

Treasury Response: In the final rule, Treasury is maintaining and clarifying the enumerated eligible uses of funds for assistance to small businesses that are impacted or disproportionately impacted by the pandemic.

Impacted small businesses.

Specifically, Treasury is maintaining enumerated eligible uses from the interim final rule for assistance to impacted small businesses. These include but are not limited to:

- Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;
- Loans, grants, or in-kind assistance to implement COVID-19 prevention or mitigation tactics (see section Public Health for details on these eligible uses); and
- Technical assistance, counseling, or other services to assist with business planning needs.

Treasury acknowledges a range of potential circumstances in which assisting small businesses could be responsive to the negative economic impacts of COVID-19, including for small businesses startups and microbusinesses and individuals seeking to start small or microbusinesses. For example:

- As noted above, a recipient could assist small business startups or microbusinesses with additional costs associated with COVID-19 mitigation tactics; see section Public Health for details on these eligible uses.
- A recipient could identify and respond to a negative economic impact of COVID-19 on new small business startups or microbusinesses; for example, if small business startups or microbusinesses in a locality faced greater difficulty accessing credit than prior to the pandemic or faced increased costs to starting the business due to the pandemic or if particular small businesses or microbusinesses had lost expected startup capital due to the pandemic.
- The interim final rule also discussed, and the final rule maintains, eligible uses that provide support for individuals who have experienced a negative economic impact from the COVID-19 public health emergency, including uses that provide job training

for unemployed individuals. These initiatives also may support small business start-ups, microbusinesses, and individuals seeking to start small or microbusinesses.

Disproportionately impacted small businesses. Additionally, Treasury agrees with commenters that disproportionately impacted small businesses may benefit from additional assistance to address the sources of that disparate impact.

As such, the final rule provides a broader set of enumerated eligible uses for disproportionately impacted small businesses and/or small businesses in disproportionately impacted business districts. Recipients may use SLFRF funds to assist these businesses with certain capital investments, such as rehabilitation of commercial properties, storefront improvements, and façade improvements. Recipients may also provide disproportionately impacted microbusinesses additional support to operate the business, including financial, childcare, and transportation supports.

Recipients could also provide technical assistance, business incubators, and grants for start-ups or expansion costs for disproportionately impacted small businesses. Note that some of these types of assistance are similar to those eligible to respond to small businesses that experienced a negative economic impact (“impacted” small businesses). However, because the final rule presumes that some small businesses were disproportionately impacted, these enumerated eligible uses can be provided to those businesses without any specific assessment of whether they individually experienced negative economic impacts or disproportionate impacts due to the pandemic.

Cross-References: Recipients providing assistance to small businesses for capital expenditures (*i.e.*, expenditures on property, facilities, or equipment) should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards that apply to capital expenditures. Recipients should also note that services to address vacant or abandoned commercial or industrial properties are addressed in section Vacant or Abandoned Properties in Assistance to Households.

Loans to Small Businesses

Public Comment: Treasury received many comments requesting clarification on using SLFRF funds to establish funds that provide loans to small businesses. For example, commenters sought clarification of how eligible use

²²⁰ In regard to counting employees, businesses owned and controlled by a Tribal government are not considered affiliates of the Tribal government and are not considered affiliates of other businesses owned by the Tribal government because of their common ownership by the Tribal government or common management, as described in 13 CFR 121.103(b)(2). This definition is consistent with the Small Business Administration (SBA) HUBZone definition of a “small business concern” relating to Tribal governments as well as how Tribal enterprises are defined for the State Small Business Credit Initiative (SSBCI).

requirements and applicable dates for SLFRF funds would apply to third party organizations (like economic development organizations) who receive SLFRF funds in order to establish a loan fund. In addition, commenters requested clarification on what requirements apply to loan programs with available funds remaining after December 31, 2024.

Treasury Response: SLFRF funds may be used to make loans, including to small businesses, provided that the loan is an eligible use, and the cost of the loan is tracked and reported in accordance with Treasury's Compliance and Reporting Guidance. Funds that are unobligated after December 31, 2024 must be returned to Treasury. See section Treatment of Loans for more information about using SLFRF funds for loan programs.

c. Assistance to Nonprofits

Background: Nonprofits have faced significant challenges because of the pandemic, including increased demand for services and changing operational needs.²²¹ Prior to the pandemic, the median U.S. nonprofit reported that it had six months of cash on hand.²²² This varied by sector, however, with some sectors like disaster relief organizations reporting a median of 17 months cash on hand, and others, like mental health and crisis intervention organizations reporting only three months.²²³ Evidence suggests that the pandemic has damaged the financial health of nonprofits, with small nonprofits, which tend to rely more heavily on donations than large nonprofits, reporting relatively larger declines in donations — 42 percent versus 29 percent, respectively.²²⁴ Among nonprofits that collect fees for services, the median revenue amount collected from such fees fell by 30 percent from 2019 to 2020, with arts organization experiencing a 50 percent decline.²²⁵ Nonprofits also experienced significant job losses. While employment in the nonprofit sector has recovered from its low point in 2020, as of November 2021,

the sector remained 485,000 jobs below its pre-pandemic level.²²⁶ In addition, some nonprofits may have experienced declines in volunteer staffing during the pandemic.²²⁷

At the same time, nonprofits provide a host of services for their communities, including helping Americans weather the multitude of challenges presented by the pandemic. The ARPA and the interim final rule recognized this dichotomy—nonprofits as entities that have themselves been negatively impacted by the pandemic and as entities that provide services that respond to the public health and negative economic impacts of the pandemic on households and others—by creating two roles for nonprofits.

First, under Sections 602(c)(1)(A) and 603(c)(1)(A), recipients may “respond to the public health emergency or its negative economic impacts,” by, among other activities, providing “assistance to . . . nonprofits.” The interim final rule defined assistance to nonprofits to include “loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID-19 public health emergency,” and “nonprofit” to mean a tax-exempt organization under Section 501(c)(3) of the U.S. Internal Revenue Code.²²⁸

Second, as discussed above, ARPA and the interim final rule provided that nonprofit organizations may also receive funds as subrecipients of a recipient government (i.e., a government that received SLFRF funds); subrecipients carry out an eligible use of SLFRF funds on behalf of a recipient government (e.g., a recipient government that would like to provide food assistance to impacted households may grant funds to a nonprofit organization to carry out that eligible use). Recipients generally have wide latitude to award funds to many types of organizations, including nonprofit or for-profit organizations, as subrecipients to carry out eligible uses of funds on their behalf. For further information on distinguishing between beneficiaries and subrecipients, as well as the impacts of the distinction on reporting and other requirements, see section Transfers of Funds and section Distinguishing Subrecipients versus Beneficiaries under the Public Health

and Negative Economic Impacts eligible use category.²²⁹

Reorganization and Cross-References: Under the interim final rule, assistance to disproportionately impacted communities was a separate, stand-alone category. The final rule reorganizes the disproportionate impact analysis within the sections Assistance to Households, Assistance to Small Business, and Assistance to Nonprofits to better articulate how recipients can serve disproportionately impacted beneficiaries in each of those categories.

As detailed above in the Public Health subsection, in response to public comments describing uncertainty on which eligible use category should be used to assess different potential uses of funds, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity. For discussion of assistance to nonprofits to implement COVID-19 mitigation and prevention strategies, see section COVID-19 Mitigation and Prevention in Public Health.

Recipients providing assistance via nonprofits involving capital expenditures (i.e., expenditures on property, facilities, or equipment) should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards for these expenditures. Recipients providing assistances in the form of loans should review the section Treatment of Loans.

Public Comment: Eligible Assistance to Impacted and Disproportionately Impacted Nonprofits: A few commenters asked Treasury to be more explicit in the final rule that recipients may use funds to provide relief directly to nonprofit organizations and to explain how nonprofits might qualify themselves for assistance and what expenses SLFRF funds may be used to cover.²³⁰ Commenters requested that Treasury note that the pandemic is

²²¹ See, e.g., Federal Reserve Bank of San Francisco, Impacts of COVID-19 on Nonprofits in the Western United States (May 2020), <https://www.frbf.org/community-development/files/impact-of-covid>.

²²² Philanthropy and COVID-19: Measuring one year of giving, Candid and the Center for Disaster Philanthropy. (2021), <https://www.issuelab.org/resources/38039/38039.pdf>.

²²³ *Id.*

²²⁴ Elizabeth T. Boris et al., Nonprofit Trends and Impacts 2021, Urban Institute (October 7, 2021), https://www.urban.org/research/publication/nonprofit-trends-and-impacts-2021/view/full_report.

²²⁵ *Id.*

²²⁶ Chelsea Newhouse, COVID-19 JOBS UPDATE, NOVEMBER 2021: Nonprofits add just 5,000 jobs in November, Center for Civil Society Studies at Johns Hopkins University (December 10, 2021), <http://ccss.jhu.edu/november-2021-jobs/>.

²²⁷ Elizabeth T. Boris et al. *supra* note 224 at p. 38.

²²⁸ § 35.3 Definitions.

²²⁹ The ARPA also states under “Transfer Authority” that a Recipient may transfer funds to a private nonprofit organization such as those defined in paragraph (17) of section 401 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(17)). See 602 & 603(c)(3) of the Social Security Act. See section Transfers of Funds for additional information on other types of entities, including other forms of nonprofits, that may receive transfers.

²³⁰ While not stated specifically in the interim final rule, the Department does not require or have a preference as to the payment structure for recipients that transfer funds to subrecipients (e.g., advance payments, reimbursement basis, etc.). Ultimately, recipients must comply with the eligible use requirements and any other applicable laws or requirements and are responsible for the actions of their subrecipients or beneficiaries.

leading to a changing financial landscape for nonprofits.

Treasury Response: Eligible Assistance to Impacted and Disproportionately Impacted Nonprofits: The interim final rule provided for, and the final rule maintains, the ability for recipients to provide direct assistance to nonprofits that experienced public health or negative economic impacts of the pandemic. Specifically, recipients may provide direct assistance to nonprofits if the nonprofit has experienced a public health or negative economic impact as a result of the pandemic. For example, if a nonprofit organization experienced impacts like decreased revenues or increased costs (e.g., through reduced contributions or uncompensated increases in service need), and a recipient provides funds to address that impact, then it is providing direct assistance to the nonprofit as a beneficiary under Subsection (c)(1) of Sections 602 and 603. Direct assistance may take the form of loans, grants, in-kind assistance, technical assistance, or other services that respond to the negative economic impacts of the COVID-19 public health emergency.

A recipient may identify a negative economic impact experienced by a nonprofit, or class of nonprofits, and design and implement a response to that negative economic impact, see section Standards: Designating a Negative Economic Impact. The final rule provides a non-exhaustive list of enumerated eligible uses for assistance to nonprofits that are impacted or disproportionately impacted by the pandemic.

A recipient may also identify a class of nonprofits that have been disproportionately impacted by the public health emergency and design and implement a program that responds to the source of that disproportionate impact. For example, a recipient may determine that nonprofits offering after-school programs within its jurisdiction were disproportionately impacted by the pandemic due to the previous in-person, indoors nature of the work and the nonprofits' reliance on fees received for services (e.g., attendance fees). The recipient might then design an intervention to assist those nonprofits in adapting their programming (e.g., to outdoor or online venues), their revenue structure (e.g., adapting the fee for service structure or developing expertise in digital donation campaigns), or both. Additional information about this framework is included in General Provisions: Structure and Standards. In order to ease administrative burden, the final rule presumes that nonprofits

operating in QCTs, operated by Tribal governments or on Tribal Lands, or operating in the U.S. territories were disproportionately impacted by the pandemic.

To summarize, a recipient may determine that certain nonprofits were impacted by the pandemic or were disproportionately impacted by the pandemic and provide responsive services.

Public Comment: Beneficiaries and Subrecipients: As noted elsewhere in this final rule, Treasury received multiple comments expressing uncertainty on how to categorize a particular activity in the eligible use categories. For instance, some commenters requested that recipients be able to use SLFRF funds for certain expenses incurred by nonprofits (e.g., unemployment charges) as a response to a public health or negative economic impact to that nonprofit; others asked if nonprofits providing certain services (e.g., social services) made them eligible for direct assistance. Commenters also requested that Treasury acknowledge that engagement directly with nonprofit organizations in low-income communities and communities of color may allow the recipient to better assess economic harms in these areas.

Treasury Response: Beneficiaries and Subrecipients: Treasury recognizes that many nonprofits play important roles in their communities, and some may have experienced public health or negative economic impacts during the pandemic. As such, under the interim final rule and the final rule, nonprofits may be impacted by the pandemic and receive assistance as a beneficiary, as described above, and/or be a subrecipient providing services on behalf of a recipient.²³¹

Specifically, the interim final rule also allowed for, and the final rule maintains, the ability for the recipient to transfer, e.g., via grant or contract, funds to nonprofit entities to carry out an eligible use on behalf of the recipient. Treasury notes that recipients may award SLFRF funds to many different types of organizations to carry out eligible uses of funds and serve beneficiaries on behalf of a recipient government (e.g., assisting in a vaccination campaign, operating a job training program, developing affordable housing). When a recipient provides funds to an organization to carry out eligible uses of funds and serve

beneficiaries, the organization becomes a subrecipient. In this case, a nonprofit need not have experienced a negative economic impact in order to serve as a subrecipient.

In the context of SLFRF, nonprofits of all types may be subrecipients. Treasury is not restricting the types of nonprofits that can operate as subrecipients, rather allowing recipients to decide what form best meets the needs of their community. Therefore, a "nonprofit" that is acting as subrecipient could include, but is not limited to, a nonprofit as that term is defined in paragraph (17) of section 401 of the McKinney-Vento Homeless Assistance.²³² See section Distinguishing Subrecipients versus Beneficiaries for further information. Additional guidance on determining subrecipient status may be found in the Uniform Guidance.²³³

Recipients may transfer funds to subrecipients in several ways, including advance payments and on a reimbursement basis. Ultimately, recipients must comply with the eligible use requirements and any other applicable laws or requirements and are responsible for the actions of their subrecipients or beneficiaries.

As part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the SLFRF award. Pursuant to this requirement, decisions concerning SLFRF funds must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. Recipients may avoid conflicts of interest in providing assistance to nonprofits or making subrecipient awards by, *inter alia*, making aid available to nonprofits on generally applicable terms or utilizing a competitive grant process, respectively. A recipient may not use control over SLFRF funds for their own private gain. Furthermore, no employee, officer, or agent may 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.

Public Comment: Definition of Nonprofit: Treasury also received several requests to expand the definition of nonprofits so that other tax-exempt entities (e.g., 501(c)(7)s, 501(c)(9)s, 501(c)(19)s, nonprofits with "historical

²³¹ Note, this response is meant to clarify the difference between nonprofits as beneficiaries and nonprofits as subrecipients. It is not meant to limit the types of relationships that a recipient may enter into with a nonprofit as permitted under the Uniform Guidance.

²³² See sections 602(c)(3) and 603(c)(3) of the Social Security Act. See also Section 401 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(17)), which defines a "private nonprofit organization."

significance”) could be eligible for direct assistance as beneficiaries.

Treasury Response: Definition of Nonprofit: The final rule expands the definition of nonprofits to mean 501(c)(3) organizations and 501(c)(19) organizations.²³⁴ The 501(c)(3) classification includes a wide range of organizations with varying charitable or public service-oriented goals (e.g., housing, food assistance, job training). As discussed above, these nonprofit organizations often experienced hardship due to increased needs for services combined with decreased donations and other sources of funding. In response to comments, Treasury has expanded the definition of nonprofit to include 501(c)(19) organizations, which includes veterans’ organizations, to provide recipients more flexibility and in alignment with the definition of nonprofit adopted by the CARES Act, wherein 501(c)(3)s and 501(c)(19)s were eligible for assistance.²³⁵

Public Comment: Reporting Requirements: One commenter asked Treasury to clarify if nonprofits that receive direct assistance as beneficiaries are required to comply with guidelines and reporting requirements.

Treasury Response: Reporting Requirements: Nonprofits that receive direct assistance as beneficiaries are not subrecipients under SLFRF and are therefore not required to comply with SLFRF reporting requirements. However, the recipient must comply with SLFRF reporting requirements, which would require reporting obligations and expenditures for assistance to nonprofits. The recipient may also choose to establish other forms of reporting or accountability as a part of the recipient’s direct assistance program.

A nonprofit entity that receives a transfer from a recipient is a subrecipient. Per the Uniform Guidance, subrecipients must adhere to the same requirements as recipients. Therefore, a nonprofit subrecipient may only receive funds to carry out an eligible use of SLFRF funds and must comply with any reporting and compliance requirements. Note that recipients are ultimately responsible for reporting information to Treasury and must collect any necessary

information from their subrecipients to complete required reporting.

d. Aid to Impacted Industries

The interim final rule allowed for “aid to tourism, travel, and hospitality, and other impacted industries” that responds to the negative economic impacts of the COVID-19 public health emergency. In designating other impacted industries, Treasury specified that recipients should consider the “extent of the economic impact as compared to tourism, travel, and hospitality” and “whether impacts were due to the COVID-19 pandemic, as opposed to longer-term economic or industrial trends unrelated to the pandemic.”²³⁶ Treasury identified declines in employment and revenue as possible metrics to compare the economic impact on a particular industry relative to the tourism, travel, and hospitality industries.

Treasury further provided that aid should be limited to businesses, attractions, business districts, and Tribal development districts²³⁷ that were operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. Examples of eligible aid include assistance to implement COVID-19 mitigation and infection prevention measures, aid to support safe reopening of businesses in these industries, as well as aid for a planned expansion or upgrade of tourism, travel, and hospitality facilities delayed due to the pandemic. The interim final rule and Treasury’s subsequent Compliance and Reporting Guidance also required governments to publicly report assistance provided to private-sector businesses under this eligible use and maintain records of their assessments to facilitate transparency and accountability.

Reorganization and Cross-References: As detailed above, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity. In the interim final rule, aid to impacted industries to implement COVID-19 mitigation and prevention strategies was categorized under Aid to Impacted Industries; the final rule addresses these items under the section COVID-19 Mitigation and Prevention in Public Health. Recipients should also be aware of the difference between beneficiaries

of assistance and subrecipients when working with impacted industries; for further information, see section Distinguishing Subrecipients versus Beneficiaries.

Designating an Impacted Industry

Public Comment: Many commenters requested greater clarity on how to designate “other impacted industries” within their jurisdiction. Commenters requested greater specificity as to the metrics used to measure impact, with some suggesting metrics such as the change in the size of an industry’s workforce due to the pandemic, as well as consideration of whether and why employees are choosing to return to work at slower rates in certain industries. One commenter asked if this meant nearly every industry was “disproportionately impacted.” Some commenters encouraged Treasury to focus on industries most negatively impacted by the pandemic, including disallowing across-the-board business subsidies to businesses that were not negatively impacted by the pandemic and saw revenue or profit growth. Other commenters asked for flexibility for recipients to determine impacted industries based on their local knowledge of the economic landscape.

Treasury Response: The final rule maintains the interim final rule’s approach of allowing recipients to designate impacted industries outside the travel, tourism, and hospitality industries, and, in response to comments, provides greater clarity as to how recipients may designate such impacted industries.

Sections 602(c)(1)(A) and 603(c)(1)(A) recognize that the tourism, travel, and hospitality industries are severely negatively impacted by the pandemic. Under the final rule, recipients may provide eligible aid (described in further detail herein) to the tourism, travel, and hospitality industries. Treasury considers Tribal development districts, which are commercial centers for Tribal hospitality, gaming, tourism, and entertainment and can include Tribal enterprises, as part of the tourism, travel, and hospitality industries that have been severely hit by the pandemic. Therefore, Treasury reaffirms that Tribal development districts are considered impacted industries and recipients may provide eligible aid to them.

To identify other industries comparably impacted to the tourism, travel, and hospitality industries, recipients should undertake a two-step process: Identifying an industry and determining whether that industry is comparably impacted.

²³⁴ § 35.3 Definitions.

²³⁵ Treasury considered expanding the definition of nonprofit to include 501(c)(6) organizations, as Congress later did in the Coronavirus Response and Consolidated Appropriations Act of 2021, but ultimately decided to retain the original CARES Act definition. To the extent impacted by the pandemic, 501(c)(6) organizations may be eligible to receive funds to support eligible uses that align with their overall purpose (e.g., tourism promotion in aid of an impacted industry).

²³⁶ Coronavirus State and Local Fiscal Recovery Funds, 86 FR at 26795.

²³⁷ For a definition of “Tribal development districts,” please see FAQ 2.9 at the following: Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

First, recipients should identify an industry to be assessed. In identifying this industry, the final rule provides recipients the flexibility to define its substantive or geographic scope.²³⁸ Recipients may identify a broad sector that encompasses a number of sub-industries, or they may identify a specific sub-industry to be assessed. For example, a recipient may identify “personal care services” as an industry, or they may identify a more specific category within the “personal care services” industry (e.g., barber shops) as an industry. In defining the industry, Treasury encourages recipients to define narrow and discrete industries eligible for aid. Recipients are not required to follow, but may consider following, industry classifications under the North American Industry Classification System (NAICS). Treasury notes that the larger and more diverse the sector, the more difficult it may be to demonstrate that the larger and less specific sector is negatively impacted in the same way given the scale and diversity of businesses within it.

State or territory recipients may also define a constituent industry with greater geographic precision than state or territory-wide. For example, a state may identify a particular industry in a certain region of the state that was negatively impacted by the pandemic, even if the same industry in the rest of the state did not see a meaningful negative economic impact from the pandemic. State recipients oversee large and diverse industries, sometimes with differences in economic activity between geographic regions. Allowing greater geographic precision allows recipients to target aid to those that need it most, ensuring that state averages do not conceal hard-hit areas in their state.

Second, to determine whether the industry is “impacted,” recipients should compare the negative economic impacts of the public health emergency on the identified industry to the impacts observed on the travel, tourism, and hospitality industries.

1. *Simplified test.* An industry is presumed to be impacted if the industry experienced employment loss of at least 8 percent.

Specifically, a recipient should compare the percent change in the

number of employees of the recipient’s identified industry and the national Leisure & Hospitality sector in the three months before the pandemic’s most severe impacts began (a straight three-month average of seasonally-adjusted employment data from December 2019, January 2020, and February 2020) with the latest data as of the final rule release (a straight three-month average of seasonally-adjusted employment data from September 2021, October 2021, and November 2021).²³⁹ The national Leisure & Hospitality sector largely represents the national travel, tourism, and hospitality industries enumerated in the statute. According to the Bureau of Labor Statistics, employment has fallen by approximately 8 percent for the national Leisure & Hospitality sector when comparing the most recent three-month period available as of the date of adoption of the final rule to the three-month period immediately before the public health emergency. Therefore, if the identified industry has suffered an employment loss of at least 8 percent, the final rule presumes the industry to be an “impacted industry.”

For parity and simplicity, smaller recipients without employment data that measure industries in their specific jurisdiction may use data available for a broader unit of government for this calculation (e.g., a county may use data from the state in which it is located; a city may use data for the county, if available, or state in which it is located) solely for purposes of determining whether a particular industry is an impacted industry.

2. *If simplified test is not met.* If an industry does not satisfy the test above or data are unavailable, the recipient may still designate the industry as impacted by demonstrating the following:

a. The recipient can show that the totality of relevant major economic indicators demonstrate that the industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries at the time of the publication of the final rule, and that the impacts were generally due to the COVID-19 public health emergency. Example economic indicators include gross output, GDP, net profits, employment levels, and projected time to restore employment back to pre-pandemic levels. Recipients may rely on available economic data, government research

publications, research from academic sources, and other quantitative sources for this determination.

If quantitative data is unavailable, the recipient can rely on qualitative data to show that the industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries, and the impacts were generally due to the COVID-19 public health emergency. Recipients may rely on sources like community interviews, surveys, and research from relevant state and local government agencies.

As the public health emergency and economic recovery evolves, recipients should assess how industry impacts shift over time. Impacted industries may recover in a short period of time and no longer face a negative economic impact; in those circumstances, the recipient should ensure that the extent and length of aid is reasonably proportional to the negative economic impact that is experienced, as detailed further below and in section General Provisions: Structure and Standards. Recipients may add to their list of impacted industries by showing that the negative economic impacts to the industry at the time of the designation are comparable to the negative economic impacts to the national tourism, travel, and hospitality sectors as of the date of the final rule adoption, as detailed herein.

Eligible Aid

Public Comment: Commenters asked for further clarification as to the definition of eligible aid to an impacted industry, with many requesting that a broad range of aid be eligible. Examples of aid that recipients asked to be considered eligible include aid to businesses to cover COVID-19 mitigation costs and planned renovations or improvements to tourism, travel, and hospitality facilities, as well as marketing and in-kind incentives to attract visitors. Commenters also asked about the eligibility of aid to broadly cover losses incurred by facilities such as convention centers and hotels due to the pandemic’s economic impact. Commenters also asked for further clarification about the requirements related to private-sector reporting. Further, some commenters asked for clarification about eligible aid to impacted industries owned and operated by Tribal governments, including for Tribal construction projects that have been delayed due to the pandemic’s economic impacts, and for deference to Tribal determinations of negative economic impacts.

²³⁸ Once an industry is designated as impacted, aid should be generally broadly available to businesses in the industry that qualify. Recipients should document how they defined the scope of their industry and how they determined that the industry was impacted. For states and territories, this includes documenting their justification for defining a constituent industry with greater geographic precision than state or territory-wide.

²³⁹ National Leisure & Hospitality supersector employment data can be found on the U.S. Bureau of Labor Statistics website: U.S. Bureau of Labor Statistics, Leisure and Hospitality, <https://www.bls.gov/iag/tgs/iag70.htm> (last visited December 7, 2021).

Treasury Response: In response to commenters' requests for clarification on eligible aid, the final rule requires that aid to impacted industries, including to Tribal development districts, be designed to address the harm experienced by the impacted industry.

First, recipients should identify a negative economic impact, *i.e.*, an economic harm, that is experienced by businesses in the impacted industry. Second, recipients should select a response that is designed to address the identified economic harm resulting from or exacerbated by the public health emergency. Responses must also be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Recipients should consider the further discussion of this standard provided in the sections Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact.

These responses may take the form of direct spending by recipients to promote an industry or support for businesses within an "impacted" industry that experienced a negative economic impact (*e.g.*, through a grant program). Examples of eligible responses include:

- Aid to mitigate financial hardship due to declines in revenue or profits by supporting payroll costs and compensation of returning employees for lost pay and benefits during the COVID-19 pandemic, as well as support of operations and maintenance of existing equipment and facilities, such as rent, leases, and utilities;
- Aid for technical assistance, counseling, and other services to assist with business planning needs; and
- Aid to implement COVID-19 mitigation and infection prevention measures, such as vaccination or testing programs, is broadly eligible for many types of entities, including travel, tourism, hospitality, and other impacted industries. Recipients providing aid to impacted industries for COVID-19 public health measures should review the section Assistance to Businesses to Implement COVID-19 Strategies in Public Health, which describes types of eligible uses of funds in this category.

To address the identified harms, responses (*e.g.*, aid through a grant program) should be generally broadly available to all businesses within the impacted industry to avoid the risk of self-dealing, preferential treatment, and

conflicts of interest.²⁴⁰ Treasury encourages recipients to design aid programs such that funds are first used for operational expenses that are generally recognized as ordinary and necessary for the recipient's operation, such as payroll, before being used on other types of costs. As noted in the section General Standards: Structure and Standards, uses of funds that do not respond to the negative economic impacts of the pandemic, such as excessive compensation to employees, is ineligible.

The final rule maintains the interim final rule's requirement that aid may only be considered responsive to the negative economic impacts of the pandemic if it supports businesses, attractions, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. Further, to facilitate transparency and accountability, the final rule maintains the interim final rule's requirement that recipients publicly report assistance provided to private-sector businesses under this eligible use, including tourism, travel, hospitality, and other impacted industries, and its connection to negative economic impacts of the public health emergency. Recipients also should maintain records to support their assessment of how businesses receiving assistance were affected by the negative economic impacts of the public health emergency and how the aid provided responds to these impacts.

Recipients providing aid to impacted industries for capital expenditures (*i.e.*, expenditures on property, facilities, or equipment), including Tribal governments providing aid to Tribal development districts, should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards that are applicable to these expenditures, depending on the type of aid. Recipients providing assistance in the form of loans should review the section Treatment of

²⁴⁰ As part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the SLFRF award. Pursuant to this policy, decisions concerning SLFRF must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. Recipients may avoid conflicts of interest in awarding aid to impacted industries by, *inter alia*, making aid available to businesses in the industry on generally applicable terms or utilizing a competitive grant process. A recipient may not use control over SLFRF for their own private gain. Furthermore, no employee, officer, or agent may 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.

Loans in Program Administration Provisions.

4. General Provisions: Other

As noted above, the final rule consolidates into a General Provisions section several types of uses of funds; in the interim final rule, the eligibility of these uses of funds was discussed within specific categories of eligible uses for public health and negative economic impacts. Treasury anticipates that this re-organization will enhance recipient clarity in assessing eligible uses of funds. These General Provisions apply across all uses of funds under public health and negative economic impacts.

Specifically, this section considers eligible uses for:

- *Public Sector Capacity and Workforce*, which includes several separate and non-mutually exclusive categories articulated in the interim final rule: public health and safety staff; rehiring state, local, and Tribal government staff; expenses for administering COVID-19 response programs; expenses to improve the efficacy of public health or economic relief programs; and administrative expenses caused or exacerbated by the pandemic. Treasury recognizes that these are closely related and frequently overlapping categories. The final rule treats them as a single purpose, supporting public sector capacity, and provides coordinated guidance on the standards and presumptions that apply to them.

- *Capital Expenditures*, which was addressed only under Public Health in the interim final rule. The final rule moves this expense to General Provisions and provides more clarity on the eligibility of capital expenditures across all aspects of the public health and negative economic impacts eligible use category.

- *Distinguishing Subrecipients versus Beneficiaries*, which describes the differences between these two categories. Recipient governments responding to the public health and negative economic impacts of the pandemic may provide assistance to beneficiaries or execute an eligible use of funds through a subrecipient; some types of entities (*e.g.*, nonprofits) could fit into either category depending on the specific purpose of the use of funds.

- *Uses Outside the Scope of this Category*, which addresses uses of funds that are ineligible or generally ineligible under this eligible use category in the interim final rule. These uses of funds remain ineligible under the final rule, but Treasury has re-categorized where they are addressed, as described below.

This section also addresses enumerated eligible uses proposed by commenters that Treasury has not incorporated into the final rule.

Recipients should also note that the Office of Management and Budget's (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (commonly called the "Uniform Guidance") generally applies to SLFRF.

a. Public Sector Capacity and Workforce Public Safety, Public Health, and Human Services Staff

Summary of Interim Final Rule: Under the interim final rule, funds may be used for payroll and covered benefits²⁴¹ for *public safety, public health, health care, human services, and similar employees*²⁴² of a recipient government, for the portion of the employee's time that is spent responding to COVID-19. For administrative convenience, the recipient may consider *public health and safety* employees to be entirely devoted to responding to COVID-19, and therefore their full payroll and covered benefits eligible to be covered, if the employee, or his or her operating unit or division, is "primarily dedicated" to responding to COVID-19, meaning that more than half of the employee, unit, or division's time is dedicated to responding to COVID-19. Recipients may consider other presumptions for assessing the extent to which an employee, division, or operating unit is responding to COVID-19. Recipients must periodically reassess their determination and maintain records to support their assessment, such as payroll records, attestations from supervisors or staff, or regular work product or

correspondence; recipients need not track staff hours. The interim final rule also posed a question on how long recipients should be able to use funds for staff responding to COVID-19 and what other measures or presumptions might Treasury consider to assess the extent to which public sector staff are engaged in COVID-19 response in an easily administrable manner.

Treasury also provided further guidance on the types of employees covered by this category of eligible use, specifically: "Public safety employees would include police officers (including state police officers), sheriffs and deputy sheriffs, firefighters, emergency medical responders, correctional and detention officers, and those who directly support such employees such as dispatchers and supervisory personnel. Public health employees²⁴³ would include employees involved in providing medical and other health services to patients and supervisory personnel, including medical staff assigned to schools, prisons, and other such institutions, and other support services essential for patient care (e.g., laboratory technicians, medical examiner, or morgue staff) as well as employees of public health departments directly engaged in matters related to public health and related supervisory personnel. Human services staff include employees providing or administering social services; public benefits; child welfare services; and child, elder, or family care, as well as others."

Public Comment: Measuring Time Spent on COVID-19 Response: Treasury received public comments on several components of this eligible use category. Many commenters argued that it poses an administrative burden to identify the extent to which staff are responding to COVID-19 and to maintain records to support that assessment. Largely citing administrative burden in assessing eligibility, several commenters recommended revisions to the administrative convenience that the full payroll and covered benefits for public health and safety staff "primarily dedicated" to responding to COVID-19 may be paid with SLFRF funds. Some commenters recommended presuming that all public health and safety staff are primarily dedicated to COVID-19 response, while others proposed that public health and safety workers who primarily serve QCTs or low- and moderate-income areas be presumed to be primarily dedicated to COVID-19

response, given the disproportionate impacts of the pandemic in those communities. Similarly, Tribal communities recommended that their public health staff be presumed eligible due to the disproportionate impact of the pandemic on their communities. Some commenters proposed that they be able to use the administrative convenience for staff outside of public health and safety that are responding to COVID-19 (i.e., to be able to pay the full payroll and covered benefits for any staff "primarily dedicated" to COVID-19 response).

Treasury Response: In the final rule, Treasury is maintaining the approach in the interim final rule, including elaborations issued in further guidance, but providing additional clarification on its application, including methods to apply the approach to minimize administrative burden. Treasury notes that recipients may assess the extent to which staff are dedicated to responding to COVID-19 through a variety of means, including establishing presumptions or assessing public health and safety staff at the division or operating unit level. For example, a recipient could consider the amount of time spent by employees in its public health department's epidemiology division in responding to COVID-19 and, if a majority of its employees are dedicated to responding to COVID-19, determine that the entire division is primarily dedicated to responding to COVID-19. Treasury also clarifies that recipients may use reasonable estimates to establish administrable presumptions; for example, a recipient could estimate, based on discussions with staff, the general share of time that employees in a specific role or type of position spend on COVID-19 related tasks and apply that share of time to all employees in that position.

Recipients are generally required to be able to support uses of SLFRF funds as eligible, including, in this instance, maintenance of records to support an assessment that public health and safety staff are primarily dedicated to responding to COVID-19. As noted above, recipients may use reasonable estimates to implement this provision. Recipients should maintain records on how they developed these estimates and need not track staff hours. Treasury notes that records retained can include payroll records (e.g., the number and type of staff in various positions), attestations from supervisors or staff (e.g., self-attestation of share of time spent on COVID-19), or regular work product or correspondence (e.g., calendars, email correspondence, documents, and other electronic

²⁴¹ In general, if an employee's wages and salaries are an eligible use of SLFRF funds, recipients may treat the employee's covered benefits as an eligible use of SLFRF funds. For purposes of SLFRF funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes). As described further in the section Deposits into Pension Funds in Restrictions on Use, that limitation on use does not apply to pension contributions that are part of regular payroll contributions for employees whose wages and salaries are an eligible use of SLFRF funds.

²⁴² Note that the interim final rule adapted prior guidance issued by CRF that described these four categories of employees; however, when listing the specific occupations or types of employees in each of these categories, the guidance collapses health care and public health into one category titled "public health." Therefore, the presumption described around public health employees also covers health care employees.

²⁴³ Note that this category encompasses both public health and health care employees; both are treated as public health employees for the purposes of this eligible use category.

records). Treasury anticipates that these types of records are generally retained in many government settings; recipients should also consult the Award Terms and Conditions for SLFRF funds for requirements on length of record retention. For example, a recipient could establish a reasonable presumption about the share of time that an employee, division, or operating unit is responding to COVID-19 and simply retain those employees' electronic records as a record to support their assessment.

Public Comment: Public Health and Safety Staff Primarily Dedicated to COVID-19 Response: Some commenters recommended expanding the administrative convenience for public health and safety staff primarily dedicated to COVID-19 response to further types of staff, to all public health and safety staff, or to public health and safety staff serving underserved areas.

Treasury Response: The interim final rule recognized that COVID-19 response continues to require substantial staff resources and provides an administrative convenience to make it relatively simpler to identify the eligibility of the types of workers—public health and safety workers—generally most involved in COVID-19 response. At the same time, many public health and safety workers perform roles unrelated to COVID-19; coverage of all roles would be overbroad compared to the workers responding to COVID-19 in actuality. For this reason, the final rule maintains the interim final rule's approach to permitting SLFRF funds to be used for public health and safety staff primarily dedicated to responding to COVID-19. Finally, to the extent that a greater proportion of public health and safety staff time is needed to respond to COVID-19 in disproportionately impacted communities, the "primarily dedicated" approach recognizes this increased need.

Public Comment: Eligible Types of COVID-19 Response: Some public commenters also sought further clarification on how to identify eligible types of "COVID-19 response." For example, commenters requested clarification on delineating COVID-19 response from general public health response and defining COVID-19 response for public safety employees.

Treasury Response: Treasury is clarifying that "responding to" COVID-19 entails work needed to respond to the public health or negative economic impacts of the pandemic, apart from the typical pre-pandemic job duties or workload of an employee in a comparable role, if one existed. For

example, responding to COVID-19 for a public safety worker may entail working in an emergency operations center to coordinate pandemic-related supply distribution, responding to an increased volume of 911 calls, or implementing COVID-19 prevention and mitigation protocols in a carceral setting.

Public Comment: Eligible Employees: Some commenters requested clarification on the types of eligible employees or expansion of eligible employees to include additional types of staff, including in behavioral health; administrative, management, or financial management positions; social services; morgue staff; and nonprofit staff supporting projects to undertake eligible uses of funds under SLFRF.

Treasury Response: Treasury provided further guidance on eligible types of employees following the interim final rule, which expressly included social services and morgue staff, and incorporates that guidance into the final rule. In addition, Treasury is clarifying that public health "employees involved in providing medical and other health services to patients and supervisory personnel" includes behavioral health services as well as physical health services.

Treasury also is clarifying that this provision only addresses employees of the recipient government responding to COVID-19. For discussion of eligible expenses to administer SLFRF, including eligible costs for subrecipients performing eligible activities on behalf of a recipient government, see section Administrative Expenses in Program Administration Provisions.

Finally, Treasury is clarifying that indirect costs for administrative, management, and financial management personnel to support public health and safety staff responding to COVID-19 are not permissible under this provision, given the relatively greater challenge of differentiating the marginal increase in staff time and workload due to pandemic response for indirect versus direct costs.

Public Comment: Time Period: Finally, some commenters made recommendations on the time period during which this eligible use should be available. Some commenters recommended eligibility begin before March 3, 2021, the period when Treasury's interim final rule permitted recipients to begin to incur costs using SLFRF funds; for discussion of this topic, see section Timeline for Use of SLFRF Funds in Program Administration Provisions. As noted above, Treasury also posed a question in the interim final rule asking for how long Treasury should maintain the

administrative convenience that SLFRF funds may be used for the full payroll and covered benefits of public health and safety staff primarily dedicated to COVID-19 response. Several commenters recommended that Treasury maintain this approach throughout the program or through December 31, 2024. Other commenters requested clarification on whether eligibility for this use of funds was tied to the length of the state of emergency or whether a jurisdiction has an active state of emergency.

Treasury Response: In the final rule, Treasury is clarifying that recipients will be permitted to fund the full payroll and covered benefits of public health and safety staff primarily dedicated to COVID-19 response throughout the period of performance for the SLFRF program, though recipients should periodically reassess their determination of primarily dedicated staff, including as the public health emergency and response evolves. Government Employment and Rehiring Public Sector Staff

The interim final rule permitted use of funds for costs associated with rehiring state, local, and Tribal government staff in order to bolster the government's ability to effectively administer services. Specifically, recipients may pay for payroll, covered benefits, and other costs associated with the recipient increasing the number of its employees up to the pre-pandemic baseline, or the number of employees that the recipient government employed on January 27, 2020.

Public Comment: Many commenters requested greater flexibility and additional clarification on the provision's requirements, including the pre-pandemic baseline and re-hiring process. Some commenters requested that the final rule allow for hiring above the pre-pandemic baseline given historic underinvestment in the public sector workforce. Commenters suggested a number of adjustments to the pre-pandemic baseline, including adjusting based on population or revenue growth, while some recommended allowing recipients to set their own hiring levels. Others requested clarification on the definition of the baseline and the re-hiring process, including whether the pre-pandemic baseline referred to budgeted or filled positions and whether new hires had to fill the same roles as the previous hires. Commenters also asked whether recipients need to show if the reduction in number of employees was due to the pandemic in order to qualify for funding and requested that workers dedicated to

COVID-19 response be exempted from the calculation of number of employees.

Many commenters also requested an expanded set of eligible uses beyond restoring their workforce up to the pre-pandemic baseline. Commenters requested that funding be able to be used to avoid layoffs, provide back pay, retain employees through pay increases and other retention programs, or reimburse salaries and benefits already paid. Some commenters also requested clarification as to whether recipients can fund re-hired positions through the period of performance and on the definition of payroll and benefits. Other commenters requested preferential hiring for workers laid off, a strong commitment to equity, and a requirement that funds would not be used to pay for contract or temporary replacement workers during a labor dispute.

Treasury Response: The final rule allows for an expanded set of eligible uses to restore and support public sector employment. Eligible uses include hiring up to a pre-pandemic baseline that is adjusted for historic underinvestment in the public sector, providing additional funds for employees who experienced pay cuts or were furloughed, avoiding layoffs, providing worker retention incentives, and paying for ancillary administrative costs related to hiring.

Restoring pre-pandemic employment. In response to comments and recognizing underinvestment in public sector employment, the final rule expands the ability to use SLFRF funds to restore pre-pandemic employment. Treasury is also clarifying how, and the extent to which, recipients may use SLFRF funds to rehire public employees.

The final rule provides two options to restore pre-pandemic employment, depending on recipient's needs. Under the first and simpler option, recipients may use SLFRF funds to rehire staff for pre-pandemic positions that were unfilled or were eliminated due to the pandemic without undergoing further analysis. Under the second option, the final rule provides recipients an option to hire above the pre-pandemic baseline, by adjusting the pre-pandemic baseline for historical growth in public sector employment over time, as well as flexibility on roles for hire. Recipients may choose between these options but cannot use both.

To pursue the first option, recipients may use SLFRF funds to hire employees for the same positions that existed on January 27, 2020 but that were unfilled or eliminated as of March 3, 2021, without undergoing further analysis. For

these employees, recipients may use SLFRF funds for payroll and covered benefit costs that are obligated by December 31, 2024 and expended by December 31, 2026, consistent with the Uniform Guidance's Cost Principles at 2 CFR part 200 Subpart E. This option provides administrative simplicity for recipients that would simply like to restore pre-pandemic positions and would not like to hire above the pre-pandemic baseline.

To pursue the second option, recipients should undergo the analysis provided below. In short, this option allows recipients to pay for payroll and covered benefits associated with the recipient increasing its number of budgeted full-time equivalent employees (FTEs) up to 7.5 percent above its pre-pandemic employment baseline, which adjusts for the continued underinvestment in state and local governments since the Great Recession. State and local government employment as a share of population in 2019 remained considerably below its share prior to the Great Recession in 2007, which presented major risks to recipients mounting a response to the COVID-19 public health emergency. The *adjustment factor* of 7.5 percent results from estimating how much larger 2019 state and local government employment would have needed to be for the share of state and local government employment to population in 2019 to have been back at its 2007 level and is intended to correct for this gap.

Recipients should complete the steps described below. Recipients may choose whether to conduct this analysis on a government-wide basis or for an individual department, agency, or authority.

- **Step One:** Identify the recipient's budgeted FTE level on January 27, 2020. This includes all budgeted positions, filled and unfilled. This is called the *pre-pandemic baseline*.

- **Step Two:** Multiply the *pre-pandemic baseline* by 1.075 (that is, 1 + *adjustment factor*). This is called the *adjusted pre-pandemic baseline*.

- **Step Three:** Identify the recipient's budgeted FTE level on March 3, 2021, which is the beginning of the period of performance for SLFRF funds. Recipients may, but are not required to, exclude FTEs dedicated to responding to the COVID-19 public health emergency.²⁴⁴ This is called the *actual number of FTEs*.

²⁴⁴ Recipients may determine that a portion of an FTE's time is dedicated to responding to the COVID-19 public health emergency. Further, for administrative convenience, the recipient may

- **Step Four:** Subtract the *actual number of FTEs* from the *adjusted pre-pandemic baseline* to calculate the number of FTEs that can be hired and covered by SLFRF funds.

Recipients may use SLFRF funds to cover payroll and covered benefit costs obligated by December 31, 2024, and expended by December 31, 2026, up to the number of FTEs calculated in Step Four, consistent with the Uniform Guidance's Cost Principles at 2 CFR part 200 Subpart E. Recipients may only use SLFRF funds for additional FTEs hired over the March 3, 2021 level of budgeted FTEs (*i.e.*, the *actual number of FTEs*); note again that recipients may choose whether to conduct the analysis of FTEs that can be covered by SLFRF funds on a government-wide basis or for an individual department, agency, or authority.

These FTEs must have begun their employment on or after March 3, 2021, which is the beginning of the period of performance. For administrative convenience, recipients do not need to demonstrate that the reduction in number of FTEs was due to the COVID-19 pandemic, as Treasury assumes the vast majority of employment reductions during this time were due to pandemic fiscal pressures on state and local budgets. Recipients do not need to hire for the same roles that existed pre-pandemic.

For illustration, consider a hypothetical recipient with 1,000 budgeted FTEs on January 27, 2020 (950 filled FTE positions and 50 unfilled FTE positions). The recipient's *pre-pandemic baseline* is 1000 FTEs; its *adjusted pre-pandemic baseline* is $1,000 * 1.075 = 1,075$ FTEs. Now, assume that on March 3, 2021, the recipient had 800 budgeted FTEs in total (795 filled FTE positions and 5 unfilled FTE positions), with 50 FTEs primarily dedicated to responding to the COVID-19 public health emergency. The recipient would have the option of using either 800 FTEs or 750 FTEs as its *actual number of FTEs* for the calculation; assuming it chooses the lower number, it would be able to fund up to 325 FTEs with SLFRF funds (that is, $1,075 - 750 = 325$ FTEs).

consider public health and safety FTEs to be entirely devoted to mitigating or responding to the COVID-19 public health emergency if the FTE, or his or her operating unit of division, is primarily dedicated to responding to the COVID-19 public health emergency. Recipients may also consider other presumptions for assessing the extent to which an FTE, division, or operating unit is engaged in activities that respond to the COVID-19 public health emergency, provided that the recipient reassesses periodically and maintains records to support its assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence demonstrating work on the COVID-19 response.

Specifically, the recipient would be able to use SLFRF to fund payroll and covered benefits for up to 325 FTEs that begin their employment on or after March 3, 2021, for costs obligated by December 31, 2024, and expended by December 31, 2026, consistent with the Uniform Guidance's Cost Principles, as long as SLFRF funds are used for additional FTEs hired over the recipient's 750 FTE level (which is its March 3, 2021 budgeted FTE level).

In hiring new employees, the final rule encourages recipients to ensure a diverse workforce. The final rule also prohibits recipients from using funds to temporarily fill positions during a labor dispute, as this would not constitute responding to the public health or negative economic impacts of the pandemic. Further, recipients must ensure that its hiring practices do not violate conflict-of-interest policies.²⁴⁵ Total compensation for a hired employee that is substantially in excess of typical compensation for employees of their experience and tenure within the recipient's government, without a corresponding business case, may indicate a potential conflict-of-interest in fact or appearance.

Providing additional funding for employees who experienced pay cuts and furloughs. In recognition of the economic hardship caused by pay cuts and furloughs, additional funds may be provided to employees who experienced pay cuts or were furloughed since the onset of the pandemic on January 27, 2020. Recipients must be able to substantiate that the pay cut or furlough was substantially due to the public health emergency or its negative economic impacts (e.g., fiscal pressures on state and local budgets) and should document their assessment. As a reminder, this additional funding must be reasonably proportional to the negative economic impact of the pay cut or furlough on the employee, which would include taking into account unemployment insurance (UI) benefits that a furloughed employee may have received during the furloughed period. Treasury presumes that additional funds beyond the difference in pay had the

employee not received a pay cut or been furloughed would not be reasonably proportional.

Recipients may also provide premium pay to certain employees, as detailed further in section Premium Pay.

Avoiding layoffs. Funds may be used to maintain current compensation levels, with adjustments for inflation, in order to prevent layoffs that would otherwise be necessary. Recipients must be able to substantiate that layoffs were likely in the absence of SLFRF funds and would be substantially due to the public health emergency or its negative economic impacts (e.g., fiscal pressures on state and local budgets) and should document their assessment.

Retaining workers. Funds may be used to provide worker retention incentives, which are designed to persuade employees to remain with the employer as compared to other employment options. Recipients must be able to substantiate that the employees were likely to leave employment in the absence of the retention incentive and should document their assessment. For example, a recipient may determine that a retention bonus is necessary based on the presence of an alternative employment offer for an employee.

All worker retention incentives must be narrowly tailored to need and should not exceed incentives traditionally offered by the recipient or compensation that alternative employers may offer to compete for the employees. Further, because retention incentives are intended to provide additional incentive to remain with the employer, they must be entirely additive to an employee's regular rate of wages and other remuneration and may not be used to reduce or substitute for an employee's normal earnings. Treasury will presume that retention incentives that are less than 25 percent of the rate of base pay for an individual employee or 10 percent for a group or category of employees are reasonably proportional to the need to retain employees, as long as the other requirements are met.

Ancillary administrative costs. Funds may be used to pay for ancillary administrative costs associated with administering SLFRF-funded hiring and retention programs detailed above, including costs to publish job postings, review applications, and onboard and train new hires. For additional information on administrative expenses, see section Administrative Expenses in Program Administration Provisions.

Effective Service Delivery: Administrative Expenses

The interim final rule provided that funds could be used for: "Expenses to improve efficacy of public health or economic relief programs: Administrative costs associated with the recipient's COVID-19 public health emergency assistance programs, including services responding to the COVID-19 public health emergency or its negative economic impacts, that are not federally funded." In the final rule, Treasury is clarifying that there are several categories of eligible administrative expenses.

First, recipients may use funds for administrative costs to improve the efficacy of public health or economic relief programs through tools like program evaluation, data analysis, and targeted consumer outreach (see section Effective Service Delivery: Program Evaluation, Data, and Outreach).

Second, recipients may use funds for administrative costs associated with programs to respond to the public health emergency and its negative economic impacts, including programs that are not funded by SLFRF or not federally funded. In other words, Treasury recognizes that responding to the public health and economic impacts of the pandemic requires many programs and activities, some of which are not funded by SLFRF. Executing these programs effectively is a component of responding to the public health and negative economic impacts of the pandemic.

Finally, recipients may use funds for direct and indirect administrative costs for administering the SLFRF program and projects funded by the SLFRF program. See section Administrative Expenses in Program Administration Provisions for details on this eligible use category.

Effective Service Delivery: Program Evaluation, Data, and Outreach

The Supplementary Information of the interim final rule provided that state, local and Tribal governments may use SLFRF funds to improve the design and execution of programs responding to the COVID-19 pandemic and to improve the efficacy of programs addressing negative economic impacts. The interim final rule included high-level guidance about how SLFRF funds could be used in this eligible use category, including the use of targeted consumer outreach, improvements to data or technology infrastructure, impact evaluations, and data analysis.

Since the publication of the interim final rule, Treasury has also released

²⁴⁵ As part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c)112 that is applicable to all activities funded with the SLFRF award. Pursuant to this policy, decisions concerning SLFRF must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. A recipient may not use control over SLFRF for their own private gain. Furthermore, no employee, officer, or agent may 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.

supplementary information on data analysis, evidence building, and program evaluation in the Compliance and Reporting Guidance.

Public Comment: Treasury received positive comments about the opportunity to invest in data and technology upgrades with SLFRF funds. For example, one commenter noted that investing in technology for better connectivity, coupled with software and hardware upgrades, will allow the workforce to be more productive. Treasury also received comments seeking clarification on using funds for investments in data and technology, including whether upgrading government websites to improve community outreach and investing in technologies that support social distancing were eligible uses.

Treasury Response: Governments with high capacity to use data and evidence to administer programs are more likely to be responsive to the needs of their community, more transparent about their community impact, and more resilient to emergencies such as the pandemic and its economic impacts.²⁴⁶ Treasury recognizes that collecting high-quality data and developing community-driven, evidence-based programs requires resources to hire and build the capacity of staff, adopt new processes and systems, and use new technology and tools in order to effectively develop, execute, and evaluate programs. As such, Treasury is clarifying that recipients may use SLFRF funds toward the following non-exhaustive list of uses to address the data, evidence, and program administration needs of recipients. Additional information may be provided in the Compliance and Reporting Guidance.

- **Program evaluation and evidence resources** to support building and using evidence to improve outcomes, including development of Learning Agendas²⁴⁷ to support strategic evidence building, selection of evidence-based interventions, and program evaluations including impact evaluations (randomized control trials

and quasi-experimental designs) as well as rapid-cycle evaluations, process or implementation evaluations, outcome evaluations, and cost-benefit analyses. Recipients are encouraged to undertake rigorous program evaluations when practicable, assess the impact of their programs by beneficiary demographics (including race, ethnicity, gender, income, and other relevant factors), and engage with community stakeholders (including intended beneficiaries) when developing Learning Agendas and designing evaluations to ensure that programmatic, cultural, linguistic, and historical nuances are accurately and respectfully addressed.

Recipients are also encouraged to use relevant evidence Clearinghouses,²⁴⁸ among other sources, to assess the level of evidence for their interventions and identify evidence-based models that could be applied in their jurisdiction (meaning models with strong or moderate evidence; see Compliance and Reporting Guidance for details on these terms).

- **Data analysis resources** to gather, assess, and use data for effective policy-making and real-time tracking of program performance to support effective implementation of SLFRF-funded programs and programs that respond to the public health emergency and its negative economic impacts, or which households, small businesses, or impacted industries are accessing during the pandemic that are funded by other sources. These resources include but are not limited to data gathering, data cleaning, data analysis, data infrastructure, data management, data sharing, data transparency, performance management, outcomes-based budgeting, outcomes-based procurement, and other data needs. Treasury encourages the disaggregation of data to identify disparate program impacts and the use of cross-jurisdictional data sharing to better measure and implement government programs.

²⁴⁶ Evidence Clearinghouses are databases of research in particular program areas. Frequently these Clearinghouses identify evidence-based programs, the strength of the evidence for those programs, and provide contextual or supporting information in easy to understand formats. Many federal departments have developed rigorous and helpful Clearinghouses that cover a wide range of uses enumerated in this final rule as well as other programs that may be responsive to public health or negative economic impacts of the pandemic. For more information on Clearinghouses, please see the Compliance and Reporting Guidance: U.S. Department of the Treasury, Recipient Compliance and Reporting Responsibilities, as of November 5, 2021; <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities>.

- **Technology infrastructure resources** to improve access to and the user-experience of government information technology systems, including upgrades to hardware and software as well as improvements to public-facing websites or to data management systems, to increase public access and improve public delivery of government programs and services (including in the judicial, legislative, or executive branches).

- **Community outreach and engagement resources** to support the gathering and sharing of information in ways that improve equity and effective implementation of SLFRF-funded programs and programs that respond to the public health emergency and its negative economic impacts, or which households, small businesses, or impacted industries are accessing during the pandemic that are funded by other sources. These methods include but are not limited to community meetings, online surveys, focus groups, human-centered design activities, behavioral science techniques, and other community engagement tools.

- **Capacity building resources** to support using data and evidence in designing, executing, and evaluating programs, including hiring public sector staff, contractors, academics, consultants, and others with expertise in evaluation, data, technology, and community engagement as well as technical assistance support for public sector staff, staff of subrecipients, and community partners to support effective implementation of SLFRF-funded programs and programs that respond to the public health emergency and its negative economic impacts, or which households, small businesses, or impacted industries are accessing during the pandemic that are funded by other sources.

Administrative Needs Caused or Exacerbated by the Pandemic

As described in guidance and the interim final rule, SLFRF funds may be used to address administrative needs of recipient governments that were caused or exacerbated by the pandemic. Guidance following the interim final rule included several examples of this, for example, uses of funds to address backlogs resulting from pandemic-related shutdowns (e.g., backlogs in court systems).²⁴⁹ This also includes

²⁴⁹ See FAQ 2.19. Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>. In the case of courts specifically, this includes “implementing COVID-19 safety measures to facilitate court operations, hiring additional court staff or attorneys to increase speed of case

²⁴⁶ Results for America, Invest in What Works State Standard of Excellence (August 2020), https://2020state.results4america.org/2020_State-Standard-of-Excellence.pdf.

²⁴⁷ Learning Agendas are systematic plans to identify, prioritize, answer important questions about programs and policies using analytic techniques that are appropriate to the type of question asked. For more information on learning agendas, please see OMB Memorandum M-19-23, available at: <https://www.whitehouse.gov/wp-content/uploads/2019/07/M-19-23.pdf> and OMB Memorandum M-21-27, available at: <https://www.whitehouse.gov/wp-content/uploads/2021/06/M-21-27.pdf>.

using funds for increased repair or maintenance needs to respond to significantly greater use of public facilities during the pandemic (*e.g.*, increased use of parks resulting in damage or increased need for maintenance). Some commenters expressed support for the ability to use funds for these purposes. Treasury is maintaining these enumerated eligible uses in the final rule and clarifying that capital expenditures such as technology infrastructure to adapt government operations to the pandemic (*e.g.*, video-conferencing software, improvements to case management systems or data sharing resources), reduce government backlogs, or meet increased maintenance needs are eligible.

b. Capital Expenditures

The interim final rule expressly permitted use of funds for a limited number of capital expenditures that mostly pertained to COVID-19 prevention and mitigation. These included capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics; adaptations to public buildings to implement COVID-19 mitigation tactics; ventilation improvements in congregate settings, health care settings, or other key locations; assistance to small businesses and nonprofits and aid to impacted industries to implement COVID-19 prevention or mitigation tactics, such as physical plant changes to enable social distancing. For disproportionately impacted populations and communities, the interim final rule also expressly permitted development of affordable housing to increase the supply of affordable and high-quality living units.

Public Comment: Many commenters supported the interim final rule's allowance of capital expenditures in facilities to meet pandemic operational needs but requested that the final rule explicitly allow for a broader range of capital expenditures. Commenters expressed an interest in investing in equipment, real property, and facilities that they argued will yield lasting benefits beyond the SLFRF period of performance. Some commenters stated that the approach in the interim final rule limited the vast majority of capital expenditures to governments that experienced revenue loss under Sections 602(c)(1)(C) and 603(c)(1)(C) and that this approach may prevent some governments from fully meeting the needs of their residents. A few

resolution, and other expenses to expedite case resolution are eligible uses."

commenters argued that Treasury should limit use of funds on capital expenditures not related to addressing a direct pandemic harm, such as general economic development or workforce development, and some expressed support for generally limiting capital expenditures to those that address the needs of low-income communities and communities of color.

Many commenters requested that capital expenditures related to direct COVID-19 public health response be included as enumerated eligible uses. The requested types of expenditures include improvements and construction of hospitals and health clinics (including behavioral health clinics), as well as other health-related infrastructure improvements, such as improvements to medical equipment or public health information technology. These commenters stated that investments in health and public health systems are vital to ensuring critical infrastructure necessary to respond to continued impacts of COVID-19 or to address disparities in health, due to lack of access to health care, that contributed to disproportionate impacts of COVID-19 on some communities. Further, some commenters requested that construction or improvements of emergency management and public safety facilities be deemed eligible, citing that some of these sites serve as remote vaccination sites or are otherwise crucial to the pandemic public health response.

Commenters also requested use of funds for capital expenditures that support community needs apart from health care, such as new construction or improvements to schools, affordable housing (beyond presumed disproportionately impacted communities), childcare facilities, and community centers; some suggested that all types of projects permissible under the Community Development Block Grant Program should be eligible both for policy and administrability reasons. Further, some commenters also asked for clarification as to whether parks and recreational facilities are eligible if built in certain disproportionately impacted areas, as well as public transportation infrastructure.

Finally, some commenters also requested use of funds for capital expenditures in government administration buildings, such as public courthouses, as well as technology infrastructure that would allow for remote delivery of public benefits. Others also asked about whether funds could be used to renovate vacant business district buildings or commercial spaces to spur economic recovery.

Treasury Response: Capital expenditures, in certain cases, can be appropriate responses to the public health and economic impacts of the pandemic, in addition to programs and services. Like other eligible uses of SLFRF funds in this category, capital expenditures should be a related and reasonably proportional response to a public health or negative economic impact of the pandemic. The final rule clarifies and expands how SLFRF funds may be used for certain capital expenditures, including criteria and documentation requirements specified in this section, as applicable.

Treasury provides presumptions and guidelines for capital expenditures that are enumerated earlier in sections Public Health, Negative Economic Impacts, and General Provisions: Other under the Public Health and Negative Economic Impact eligible use category ("enumerated projects"), along with capital expenditures beyond those enumerated by Treasury. In addition to satisfying the two-part framework in Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact for identifying and designing a response to a pandemic harm, Treasury will require projects with total expected capital expenditure costs of \$1 million or greater to undergo additional analysis to justify their capital expenditure. Increased reporting requirements will be required for projects that are larger in size, as well as projects that are not enumerated as eligible by Treasury, with certain exceptions for Tribal governments discussed below. Smaller projects with total expected capital expenditures below \$1 million will not be required to undergo additional analysis to justify their capital expenditure, as such projects will be presumed to be reasonably proportional, provided that they are responding to a harm caused or exacerbated by the public health emergency. These standards and documentation requirements are designed to minimize administrative burden while also ensuring that projects are reasonably proportional and supporting Treasury's risk-based approach to overall program management and monitoring.

This section provides (1) an overview of general standards governing capital expenditures; (2) presumptions on capital expenditures, which help guide recipients in determining whether the expenditure meets the standards and the associated documentation requirements; and (3) additional standards and requirements that may apply.

Overview of General Standards

In considering whether a capital expenditure would be eligible under the public health and negative economic impacts eligible use category, recipients must satisfy the requirements for all uses under the public health and negative economic impacts eligible use category, including identifying an impact or harm and designing a response that addresses or responds to the identified impact or harm. Responses must be reasonably designed to benefit the individual or class that experienced the impact or harm and must be related and reasonably proportional to the extent and type of impact or harm. Recipients should consult further details on this standard provided in the sections Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact under General Provisions: Structure and Standards.

In addition to the framework described above, for projects with total expected capital expenditures of \$1 million or greater, recipients must complete and meet the substantive requirements of a Written Justification for their capital expenditure, except for Tribal governments as discussed below. This Written Justification helps clarify the application of this interpretive framework to capital expenditures, while recognizing that the needs of communities differ. In particular, this justification reflects the fact that the time required for a large construction project may make capital expenditures less responsive to pandemic-related needs relative to other types of responses. In addition, as discussed in section Timeline for Use of SLFRF Funds of this Supplemental Information, SLFRF funds must be obligated by December 31, 2024 and expended by December 31, 2026. Capital expenditures may involve long lead-times, and the Written Justification may support recipients in analyzing proposed capital expenditures to confirm that they conform to the obligation and expenditure timing requirements. Further, such large projects may be less likely to be reasonably proportional to the harm identified. For example, construction of a new, larger public facility for the purpose of increasing the ability to socially distance generally would not be considered a reasonably proportional response compared to other less time- and resource-intensive options that may be available and would be equally or more effective. Other solutions, such as improvements in ventilation, could be made more quickly and are typically

more cost effective than construction of a new, larger facility. The needs of communities differ, and recipients are responsible for identifying uses of SLFRF funds that best respond to these needs. The Written Justification recognizes this while also establishing consistent documentation and reporting to support monitoring and compliance with the ARPA and final rule. Finally, the Written Justification also reflects the fact that infrastructure projects are generally not within scope of this eligible use category. See section Uses Outside the Scope of this Category in General Provisions: Other.

As noted above, Tribal governments are not required to complete the Written Justification for projects with total capital expenditures of \$1 million or greater. Tribal governments generally have limited administrative capacity due to their small size and corresponding limited ability to supplement staffing for short-term programs. In addition, Tribal governments are already subject to unique considerations that require additional administrative processes and administrative burden for Tribal government decision making, including capital expenditures. Tribal governments generally are subject to a jurisdictionally complex sets of rules and regulations in the case of improvements to land for which the title is held in trust by the United States for a Tribe (Tribal Trust Lands).²⁵⁰ This includes the requirement in certain circumstances to seek the input or approval of one or more federal agencies such as the Department of the Interior, which holds fee title of Tribal Trust Lands.

As a result of their limited administrative capacity and unique and complex rules and regulations applicable to Tribal governments operating on Tribal Trust Lands, Tribal governments would experience significant and redundant administrative burden by also being required to complete a Written Justification for applicable capital expenditures. While Tribal governments are not required to complete the Written Justification for applicable capital expenditures, the associated substantive requirements continue to apply, including the requirement that a capital expenditure must be reasonably designed to benefit the individual or class that experienced the identified impact or harm and must be related and reasonably proportional to the extent and type of impact or harm. Note that, as a general matter, Treasury may also

request further information on SLFRF expenditures and projects, including capital expenditures, as part of the regular SLFRF reporting and compliance process, including to assess their eligibility under the final rule.

The Written Justification should (1) describe the harm or need to be addressed; (2) explain why a capital expenditure is appropriate to address the harm or need; and (3) compare the proposed capital expenditure against alternative capital expenditures that could be made. The information required for the Written Justification reflects the framework applicable to all uses under the public health and negative economic impacts eligible use category, providing justification for the reasonable design, relatedness, and reasonable proportionality of the capital expenditure in response to the harm or impact identified.

1. *Description of harm or need to be addressed:* Recipients should provide a description of the specific harm or need to be addressed, and why the harm was exacerbated or caused by the public health emergency. When appropriate, recipients may provide quantitative information on the extent and type of the harm, such as the number of individuals or entities affected.

2. *Explanation of why a capital expenditure is appropriate:* Recipients should provide an independent assessment demonstrating why a capital expenditure is appropriate to address the specified harm or need. This should include an explanation of why existing capital equipment, property, or facilities would be inadequate to addressing the harm or need and why policy changes or additional funding to pertinent programs or services would be insufficient without the corresponding capital expenditures. Recipients are not required to demonstrate that the harm or need would be irremediable but for the additional capital expenditure; rather, they may show that other interventions would be inefficient, costly, or otherwise not reasonably designed to remedy the harm without additional capital expenditure.

3. *Comparison of the proposed capital expenditure against alternative capital expenditures:* Recipients should provide an objective comparison of the proposed capital expenditure against at least two alternative capital expenditures and demonstrate why their proposed capital expenditure is superior to alternative capital expenditures that could be made. Specifically, recipients should assess the proposed capital expenditure against at least two alternative types or sizes of capital expenditures that are potentially effective and reasonably

²⁵⁰ See 25 U.S.C. 5108.

feasible. Where relevant, recipients should compare the proposal against the alternative of improving existing capital assets already owned or leasing other capital assets. Recipients should use quantitative data when available, although they are encouraged to supplement with qualitative information and narrative description. Recipients that complete analyses with minimal or no quantitative data should provide an explanation for doing so.

In determining whether their proposed capital expenditure is superior to alternative capital expenditures, recipients should consider the following factors against each selected alternative.

a. *A comparison of the effectiveness of the capital expenditures in addressing the harm identified.* Recipients should generally consider the effectiveness of the capital expenditures in addressing the harm over the useful life of the capital asset and may consider metrics such as the number of impacted or disproportionately impacted individuals or entities served, when such individuals or entities are estimated to be served, the relative time horizons of the project, and consideration of any uncertainties or risks involved with the capital expenditure.

b. *A comparison of the expected total cost of the capital expenditures.* Recipients should consider the expected total cost of the capital expenditure required to construct, purchase, install, or improve the capital assets intended to address the public health or negative economic impact of the public health emergency. Recipients should include pre-development costs in their calculation and may choose to include information on ongoing operational costs, although this information is not required.

Recipients should balance the effectiveness and costs of the proposed capital expenditure against alternatives and demonstrate that their proposed capital expenditure is superior. Further, recipients should choose the most cost-effective option unless it substantively reduces the effectiveness of the capital investment in addressing the harm identified.

As an example, a recipient considering building a new diagnostic testing laboratory to enhance COVID-19 testing capacity may consider whether existing laboratories sufficiently meet demand for COVID-19 testing, considering the demand for test results (along with their turnaround time) as well as the impact of current testing

availability on the spread of COVID-19. Recipients may also consider other public health impacts of the level of diagnostic testing capacity, for example if insufficient capacity has decreased testing for other health conditions. The recipient may consider alternatives such as expanding existing laboratories or building a laboratory of a different size. In comparing the effectiveness of the capital expenditures, examples of factors that the recipient may consider include when the facilities will become operational and for how long; the daily throughput of COVID-19 tests; and the effect on minimizing delays in test results on the populations that such tests will serve. In comparing costs, the recipient may compare the total expected cost of the new laboratory (including costs of acquisition of real property, construction of the laboratory, and purchase of any necessary equipment needed to operationalize the lab), against the expected costs of expanding existing laboratories (whether by replacing current equipment with higher throughput devices or physically expanding space to accommodate additional capacity) or building a new laboratory of a different size, including by leasing property. As a reminder, recipients should only consider alternatives that are potentially effective and reasonably feasible.

Because, in all cases, uses of SLFRF funds to respond to public health and negative economic impacts of the pandemic must be related and reasonably proportional to a harm caused or exacerbated by the pandemic, some capital expenditures may not be eligible. For example, constructing a new correctional facility would generally not be a proportional response to an increase in the rate of certain crimes or overall crime as most correctional facilities have historically accommodated fluctuations in occupancy.²⁵¹ In addition, construction of new congregate facilities, which would generally be expected to involve expenditures greater than \$1 million, would generally not be a proportional response to mitigate or prevent COVID-19, because such construction is generally expected to be more costly than alternative approaches or capital expenditures that may be equally or more effective in decreasing spread of

the disease.²⁵² These alternatives include personal protective equipment, ventilation improvements, utilizing excess capacity in other facilities or wings, or temporary facility capacity expansions.

Large capital expenditures intended for general economic development or to aid the travel, tourism, and hospitality industries—such as convention centers and stadiums—are, on balance, generally not reasonably proportional to addressing the negative economic impacts of the pandemic, as the efficacy of a large capital expenditure intended for general economic development in remedying pandemic harms may be very limited compared to its cost.²⁵³

Presumptions on Capital Expenditures

For administrative convenience, the final rule provides presumptions on whether a Written Justification is required—and required to be submitted to Treasury through reporting—based on the type and size of the capital expenditure, as detailed in the table below.

As discussed above, Tribal governments are not required to complete the Written Justification for applicable capital expenditures, but the associated substantive requirements continue to apply, including the requirement that a capital expenditure must be reasonably designed to benefit the individual or class that experienced the identified impact or harm and must be related and reasonably proportional to the extent and type of impact or harm.

²⁵² For instance, the CDC has published detailed recommendations for nursing homes, long-term care facilities, and correctional and detention facilities, on infection prevention and control. Many of these recommendations are relatively low cost, such as proper use of PPE. In addition, increasing vaccination rates among nursing home staff is among the most important ways to decrease the spread of the disease. Centers for Disease Control and Prevention, Interim Infection Prevention and Control Recommendations to Prevent SARS-CoV-2 Spread in Nursing Homes (September 10, 2021), https://www.cdc.gov/coronavirus/2019-ncov/hcp/long-term-care.html#anchor_1631030153017.

²⁵³ For instance, researchers have found no consistent positive relationship between building sports facilities and local economic development. As Siegfried and Zimbalist (2000, 103) write in a review of the literature, “independent work on the economic impact of stadiums and arenas has uniformly found that there is no statistically significant positive correlation between sports facility construction and economic development.” John Siegfried and Andrew Zimbalist, *The Economics of Sports Facilities and Their Communities*, *Journal of Economic Perspectives* 14, no. 3 (Summer 2000): 95–114, <https://www.aeaweb.org/articles?id=10.1257/jep.14.3.95>.

²⁵¹ See, e.g., “Economic Perspectives on Incarceration and the Criminal Justice System,” Council of Economic Advisers (April 2016), pg. 36–43.

If a project has total expected capital expenditures of	and the use is enumerated by Treasury as eligible, then ²⁵⁴	and the use is beyond those enumerated by Treasury as eligible, then ²⁵⁵
Less than \$1 million	No Written Justification required	No Written Justification required.
Greater than or equal to \$1 million, but less than \$10 million.	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury.	Written Justification required and recipients must submit as part of regular reporting to Treasury.
\$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury.	

In selecting these thresholds, Treasury recognized that capital expenditures vary widely in size and therefore would benefit from tiered treatment to implement eligibility standards while minimizing administrative burden, especially for smaller projects. For example, Treasury selected \$1 million as a threshold for whether a recipient needs to complete a Written Justification as well as a threshold under which capital expenditures would be presumed reasonably proportional. Treasury estimates that \$1 million would encapsulate the costs of a significant portion of equipment or small renovations. These types of smaller projects are often a necessary and reasonably proportional part of a response to the public health emergency; therefore, the \$1 million threshold provides a simplified pathway to complete smaller projects more likely to meet the eligibility standard. At the same time, Treasury selected \$10 million as the threshold for more intensive reporting requirements, estimating that projects larger than \$10 million would likely constitute significant improvements or construction of mid- or large-sized facilities. As discussed above, given their scale and longer time to completion, these types of larger

²⁵⁴ Whether or not a Written Justification is required, recipients should still determine that the response is related and reasonably proportional to the public health emergency and its negative economic impacts. Treasury recognizes that enumerated eligible uses are “related” to the public health emergency and its negative economic impacts and presumed to be reasonably proportional, except recipients pursuing projects with expected total capital expenditures equal to or greater than \$1 million should still independently determine that the expenditures are a reasonably proportional response. Enumerated projects with total expected capital expenditures under \$1 million receive a safe harbor and deemed to meet the related and reasonably proportional standard.

²⁵⁵ Whether or not a Written Justification is required, recipients should still determine that the response is related and reasonably proportional to the public health emergency and its negative economic impacts. Treasury presumes that projects with total expected capital expenditures under \$1 million are reasonably proportional in size to responding to the public health emergency and its negative economic impacts; however, recipients should determine that the response otherwise meets the requirements of the standard, including that the response is related to the public health emergency and its negative economic impacts.

projects may be less likely to be reasonably proportional responses. The \$10 million threshold also generally aligns with thresholds in other parts of the SLFRF program, such as for enhanced reporting on labor practices.

Expenditures from closely related activities directed toward a common purpose are considered part of the scope of one project. These expenditures can include capital expenditures, as well as expenditures on related programs, services, or other interventions. A project includes expenditures that are interdependent (e.g., acquisition of land, construction of the school on the land, and purchase of school equipment), or are of the same or similar type and would be utilized for a common purpose (e.g., acquisition of a fleet of ambulances that would be used for COVID-19 emergency response). Recipients must not segment a larger project into smaller projects in order to evade review. A recipient undertaking a set of identical or similar projects (e.g., development of a number of new affordable housing complexes across the recipient jurisdiction) may complete one Written Justification comprehensively addressing the entire set of projects.

Projects Enumerated as Eligible by Treasury

Under the public health and negative economic impacts eligible use category, the final rule provides a non-exclusive list of eligible uses of funding for projects that respond to the public health emergency or its negative economic impacts. Treasury has determined that these enumerated projects are related to the public health emergency and its negative economic impacts; however, recipients (other than Tribal governments) undertaking these projects with total expected capital expenditures of \$1 million or greater must still complete and meet the substantive requirements of a Written Justification as part of their demonstration that the project is a related and reasonably proportional response to the harm identified.

• *Projects with total expected capital expenditures of under \$1 million:* Treasury provides a safe harbor for

projects with total expected capital expenditures of less than \$1 million and will not require recipients to complete, submit, or meet the substantive requirements of a Written Justification for the capital expenditure. In essence, recipients may pursue an enumerated project with total expected capital expenditures of under \$1 million without having to undergo additional assessments to meet SLFRF requirements.

• *Projects with total expected capital expenditures of at least \$1 million but under \$10 million:* Recipients should complete a Written Justification for the capital expenditure and make an independent assessment of whether their proposed capital expenditure meets the substantive requirements of the Written Justification. Recipients will not be required to submit the Written Justification as part of regular reporting to Treasury but should keep documentation for their records.

• *Projects with total expected capital expenditures of at least \$10 million:* Similar to the above, recipients should complete a Written Justification of the capital expenditure and make an independent assessment of whether their proposed capital expenditure meets the substantive requirements of the Written Justification. Further, recipients will be asked to submit the Written Justification as part of regular reporting to Treasury. Similar to other parts of the SLFRF program, such as on reporting on labor practices, Treasury recognizes that projects with expected total capital expenditures of at least \$10 million may be less likely to meet eligibility requirements and therefore requires recipients to provide an enhanced level of information to Treasury.

Projects Beyond Those Enumerated as Eligible by Treasury

As with all uses, recipients that undertake capital expenditures beyond those enumerated as eligible by Treasury must meet the two-part framework under Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact under General Provisions: Structure and Standards,

including the requirement that responses are related and reasonably proportional to the harm or impact identified. As part of that assessment, these recipients may also be asked to complete a Written Justification. Recipients (other than Tribal governments) are subject to the following presumptions for the Written Justification of the capital expenditure, based on the total expected capital expenditures of the project:

- *Projects with total expected capital expenditures of under \$1 million:* Treasury provides a safe harbor for unenumerated projects with total expected capital expenditures of under \$1 million and will not require recipients to complete, submit, or meet the substantive requirements of a Written Justification of the capital expenditure. Recipients should still make a determination as to whether the capital expenditure is part of a response that is related and reasonably proportional to the public health emergency or its negative economic impacts.

- *Projects with total expected capital expenditures of \$1 million or over:* Recipients should complete a Written Justification of the capital expenditure and make an independent assessment that their proposed capital expenditure meets the substantive requirements of the Written Justification. Further, recipients will be asked to submit the Written Justification as part of regular reporting to Treasury.

Treasury employs a risk-based approach to overall program management and monitoring, which may result in heightened scrutiny on larger projects. Accordingly, recipients pursuing projects with larger capital expenditures should complete more detailed analyses for their Written Justification, commensurate with the scale of the project.

Additional Provisions, Standards, and Definitions

Strong Labor Standards in Construction

Treasury encourages recipients to carry out projects in ways that produce high-quality work, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to use strong labor standards, including project labor agreements (PLAs) and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also recommends that recipients prioritize in their procurement decisions employers who can demonstrate that their workforce meets high safety and training standards

(e.g., professional certification, licensure, and/or robust in-house training), that hire local workers and/or workers from historically underserved communities, and who directly employ their workforce or have policies and practices in place to ensure contractors and subcontractors meet high labor standards. Treasury further encourages recipients to prioritize employers (including contractors and subcontractors) without recent violations of federal and state labor and employment laws.

Treasury believes that such practices will promote effective and efficient delivery of high-quality projects and support the economic recovery through strong employment opportunities for workers. Such practices will reduce likelihood of potential project challenges like work stoppages or safety accidents, while ensuring a reliable supply of skilled labor and minimizing disruptions, such as those associated with labor disputes or workplace injuries. That will, in turn, promote on-time and on-budget delivery.

Furthermore, among other requirements contained in 2 CFR 200, Appendix II, all contracts made by a recipient or subrecipient in excess of \$100,000 with respect to a capital expenditure that involve employment of mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5).

Treasury will seek information from recipients on their workforce plans and practices related to capital expenditures undertaken under the public health and negative economic impacts eligible use category with SLFRF funds. This reporting will support transparency and competition by enhancing available information on the services being provided.

Environmental, Uniform Guidance, and Other Generally Applicable Requirements

Treasury cautions that, as is the case with all projects using SLFRF funds, all projects must comply with applicable federal, state, and local law. In the case of capital expenditures in particular, this includes environmental and permitting laws and regulations. Likewise, as with all capital expenditure projects using the SLFRF funds, projects must be completed in a manner that is technically sound, meaning that it must meet design and construction methods and use materials that are approved, codified, recognized, fall under standard

or acceptable levels of practice, or otherwise are determined to be generally acceptable by the design and construction industry.

Further, as with all other uses of funds under the SLFRF program, the Uniform Guidance at 2 CFR part 200 applies to capital expenditures unless stated otherwise. Importantly, this includes 2 CFR part 200 Subpart D on post-federal award requirements, including property standards pertaining to insurance coverage, real property, and equipment; procurement standards; sub-recipient monitoring and management; and record retention and access.

Definitions

Treasury adopts several definitions from the Uniform Guidance at 2 CFR 200.1 under this section, including for capital expenditures, capital assets, equipment, and supplies.

Per the Uniform Guidance, the term “capital expenditures” means “expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.” The term “capital assets” means “tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with [Generally Accepted Accounting Principles].”

Capital assets include lands, facilities, equipment, and intellectual property. Equipment means “tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000.” Supplies, which means all tangible personal property other than those included as “equipment,” are not considered capital expenditures.

Recipients may also use SLFRF funds for pre-project development costs that are tied to or reasonably expected to lead to an eligible capital expenditure. For example, pre-project costs associated with planning and engineering for an eligible project are considered an eligible use of funds.

c. Distinguishing Subrecipients Versus Beneficiaries

Under the interim final rule, state, local, and Tribal governments that receive a federal award directly from a federal awarding agency, such as Treasury, are designated as “recipients,”

and state, local, and Tribal governments are authorized to transfer funds to other entities, including private entities like nonprofits. The interim final rule stated that, “[a] transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be a subrecipient. Subrecipients are entities that receive a subaward from a recipient to carry out a program or project on behalf of the recipient with the recipient’s Federal award funding.”

For funds transferred to a subrecipient, the interim final rule noted that “[r]ecipients continue to be responsible for monitoring and overseeing the subrecipient’s use of SLFRF funds and other activities related to the award to ensure that the subrecipient complies with the statutory and regulatory requirements and the terms and conditions of the award. Recipients also remain responsible for reporting to Treasury on their subrecipients’ use of payments from the SLFRF funds for the duration of the award.”

Public Comment: Treasury received many comments requesting clarification about which entities qualify as subrecipients and are, in turn, subject to subrecipient monitoring and reporting requirements. For example, commenters sought clarification about whether a nonprofit that received a grant to provide services under a program to carry out an enumerated eligible use would qualify as a subrecipient and be subject to subrecipient monitoring and reporting requirements. Similarly, commenters also wondered if a nonprofit that received a grant in recognition of experiencing a negative economic impact of the public health emergency would also be a subrecipient and subject to subrecipient reporting requirements.

Treasury Response: Treasury is clarifying the distinction between a subrecipient and beneficiary in the final rule. The Uniform Guidance definitions for subaward and subrecipient inform Treasury’s distinction between subrecipients and beneficiaries.

First, per 2 CFR 200.1 of Uniform Guidance “[s]ubaward means an award provided by a pass-through entity²⁵⁶ to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement,

including an agreement that the pass-through entity considers a contract.”

Further, 2 CFR 200.1 of the Uniform Guidance defines a subrecipient, in that “[s]ubrecipient means an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.” Treasury is aligning the definition of subrecipient in the final rule with the definition of subrecipient in the Uniform Guidance.

Treasury is maintaining the monitoring and subrecipient reporting requirements outlined in the final rule. Per 2 CFR 200.101 (b)(2) of the Uniform Guidance, the terms and conditions of federal awards flow down to subawards to subrecipients. Therefore, non-federal entities, as defined in the Uniform Guidance, must comply with the applicable requirements in the Uniform Guidance regardless of whether the non-federal entity is a recipient or subrecipient of a federal award. This includes requirements such as the treatment of eligible uses of funds, procurement, and reporting requirements.

The Uniform Guidance definitions for both subaward and subrecipient specify that payments to individuals or entities that are direct beneficiaries of a federal award are not considered subrecipients. The final rule adopts this definition of a beneficiary and outlines that households, communities, small businesses, nonprofits, and impacted industries are all potential beneficiaries of projects carried out with SLFRF funds. Beneficiaries are not subject to the requirements placed on subrecipients in the Uniform Guidance, including audit pursuant to the Single Audit Act and 2 CFR part 200, subpart F or subrecipient reporting requirements.

The distinction between a subrecipient and a beneficiary, therefore, is contingent upon the rationale for why a recipient is providing funds to the individual or entity. If the recipient is providing funds to the individual or entity for the purpose of carrying out a SLFRF program or project on behalf of the recipient, the individual or entity is acting as a subrecipient. Acting as a subrecipient, the individual or entity is subject to subrecipient monitoring and reporting requirements. Conversely, if the recipient is providing funds to the individual or entity for the purpose of directly benefitting the individual or

entity as a result of experiencing a public health impact or negative economic impact of the pandemic, the individual or entity is acting as a beneficiary. Acting as a beneficiary, the individual or entity is not subject to subrecipient monitoring and reporting requirements.

d. Uses Outside the Scope of This Category

Summary of the Interim Final Rule and Final Rule Structure

In the interim final rule, Treasury noted that certain uses of funds are not permissible under the eligible use category of responding to the public health and negative economic impacts of the pandemic. In the final rule, these uses remain impermissible, but Treasury has re-categorized where they are addressed to increase clarity.

Specifically, the interim final rule provided that the following uses of funds are not eligible under this eligible use category: Contributions to rainy day funds, financial reserves, or similar funds; payment of interest or principal on outstanding debt instruments; fees or issuance costs associated with the issuance of new debt; and satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding, except to the extent the judgment or settlement requires the provision of services that would respond to the COVID-19 public health emergency. These uses of funds remain ineligible under the final rule; Treasury has re-categorized these issues to the section Restrictions on Use, which describes restrictions that apply to all eligible use categories, to clarify that these uses are not eligible under any eligible use category of SLFRF. Treasury responds to public comments on this issue in the section Restrictions on Use.

As noted above, the interim final rule also posed several questions on what other types of services or costs Treasury should consider as eligible uses to respond to the public health and negative economic impacts of COVID-19, including in disproportionately impacted communities. In this section, Treasury addresses proposed uses of funds suggested by commenters that Treasury has not included as enumerated eligible uses of funds in this eligible use category.

General Eligible Uses

Public Comment: Commenters proposed a wide variety of additional recommended enumerated eligible uses

²⁵⁶ In this context, a pass-through entity means a recipient of SLFRF funds.

in all sections of the public health and negative economic impacts eligible use category, including in impacted and disproportionately impacted communities. The proposed additional uses included general categories of services (e.g., legal and social services, long-term investments to remediate long-term disparities, response to natural disasters). Other suggested uses of funds respond to needs widely experienced across the country (e.g., access to and affordability of health insurance). Finally, other suggested uses of funds were highly specific (e.g., healthcare equipment for a specific health condition, fire hydrants, weather alert systems) or most applicable to the particularized needs to certain populations or geographic areas of the United States (e.g., senior citizens, immigrants, formerly incarcerated individuals, responding to environmental issues in certain geographic regions). Other commenters generally requested a high degree of flexibility to respond to the particular needs of their communities.

Treasury Response: Given the large number and diversity of SLFRF recipients, Treasury has aimed to include as enumerated eligible uses programs, services, and capital expenditures that respond to public health and negative economic impacts of the pandemic experienced widely in many jurisdictions across the country, making it clear and simple for recipients to pursue these enumerated eligible uses under the final rule. This provides enumerated eligible uses that many recipients may want to pursue, while including uses that are responsive to the pandemic's impacts across the diverse range of SLFRF recipients. In the final rule, Treasury has clarified several additional uses that generally respond to pandemic impacts experienced broadly across jurisdictions and populations.

Treasury has not chosen to include as enumerated uses all uses proposed by commenters; given the significant range, and in some cases highly specific nature, of the proposed uses Treasury was not able to assess that the proposed uses would respond to negative economic impacts experienced generally across the country, supporting an enumerated eligible use available to all recipients presumptively.

However, Treasury emphasizes that the enumerated eligible uses are non-exhaustive and that other uses, beyond those enumerated, are eligible. Treasury recognizes that the impacts of the pandemic vary over time, by jurisdiction, and by population; as such, the final rule provides flexibility for

recipients to identify other public health or negative economic impacts to additional households, small businesses, or nonprofits, including classes of these entities, and pursue programs and services that respond to those impacts. Treasury also notes that some populations are presumed to be impacted or disproportionately impacted by the pandemic, and thus eligible for responsive services; these presumed eligible populations may encompass many individuals in the specific populations for whom commenters recommended services. For details on these issues, see section General Provisions: Structure and Standards.

Infrastructure, Community Development, and General Economic Development

Some potential additions to enumerated eligible uses were also recommended by several commenters each but are not included as enumerated eligible uses in the final rule.

Public Comment: Infrastructure: In the interim final rule, Treasury noted that a "general infrastructure project, for example, typically would not be included [in this eligible use category] unless the project responded to a specific pandemic public health need."

Numerous commenters requested that Treasury permit investments in infrastructure as a response to the public health and negative economic impacts of the pandemic. While these comments most commonly recommended that constructing and maintaining roads and surface transportation infrastructure be eligible, the proposed uses for infrastructure ranged widely and included parking lots, bridges, traffic management infrastructure, solid waste disposal facilities, and utility infrastructure (outside of water, sewer, and broadband).

Many commenters argued that infrastructure development and maintenance is a pressing need in their communities and that their communities had less need for water, sewer, and broadband infrastructure or other eligible uses to respond to the public health and negative economic impacts of the pandemic. Other commenters argued that these uses would stimulate the economy, attract businesses, or allow for tourist movement; these commenters argued that, by generally supporting a stronger economy or facilitating conditions that are more conducive to business activity and tourism, these uses respond to the negative economic impacts of the pandemic.

Treasury Response: In the final rule, Treasury is maintaining the approach under the interim final rule that general infrastructure projects, including roads, streets, and surface transportation infrastructure, would generally not be eligible, unless the project responded to a specific pandemic public health need or a specific negative economic impact.

The ARPA expressly includes infrastructure if it is "necessary" and in water, sewer, or broadband, suggesting that the statute contemplates only those types of infrastructure. Further, responding to the public health and negative economic impacts of the pandemic requires identifying whether, and the extent to which, there has been a harm that resulted from the COVID-19 public health emergency and whether, and the extent to which, the use would respond or address this harm. Uses of funds intended to generally grow the economy and therefore enhance opportunities for workers and businesses would not be an eligible use, because such assistance is not reasonably designed to impact individuals or classes that have been identified as having experienced a negative economic impact. In other words, there is not a reasonable connection between the assistance provided and an impact on the beneficiaries. Such an activity would be attenuated from and thus not reasonably designed to benefit the households that experienced the negative economic impact.

Note, however, that Treasury has clarified that capital expenditures that are related and reasonably proportional to responding to the public health and economic impacts of the pandemic are eligible uses of funds, in addition to programs and services; for details on eligibility criteria for capital expenditures, see section Capital Expenditures in General Provisions: Other.

Public Comment: Community Development Block Grant: Several commenters recommended that Treasury enumerate as eligible uses those eligible under the Department of Housing and Urban Development's Community Development Block Grant (CDBG) or the Housing and Community Development Act of 1974, which established the CDBG program. Commenters requested that these uses be eligible either to respond to the negative economic impacts of the pandemic, or in the alternate the disproportionate negative economic impacts of the pandemic in certain communities. Under the CDBG program, recipient governments may undertake a wide range of community and economic

development services and projects. Commenters reasoned that many state and local governments are familiar with this program, and that aligning to its eligible uses may help recipients easily understand and pursue eligible projects. Commenters also noted that Treasury had chosen to align with existing federal programs in other eligible use categories, namely water infrastructure, in the interim final rule.

Treasury Response: In the final rule, Treasury is not including all categories of projects permissible under CDBG as enumerated eligible uses to respond to the public health and negative economic impacts of the pandemic. Because CDBG permits such a broad range of activities, including services to individual households, communities, small businesses, general economic development activities, and capital expenditures, Treasury determined that it was more appropriate to assess the underlying types of projects eligible within CDBG and whether each type of project responds to the negative economic impacts of the pandemic. In other words, Treasury considered whether various types of community and economic development projects respond to the impacts of the pandemic in different communities and circumstances. In the final rule, Treasury addresses the eligibility of these various types of projects in each relevant eligible use category within public health and negative economic impacts under SLFRF, including assistance for impacted households, disproportionately impacted households, disproportionately impacted small businesses, and capital expenditures.

Public Comment: General Economic Development: Treasury provided guidance following the interim final rule that general economic development or workforce development would generally not be eligible as it does not respond to a negative economic impact of the COVID-19 public health emergency.

Some commenters recommended that Treasury expand enumerated eligible uses to include general economic development activities, beyond those that respond to negative economic impacts of the pandemic, such as creating an economic development strategy for the jurisdiction's overall economic growth, creating a general workforce development strategy, or providing funds to businesses that did not experience negative economic impacts to carry out economic development activities or to incentivize the addition or retention of jobs. Commenters supportive of assistance to

businesses for general economic development activities argued that subsidies to businesses increase job growth and that, in some cases, assistance to companies that excelled during the public health emergency would help create more job opportunities for workers or expand the jurisdiction's tax base and produce funds to support government services. In contrast, other commenters argued that academic research consistently finds that economic development subsidies have a negligible, or even negative, economic effect, citing research findings to this effect.²⁵⁷

Treasury Response: In the final rule, Treasury maintains the interim final rule's approach that general economic development or workforce development, meaning activities that do not respond to negative economic impacts of the pandemic and rather seek to more generally enhance the jurisdiction's business climate, would generally not be eligible under this eligible use category. As noted above, to identify an eligible use of funds under this category, a recipient must identify a beneficiary or class of beneficiaries that experienced a harm or impact due to the pandemic, and eligible uses of funds must be

²⁵⁷ See, e.g., Matthew D. Mitchell et al., *The Economics of a Targeted Economic Development Subsidy* (Arlington, VA: Mercatus Center at George Mason University, 2019), 5, available at <https://www.mercatus.org/publications/government-spending/economics-targeted-economic-development-subsidy>; Timothy J. Bartik, *Who Benefits from Economic Development Incentives? How Incentive Effects on Local Incomes and the Income Distribution Vary with Different Assumptions about Incentive Policy and the Local Economy* (Upjohn Institute Technical Report No. 13-034, W.E. Upjohn Institute for Employment Research, March 1, 2018), available at https://research.upjohn.org/up_technicalreports/34/; Cailin Slattery and Owen Zidar, *Evaluating State and Local Business Tax Incentives*, *Journal of Economic Perspectives* 34, no. 2 (2020): 90-118, available at <https://www.aeaweb.org/articles?id=10.1257/jep.34.2.90>; Kenneth Thomas, *The State of State and Local Subsidies to Business* (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, October 2019), available at https://www.mercatus.org/system/files/thomas_-_policy_brief_-_the_state_of_state_and_local_subsidies_to_business_-_v1.pdf; Dennis Coates, *Growth Effects of Sports Franchises, Stadiums, and Arenas: 15 Years Later* (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, September 2015), available at <https://www.mercatus.org/system/files/Coates-Sports-Franchises.pdf>; Dennis Coates and Brad R. Humphreys, *Do Economists Reach a Conclusion on Subsidies for Sports Franchises, Stadiums, and Mega-Events?*, *Econ Journal Watch* 5, no. 3 (2008): 294-315, available at <https://econjwatch.org/articles/do-economists-reach-a-conclusion-on-subsidies-for-sports-franchises-stadiums-and-mega-events>; Matthew D. Mitchell, Daniel Sutter, and Scott Eastman, *The Political Economy of Targeted Economic Development Incentives*, *Review of Regional Studies* 48, no. 1 (2018): 1-9, available at <https://www.mercatus.org/publications/corporate-welfare/political-economy-targeted-economic-development-incentives>.

reasonably designed to respond to the harm, benefit the beneficiaries that experienced it, and be related and reasonably proportional to that harm or impact.

As noted above, recipients should analyze eligible uses based on the beneficiary of the assistance, and recipients may not provide assistance to small businesses or impacted industries that did not experience a negative economic impact. Provision of assistance to a business that did not experience a negative economic impact, under the theory that such assistance would generally grow the economy and therefore enhance opportunities for workers, would not be an eligible use, because such assistance is not reasonably designed to impact individuals or classes that have been identified as having experienced a negative economic impact. In other words, there is not a reasonable connection between the assistance provided and an impact on the beneficiaries. Such an activity would be attenuated from and thus not reasonably designed to benefit the households that experienced the negative economic impact. Research cited by some commenters finding that business subsidies have limited or negative economic impact also suggests that such a response may not be reasonably designed to benefit households and other entities impacted by the pandemic. Similarly, planning activities for an economic development or workforce strategy regarding general future economic growth do not provide a program, service, or capital expenditure that responds to negative economic impacts of the pandemic.

However, Treasury notes that the final rule includes as enumerated eligible uses many types of assistance that respond to negative economic impacts of the pandemic and may produce economic development benefits. For example, see sections Assistance to Unemployed Workers, Assistance to Small Businesses, and Capital Expenditures.

B. Premium Pay

Background and Summary of the Interim Final Rule

Sections 602(c)(1)(B) and 603(c)(1)(B) of the Social Security Act, as added by the ARPA, provide that SLFRF funds may be used "to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the . . . government that are performing such essential work, or by providing grants to eligible employers

that have eligible workers who perform essential work.”

Premium pay is designed to compensate workers that, by virtue of their employment, were forced to take on additional burdens and make great personal sacrifices as a result of the COVID-19 pandemic. Premium pay can be thought of as hazard pay by another name.²⁵⁸

During the public health emergency, employers’ policies on COVID-19-related premium pay or hazard pay have varied widely, with many essential workers not yet compensated for the heightened risks they have faced and continue to face.²⁵⁹ Many of these workers earn lower wages on average and live in socioeconomically underserved communities as compared to the general population.²⁶⁰ A recent study found that 25 percent of essential workers were estimated to have low household income, with 13 percent in high-risk households.²⁶¹ The low pay of many essential workers makes them less able to cope with the financial consequences of the pandemic or their work-related health risks. As Americans return to work and governments relax certain rules, essential workers will continue to bear the brunt of the risk of maintaining the ongoing operation of vital facilities and services. The added health risk to essential workers is one prominent way in which the pandemic has amplified pre-existing socioeconomic inequities. Premium pay is designed to address the disparity between the critical services provided by and the risks taken by essential workers and the relatively low compensation they tend to receive.

The interim final rule established a three-part framework for recipients seeking to use SLFRF funds for premium pay. First, to receive premium pay one must be an eligible worker. Second, an eligible worker must also perform essential work. Finally, premium pay must respond to workers performing essential work during the COVID-19 public health emergency. Most of the comments received by Treasury pertaining to premium pay related to these three requirements. Comments also addressed the definition of premium pay generally and posed

questions regarding premium pay program structuring. This section responds to the comments by addressing the three requirements in turn, then the overall definition of premium pay and, finally, program structure.

Eligible Workers

The ARPA defines “eligible workers” as “those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each . . . [government] may designate as critical to protect the health and wellbeing of [its] residents.” The interim final rule supplemented this definition by identifying a list of “essential critical infrastructure sectors” whose workers are eligible workers, based on the list of sectors in the HEROES Act, a bill introduced in the House of Representatives in 2020 that would have provided premium pay to essential workers.²⁶² In addition to the critical infrastructure sectors defined in the interim final rule, the chief executive (or equivalent) of a recipient government may designate additional non-public²⁶³ sectors as critical so long as doing so is necessary to protecting the health and wellbeing of the residents of such jurisdiction.

Public Comment: Treasury received multiple comments on the definition of “eligible worker” included in the interim final rule. Many commenters agreed with the definition of eligible worker adopted by Treasury. Other commenters sought clarification about or changes to the definition of eligible worker, including the definition of eligible sectors, the inclusion of government workers in the definition of eligible workers, and the process for designating additional non-public sectors as eligible.

Some commenters asked Treasury to change how it identifies eligible sectors, including suggestions to add to or subtract from the list of eligible sectors. For example, some commenters asked Treasury to consider using Bureau of Labor Statistics (BLS)-Standard Occupational Classifications to identify specific sectors or occupations, in contrast to the approach taken in the interim final rule, which included a mixture of economic sectors, industries, and occupations. Many commenters asked Treasury to explicitly clarify that a particular industry or occupation is covered by the definition of “essential critical infrastructure sector.” Some of

these commenters represented public employees, e.g., employees of facilities and public works; public utilities; courthouse employees; police, fire, and emergency medical services; and waste and wastewater services. Others were a mixture of public and private sector employees, e.g., coroners and medical examiners; transportation infrastructure (specifically electric vehicle infrastructure and supply equipment); electric utilities, natural gas, and steam supply; and grocery employees. Other commenters requested that Treasury prohibit certain occupations currently included in the eligible workers definition (e.g., police and corrections officers) from receiving premium pay for performance of regular duties.

Commenters also asked Treasury to clarify which government workers are included in the definition of eligible workers. The interim final rule included as an essential critical infrastructure sector, “any work performed by an employee of a State, local, or Tribal government.” Some commenters requested that Treasury adopt a definition of eligible worker that includes all employees of the recipient government; however, all public employees of state, local, and Tribal governments are already included in the interim final rule definition of “eligible worker.” Commenters asked whether this includes governments that did not receive SLFRF funds (i.e., “non recipient governments”). Many commenters from Tribal governments requested that the definition of eligible worker, which includes “any work performed by an employee of a . . . Tribal government,” also include an employee of a “Tribal enterprise” to remove uncertainty regarding which employees are included.

Finally, commenters made suggestions for the process by which the chief executive (or equivalent) of a recipient government may designate additional non-public sectors as critical. Commenters asked that Treasury adopt a requirement that Treasury must approve or deny any additional non-public sector identified by the chief executive of a recipient government prior to implementation of the recipient’s program.

Some commenters asked Treasury to clarify whether their chief executive (or equivalent) could designate particular, and in some cases *all*, employees of the recipient government as eligible for premium pay.

Treasury Response: In the final rule, Treasury will preserve the definition of “eligible worker” as it was defined in the interim final rule with minor modifications to clarify that all public

²⁵⁸ See U.S. Department of Labor, *Hazard Pay*, <https://www.dol.gov/general/topic/wages/hazardpay> (last visited October 18, 2021).

²⁵⁹ Economic Policy Institute, *Only 30% of those working outside their home are receiving hazard pay* (June 16, 2020), <https://www.epi.org/press/only-30-of-those-working-outside-their-home-are-receiving-hazard-pay-black-and-hispanic-workers-are-most-concerned-about-bringing-the-coronavirus-home/>.

²⁶⁰ McCormack, *supra* note 65.

²⁶¹ *Id.*

²⁶² See H.R. 6800, 116th Cong. (2020).

²⁶³ Note that the sectors defined in the interim final rule already include all state, local, and Tribal government employees.

employees of recipient governments are already included in the interim final rule definition of “eligible worker.” A more specific eligibility system (e.g., linking eligibility to specific occupational or industry codes) would have provided more certainty but would have been much more rigid. In contrast, the current definition is flexible enough to give recipients the ability to tailor their premium pay programs to meet their needs while ensuring that programs focus on sectors where workers were forced to shoulder substantial risk as a result of the COVID-19 pandemic. Furthermore, the critical infrastructure sectors defined in the interim final rule already include many of the occupations that commenters requested be added. For example, Treasury received many comments from public workers asking to be included in the definition of “eligible worker” even though these workers already fall within the scope of “any work performed by an employee of a State, local, or Tribal government.” Treasury has clarified in the final rule that the chief executive’s discretion to designate additional sectors as critical relates only to “non-public” sectors, since all public employees of recipient governments are already included in the definition of “eligible worker.” While all such public employees are “eligible workers” and the chief executive (or equivalent) of a recipient government may designate additional non-public sectors as critical, in order to receive premium pay, these workers must still meet the other premium pay requirements (e.g., performing essential work).

Treasury recognizes that the list of “essential critical infrastructure sectors” includes both occupations and sectors. Recipients, if uncertain which occupations are included in a critical infrastructure sector, may consult government occupational classifications if helpful but are not required to do so.²⁶⁴ Furthermore, a recipient government does not need to submit to Treasury for approval its designation of a sector as essential critical infrastructure; rather, Treasury will defer to the reasonable interpretation of the recipient government and the discretion of the recipient’s chief executive in making such designations. If a recipient is unsure if a non-public sector is covered by the definition in the

final rule,²⁶⁵ the chief executive (or equivalent) of a recipient government may also identify the non-public sector as critical so long as the chief executive deems the non-public sector necessary to protecting the health and wellbeing of residents. Treasury has, where possible, clarified the definition of “essential critical infrastructure sectors.” For instance, Treasury has clarified in the final rule that work performed by an employee of a Tribal government includes an employee of a Tribal enterprise and discussed in this Supplementary Information how a recipient may qualify other non-public sectors as essential critical infrastructure.

Essential Work

The interim final rule defined “essential work” as work that (1) is not performed while teleworking from a residence and (2) involves either (i) regular, in-person interactions with patients, the public, or coworkers of the individual that is performing the work or (ii) regular physical handling of items that were handled by, or are to be handled by, patients, the public, or coworkers of the individual that is performing the work. Treasury adopted this definition of essential work to ensure that premium pay is targeted to workers that faced or face heightened risks due to the character of their work during a pandemic.

Public Comment: Some commenters found the definition unclear and asked Treasury to clarify what constitutes “essential work.” Others disagreed with the essential work test altogether, arguing that it forces recipients to distinguish between essential and non-essential employees, which may be difficult to do. Accordingly, these commenters asked Treasury to allow recipients to determine which workers qualify as essential. Treasury also received several requests that specific occupations be explicitly deemed essential, including all public employees, veterinarians, election administrators, detention staff and sheriff’s deputies, and employees of utilities, such as electric power, natural gas, steam supply, water supply, and sewage removal.

Several commenters requested that Treasury not distinguish between remote and in-person work or amend the standard so that employees providing essential services would still be eligible even if they worked remotely. Finally, a few commenters requested clarification as to the

definition of “regular” in-person interactions and whether Treasury could clarify which job functions merit more (or less) premium pay.

Treasury Response: Treasury is maintaining the definition of “essential work” in the final rule without modification. The test adopted in the interim final rule was designed to compensate workers facing disproportionate risk due to the pandemic. COVID-19 is transmitted through person-to-person interactions, and therefore, workers with regular in-person interactions are the primary group facing increased health risks. Although COVID-19 is not transmitted primarily by people handling items, such work may present increased risk in certain cases, and the final rule maintains the interim final rule’s inclusion of such work in order to give recipient governments the flexibility to include workers performing such work as they determine appropriate. Changing the test as some commenters suggested, e.g., by eliminating the in-person work requirement or allowing recipients to designate which employees are essential, even if not working in person, would no longer focus the program on workers taking on additional health risks and instead allow premium pay to be awarded to individuals who experienced relatively little risk of exposure to COVID-19. To maintain flexibility, Treasury is not defining the term “regular” with regard to in-person interactions, allowing recipients to develop programs based on the specific workforce to be served and local circumstances. Generally speaking, however, recipients are encouraged to consider an eligible worker’s risk of exposure in designing premium pay programs.

Respond To

As required by the ARPA, the interim final rule required that premium pay programs “respond to” eligible workers performing essential work during the COVID-19 public health emergency. Premium pay responds to eligible workers performing essential work if it prioritizes low- and moderate-income persons, given the significant share of essential workers that are low- and moderate-income and may be least able to bear added costs associated with illness. The level of the award limit—up to \$13 per hour not to exceed \$25,000 in aggregate—in the ARPA supports this reasoning.

Accordingly, the interim final rule required written justification for how premium pay to certain higher-income workers responds to eligible workers performing essential work: If a recipient

²⁶⁴ See, e.g., sources such as Bureau of Labor Statistics, Occupational Outlook Handbook, which provide information on which professions or occupations are typically included in interpretations of a sector, <https://www.bls.gov/ooh/>.

²⁶⁵ Public sector workers are “eligible workers” under the interim final rule and final rule.

(or grantee) uses SLFRF funds to provide premium pay to an employee and the pay or grant would increase a worker's total pay above 150 percent of their residing state or county's average annual wage for all occupations, as defined by the BLS Occupational Employment and Wage Statistics, whichever is higher, on an annual basis, then the recipient must provide, whether for themselves or on behalf of a grantee, written justification to Treasury detailing how the award responds to eligible workers performing essential work.

Public Comment: Treasury received numerous comments on the wage threshold and the written justification requirement. Several commenters supported the threshold as a way to encourage recipients to target premium pay to lower-income, eligible workers. Some commenters even asked Treasury to make the wage threshold a firm restriction, above which an eligible worker could not receive premium pay. Others agreed with the threshold but also requested flexibility to use existing worker classifications as an administratively simple way to identify workers for whom premium pay would be responsive. For instance, a few commenters asked Treasury to allow recipients or grantees to presume that premium pay "responds to" eligible workers performing essential work when it is provided to employees who are not exempt from the Fair Labor Standards Act (FLSA) overtime provisions—a test that employers are routinely required to apply.²⁶⁶

In contrast, several commenters disagreed with the threshold and the requirement for written justification. A few commenters thought the threshold was too low to capture employees in certain critical infrastructure sectors (e.g., public safety, waste collection) and that it did not sufficiently account for the variance in economic need across different geographic areas and family structures. Some smaller communities argued that the threshold was difficult to calculate and apply.

Other commenters proposed revisions for how the threshold is calculated. For instance, a few commenters asked Treasury to consider using alternative earnings measures such as median income. Similarly, another commenter asked Treasury to consider the incomes of workers with different levels of seniority in developing any income

thresholds for permitting or reporting on premium pay.

Finally, there was also some uncertainty as to the threshold and the requirement for written justification. Some commenters interpreted the threshold as a hard cap on who was eligible for premium pay, which is not the case. Relatedly, some commenters also requested further guidance on what recipients should include in the written justification submitted to the Secretary.

Treasury Response: The final rule makes some modifications to the determination of when premium pay "responds to" eligible workers performing essential work during the public health emergency. Under the interim final rule, premium pay was responsive if either the workers' pay was below a wage threshold or, if the pay was above a wage threshold, the recipient submitted written justification to Treasury explaining how the premium pay was responsive. The final rule retains these two means of establishing premium pay in response to workers performing essential work and adds an additional means of demonstrating that premium pay is responsive. Under the final rule, a recipient may also show that premium pay is responsive by demonstrating that the eligible worker receiving premium pay is not exempt from the FLSA overtime provisions.²⁶⁷ This change will expand the number of workers eligible to receive premium pay²⁶⁸ and does not require recipients to provide written justification to Treasury regarding the workers who are not exempt from the FLSA overtime provisions, making the program easier to administer for recipients. Incorporating this change further simplifies application of the

final rule for recipients because Treasury understands that most employers, public and private, are familiar with and are routinely required to apply the FLSA.

With this addition, the final rule provides that premium pay is responsive to eligible workers performing essential work during the public health emergency if each eligible worker who receives premium pay falls into one of three categories: (1) The worker's pay is below the wage threshold, (2) the worker is not exempt from the FLSA overtime provisions, or (3) the recipient has submitted a written justification to Treasury.

The final rule makes it clear that written justification to Treasury is not necessary with respect to eligible workers whose pay is less than the wage threshold. Nor is written justification necessary with respect to eligible workers who are not exempt from the FLSA overtime provisions. The written justification is only necessary if the worker's pay (with or without the premium) exceeds the threshold, and the worker is exempt from the FLSA overtime provisions. The final rule also clarifies that a worker's pay exceeds the threshold if either the premium pay increases the worker's total pay above the wage threshold or the worker's total pay was already above the threshold, before receiving premium pay.

Treasury has also updated the final rule to clarify that written justification means a brief, written narrative justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19, and why the recipient determined that the premium pay was responsive despite the workers' higher income.

Recipients should refer to SLFRF program reporting guidance, user guides, and other documentation for further guidance on the form and content of the written justification. Treasury anticipates that recipients will easily be able to satisfy the justification requirement for front-line workers, like nurses and hospital staff.

Definition of Premium Pay

The statute defines premium pay as "an amount of up to \$13 per hour . . . , in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID-19 public health emergency. Such amount may not exceed \$25,000 with respect to any single eligible worker." The interim

²⁶⁷ Department of Labor, Overtime Pay, <https://www.dol.gov/agencies/whd/overtime>; see also 29 U.S.C. 207.

²⁶⁸ Among workers that report working overtime, roughly 41–44 percent of workers earn above \$50,000 per year, which is slightly less than the national average annual wage for all employees according to the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, available at <https://www.bls.gov/oes/>. See also U.S. Census Bureau, Basic Monthly CPS, January 2019 through December 2019, available at <https://www.census.gov/data/datasets/time-series/demo/cps/cps-basic.html>. Notes: Annual earnings reflect weekly wages multiplied by 52. Usual weekly earnings are computed by BLS to include earnings from work such as tips, overtime, regular wages, etc., but not non-labor sources of income such as government transfers and capital gains. Pre-overtime earnings are computed by taking the difference of usual weekly earnings and earnings from overtime last week and multiplying by 52. Note, some sources multiply weekly earnings by 50 instead of 52 to account for unpaid time off and holidays, so these figures may be slightly larger than those reported elsewhere. Either assumption may overestimate earnings if workers do not work year-round.

²⁶⁶ See generally 29 U.S.C. 207(a); U.S. Department of Labor, Overtime Pay Requirements of the FLSA (Fact Sheet No. 23), <https://www.dol.gov/agencies/whd/fact-sheets/23-flsa-overtime-pay>.

final rule incorporated this definition and emphasized that premium pay should be in addition to compensation typically received.

Public Comment: Several submitted comments related to the definition of “premium pay.” Several commenters asked Treasury to clarify certain aspects of the interim final rule and statutory definition of premium pay. For instance, a few commenters asked whether the \$25,000 limit applies to the annual amount of premium pay received or the aggregate amount of premium pay received over the period of performance. A few commenters requested flexibility as to how premium pay may be awarded, including flexibility to make monthly or quarterly payments or lump sum payments. Finally, commenters requested additional clarification as to how premium pay should be calculated. For instance, a commenter asked how to calculate the amount of and account for overtime pay and other incentive pay.²⁶⁹

Treasury Response: Treasury has clarified some of these issues in the final rule. For example, Treasury has clarified in the final rule that the \$25,000 per employee limit is for the entire period of performance, not an annual cap. Further, recipients have discretion with respect to the way in which premium pay is awarded to eligible workers (e.g., monthly, quarterly, lump sum), provided that the total premium pay awarded to any eligible worker does not exceed \$13 per hour or \$25,000 over the period of performance. Finally, a recipient may award premium pay to an eligible worker in addition to the overtime pay already earned by the eligible worker but in no instance may the portion of the compensation funded with SLFRF funds exceed \$13 per hour, even if strict time-and-a-half calculation requires more.²⁷⁰ To the extent that an employer is required under the FLSA to make payments to an eligible worker in excess of \$13 per hour or \$25,000 in the aggregate over the period of performance, the employer must use a source of funding other than the SLFRF funds to satisfy those obligations.

Program Structure

Public Comment: Several commenters also requested elaboration on eligible

types of employees and permissible structures for awarding premium pay. A few commenters asked if premium pay could be awarded to volunteers or those in irregular and non-hourly or salaried employment positions. Similarly, various commenters asked if part-time workers were eligible for premium pay.

Some commenters asked Treasury to provide more detail on when premium pay may be paid retroactively or if a government could reimburse its general fund for hazard pay already paid before the start of the period of performance.

Treasury Response: Treasury has also made clear in the final rule that a recipient may award premium pay to non-hourly or salaried workers as well as part-time workers. Premium pay may not, however, be awarded to volunteers. If a recipient is interested in compensating volunteers with SLFRF funds, then it must do so consistent with the requirements set forth in other eligible use categories; for example, see section Public Sector Capacity and Workforce in Public Health and Negative Economic Impacts.

Under the final rule, recipients may award premium pay retroactively; however, SLFRF funds may not be used to reimburse a recipient or eligible employer grantee for premium pay or hazard pay already received by the employee. To make retroactive premium payments funded with SLFRF funds, a recipient or eligible employer grantee must make a new cash outlay for the premium payments and the payments must be in addition to any wages or remuneration the eligible worker already received, subject to the other requirements and limitations set forth in the ARPA and this final rule.

Finally, as part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the SLFRF award. This award term requires recipients and subrecipients to report to Treasury or the pass-through agency, as appropriate, any potential conflict of interest related to the award funds per 2 CFR 200.112. Pursuant to this policy, decisions concerning SLFRF funds must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. Consistent with this policy, elected officials are prohibited from using their official position and control over SLFRF funds for their own private gain. This policy also prohibits, among other things, elected officials from steering funds to projects in which they have a financial interest or using funds to pay themselves premium pay.

C. Revenue Loss

Background

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act provide that SLFRF funds may be used “for the provision of government services to the extent of the reduction in revenue of such . . . government due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the . . . government prior to the emergency.” This provision allows recipients experiencing budget shortfalls to use payments from the SLFRF funds to avoid cuts to government services and, thus, enables state, local, and Tribal governments to continue to provide valuable services and ensures that fiscal austerity measures do not hamper the broader economic recovery.

State and local government budgets experienced stress in fiscal year 2020 as delayed tax filings and pandemic-related business closures caused revenues to decline sharply.²⁷¹ Twenty-two state governments took actions to close budget gaps in fiscal year 2020²⁷² and nearly 80 percent of cities reported being less able to meet the fiscal needs of their communities relative to fiscal year 2019.²⁷³ Surveys of Tribal governments and Tribal enterprises conducted in 2020 found majorities of respondents reporting substantial cost increases and revenue decreases, with Tribal governments reporting reductions in health care, housing, social services, and economic development activities as a result of reduced revenues.²⁷⁴

The economic recovery, aided by the broad distribution of COVID-19 vaccines and the deployment of federal stimulus, has led to a strong rebound in total state and local government revenue and is contributing to a brighter fiscal

²⁷¹ In the second quarter of 2020, quarterly state and local tax revenues as reported by the U.S. Census Bureau fell 19 percent compared to the second quarter of 2019; U.S. Census Bureau, Quarterly Summary of State and Local Tax Revenue, <https://www.census.gov/programs-surveys/qtax.html>.

²⁷² National Association of State Budget Officers, Fiscal Survey of the States (Fall 2020), available at https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/Fiscal%20Survey/NASBO_Fall_2020_Fiscal_Survey_of_States_S.pdf.

²⁷³ National League of Cities, City Fiscal Conditions (2020), available at https://www.nlc.org/wp-content/uploads/2020/08/City_Fiscal_Conditions_2020_FINAL.pdf.

²⁷⁴ Surveys conducted by the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis in March, April, and September 2020. Elijah Moreno & Heather Sobrepena, Tribal entities remain resilient as COVID-19 batters their finances, Federal Reserve Bank of Minneapolis (Nov. 10, 2020), <https://www.minneapolisfed.org/article/2020/tribal-entities-remain-resilient-as-covid-19-batters-their-finances>.

²⁶⁹ See 29 U.S.C. 207(a) (“[A]t a rate not less than one and one-half times the regular rate at which he is employed.”).

²⁷⁰ All recipients are required to comply with otherwise applicable laws, including any wage and hour requirements in the Fair Labor Standards Act. See generally, Department of Labor, *Wages and the Fair Labor Standards Act*, <https://www.dol.gov/agencies/whd/flsa>.

outlook for most jurisdictions as compared to the earlier months of the public health emergency. For the fiscal year ending June 30, 2021, total state and local government tax revenues increased 21 percent relative to the same period in 2020, reflecting the combined impact of the modified tax filing deadline in 2020 and an improving economy.²⁷⁵ However, despite a stable budget situation overall, many governments face uncertainty as the COVID-19 pandemic continues to impact commuting patterns, hospitality and tourism, and other drivers of jurisdictions' economies. Thirty-five percent of cities still report being less able to meet financial needs than in fiscal year 2020,²⁷⁶ and over half of surveyed Tribal governments and Tribal enterprises reported losing at least 40 percent of their revenue since the start of the pandemic.²⁷⁷ Budget challenges persist as governments work to mitigate and contain COVID-19 and help citizens weather the economic downturn.

State, local, and Tribal government budgets affect the broader economic recovery. During the period following the 2007–2009 recession, state and local government budget pressures led to fiscal austerity that was a significant drag on the overall economic recovery.²⁷⁸ Inflation-adjusted state and local government revenue did not return to the previous peak until 2013,²⁷⁹ while employment in the sector returned to the previous peak in August 2019, nearly a decade later.²⁸⁰ Just months after recouping losses from the previous downturn, the COVID-19

pandemic caused state and local government employment to contract again, but this time more sharply: By May 2020, state and local government payrolls fell 7.7 percent compared to February 2020. Despite improvement, non-federal public sector job growth continues to lag behind the rest of the U.S. labor market recovery.²⁸¹

Summary of Interim Final Rule

As stated above, the Social Security Act provides that SLFRF funds may be used “for the provision of government services to the extent of the reduction in revenue of such . . . government due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the . . . government prior to the emergency.” The interim final rule provided a formula for calculating revenue loss through a four-step process:

- *Step 1:* Identify revenues collected in the most recent full fiscal year prior to the public health emergency (*i.e.*, last full fiscal year before January 27, 2020), called the *base year revenue*.
- *Step 2:* Estimate *counterfactual revenue*, which is the amount of revenue the recipient would have expected in the absence of the downturn caused by the pandemic. The counterfactual revenue is equal to *base year revenue* * $[(1 + \text{growth adjustment}) \wedge (n/12)]$, where *n* is the number of months elapsed since the end of the base year to the calculation date, and *growth adjustment* is the greater of the average annual growth rate across all State and Local Government “General Revenue from Own Sources” in the most recent three years prior to the

emergency, 5.2 percent, or the recipient's average annual revenue growth in the three full fiscal years prior to the COVID-19 public health emergency.²⁸² This approach to the growth rate provides recipients with the option to use a standardized growth adjustment when calculating the counterfactual revenue trend and thus minimizes administrative burden, while not disadvantaging recipients with revenue growth that exceeded the national average prior to the COVID-19 public health emergency by permitting these recipients to use their own revenue growth rate over the preceding three years.

- *Step 3:* Identify *actual revenue*,²⁸³ which equals revenues collected over the twelve months immediately preceding the calculation date.

- *Step 4:* The extent of the reduction in revenue is equal to *counterfactual revenue* less *actual revenue*. If *actual revenue* exceeds *counterfactual revenue*, the extent of the reduction in revenue is set to zero for that calculation date.

For illustration, consider a hypothetical recipient with *base year revenue* equal to 100 (Step 1) that ends on June 30, 2019. In Step 2, the hypothetical recipient finds that the average annual growth across all state and local government “General Revenue from Own Sources” in the most recent three years of available data, 5.2 percent, is greater than the recipient's average annual revenue growth in the three full fiscal years prior to the public health emergency. In this illustration, *n* (months elapsed) and *counterfactual revenue* would be equal to:

As of:	12/31/2020	12/31/2021	12/31/2022	12/31/2023
<i>n</i> (months elapsed)	18	30	42	54
<i>Counterfactual revenue</i> :	107.9	113.5	119.4	125.6

²⁷⁵ Analysis of Quarterly Summary of State and Local Tax Revenue, U.S. Census Bureau, *supra* note 271.

²⁷⁶ National League of Cities, City Fiscal Conditions (2021), available at <https://www.nlc.org/wp-content/uploads/2021/10/2021-City-Fiscal-Conditions-Report-2021.pdf>.

²⁷⁷ Center for Indian Country Development and Federal Reserve Bank of Minneapolis, One Year Into COVID-19, Pandemic's Negative Effects Persist in Indian Country (May 2021), available at <https://www.minneapolisfed.org/article/2021/one-year-into-covid-19-pandemics-negative-effects-persist-in-indian-country>.

²⁷⁸ See, e.g., Nora Fitzpatrick et al., Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), [https://libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-](https://libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html)

[and-local-sector.html](https://libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html); Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), available at <https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf>; Gordon, *supra* note 16.

²⁷⁹ State and local government general revenue from own sources, adjusted for inflation using the Bureau of Economic Analysis' implicit price deflator for GDP, U.S. Census Bureau, Annual Survey of State Government Finances and U.S. Bureau of Economic Analysis, National Income and Product Accounts, <https://www.census.gov/programs-surveys/gov-finances.html>.

²⁸⁰ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001>.

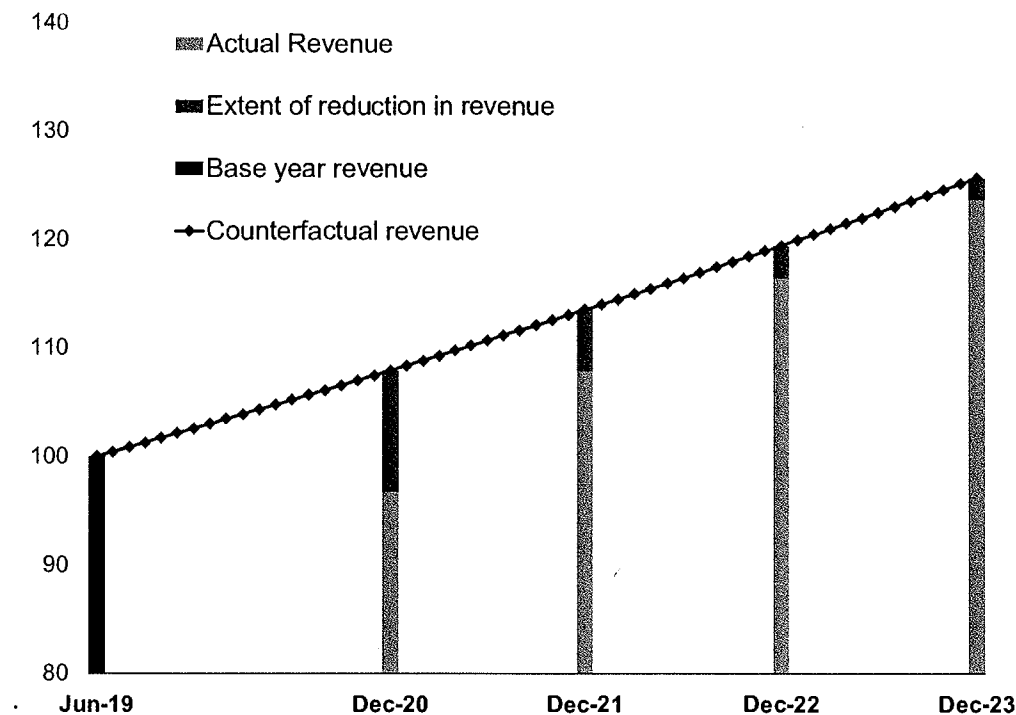
²⁸¹ Pew Research, State and Local Government Job Growth Lags as Economy Recovers (September 2021), available at <https://www.pewtrusts.org/en/research-and-analysis/articles/2021/09/14/state-and-local-government-job-growth-lags-as-economy-recovers>.

²⁸² At the time the interim final rule was published, the average annual growth across all state and local government “General Revenue from Own Sources” in the most recent three years of available data (2015–2018) was 4.1%, which was presented as one option for the growth adjustment. Since the interim final rule was published, 2019 data has been made available, which increases this rate to 5.2%. The final rule updates the percentage to 5.2%, as shown in Step 2.

²⁸³ As explained below, in the final rule, recipients must adjust actual revenue amounts based on certain tax policy changes.

The figure below illustrates the reduction in revenue for the

hypothetical recipient calculated in accordance with the methodology.



Finally, as explained in greater detail below, the clear meaning of the statutory phrase “due to the COVID-19 public health emergency” is that it is referring to revenue reductions caused by the public health emergency. As such, it does not include revenue reduced for reasons other than the public health emergency. Treasury in the interim final rule presumed that any reduction in revenue relative to the counterfactual estimate would be considered revenue lost due to the pandemic and thereby relieved recipients of the administrative burden of determining the extent to which reduction in revenue was due to the public health emergency. The calculation methodology in the interim final rule implicitly assumed that recipients did not suffer a loss in revenue due to the public health emergency if they did not experience a reduction in aggregate revenue compared to the counterfactual estimate. The interim final rule invited comments on whether Treasury should revise its presumption to “take into account other factors, including actions taken by the recipient as well as the expiration of the COVID-19 public health emergency, in determining whether to presume that revenue losses

are ‘due to’ the COVID-19 public health emergency.”

Treasury received a substantial number of comments on the revenue loss provisions set forth in the interim final rule. These comments largely pertained to the following topics: The overall methodology for calculating revenue loss; the definition of “revenue”; whether revenue should be aggregated or calculated on some alternative basis (e.g., source-by-source or fund-by-fund); the appropriate calculation dates (*i.e.*, fiscal year or calendar year); the presumption that all revenue loss is due to the pandemic; the base year; and the definition of “government services.”

Overall Methodology for Calculating Revenue Loss

As noted above, the interim final rule provided a formula for recipients to calculate revenue loss by comparing actual revenues received during a given time-period with a counterfactual amount of revenue based on revenues in the base year and an adjustment for expected growth in revenue each year.

Public Comment: Treasury received many public comments on the overall methodology for calculating revenue loss. Some recipients, including smaller governments, have expressed concern regarding the burden associated with

the calculation of revenue loss, particularly the burden involved in calculating the amount of general revenue, given that the definition of general revenue in the interim final rule does not always align with the definition of revenue already calculated by recipients for other purposes, and requested clarifications regarding a number of components, including the definition of revenue. Commenters also asked for clarification on the relationship between revenue loss calculations across different calculation dates. Other commenters argued that the revenue loss formula does not precisely capture the nuances of local revenues or their particular situation. For example, some commenters stated that requiring that revenues be aggregated fails to capture decreases in revenue sources that cannot easily be made up for with other revenue sources.

Treasury Response: In the final rule, Treasury is largely maintaining the revenue loss formula as set forth in the interim final rule. To address comments that the formula for calculating revenue loss was difficult to apply, Treasury is including an option for recipients to use a standard allowance for revenue loss. Specifically, in the final rule, recipients will be permitted to elect a fixed amount of loss that can then be used to fund government services. This fixed

amount, referred to as the “standard allowance,” is set at up to \$10 million total for the entire period of performance not to exceed the recipient’s SLFRF award amount. Although Treasury anticipates that this standard allowance will be most helpful to smaller local governments and Tribal governments, any recipient can use this standard allowance instead of calculating revenue loss pursuant to the formula above, so long as recipients employ a consistent methodology across the period of performance (*i.e.*, choose either the standard allowance or the regular formula). Treasury intends to amend its reporting forms to provide a mechanism for recipients to make a one-time, irrevocable election to utilize either the revenue loss formula or the standard allowance.

The \$10 million level is based on average revenue loss across state and local governments, taking into consideration potential variation in revenue types and losses and continued uncertainty faced by many recipients regarding revenue shortfalls. To calculate this estimate, Treasury applied a variation of the final rule’s revenue loss calculation on available aggregate state and local government tax revenue data as reported by the Census Bureau for the first calculation date of December 31, 2020. This estimate accounts for expected variation across recipient experiences and reflects the fact that the final rule revenue loss calculation provides recipients several options for specific aspects (*e.g.*, calendar year or fiscal year basis; use of average state and local revenue growth rate or specific local rate). Treasury compared actual calendar year 2020 tax revenues, in aggregate for all state and local governments, to several counterfactual trends that vary based on the end date of the fiscal base year.²⁸⁴ Treasury also assessed counterfactual trends using different revenue growth rates (*e.g.*, the three-year average growth rates of total state and local government general revenue for both fiscal years ending in 2016–2018 and fiscal years ending in 2017–2019; the three-year average growth rates of total state and local government tax revenues for fiscal years ending in 2017–2019; and the one-year growth rate for total state and local government tax revenue in the last full fiscal year before the public health emergency). To account for the fact that the initial estimate, based on tax

revenue, only includes a subset of recipient aggregate general revenue, Treasury applied a scaling factor to recognize that tax revenues generally make up just over half of general revenue collected by state and local governments (*i.e.*, Treasury scaled up its estimate based on tax revenue to produce an estimate for total general revenue).²⁸⁵ The resulting calculation was then extrapolated over the four-year period of performance and divided by a population of interest to arrive at an average loss estimate.

As noted above, Treasury estimated a range of scenarios to account for different values of the variables that would impact average losses. For example, the end date of the fiscal base year and growth rate of counterfactual revenue impact the overall estimate of revenue loss. In addition, this estimate takes into consideration the limitations in the available data. The governments covered by the Census Bureau’s survey do not entirely align with SLFRF recipients. The Census Bureau’s figures are based on 50 state governments, all local government property tax collectors and local government non-property tax imposers, representing at a minimum the more than 38,000 “General Purpose Governments” defined by Census. However, there are only roughly 32,000 recipients of SLFRF funds. Thus, Treasury considered the difference between the number and type of entities in the Census Bureau data and the SLFRF recipients.

Based on this methodology, Treasury estimates that average revenue loss (determined by comparing the counterfactual revenue to actual revenue) may range from \$0 to \$11.7 million per recipient over the period of performance.²⁸⁶ Treasury settled on a point estimate toward the upper end of the range of potential averages, in part, to account for significant variation in the experiences of recipient governments: Some recipients likely experienced losses at the upper end of this range of potential averages. A point estimate toward the upper end of the range errs toward ensuring more recipients’ experiences are covered and increases the utility of the standard allowance for SLFRF recipients. Specifically, the program includes a very large number of recipients with relatively smaller awards; these recipients have tended to describe having greater difficulty completing the

regular revenue loss calculation. Thus, selecting a point estimate toward the higher end of the expected range not only increases the likelihood that the standard allowance will reflect the experience of a larger number of SLFRF recipients but is more responsive to the comments of those with smaller awards. In addition, using a point estimate toward the upper end of the range accounts for the difficulty and uncertainty in predicting revenue losses years into the future, throughout the period of performance.²⁸⁷

Finally, Treasury selected a single allowance level, as opposed to varying levels, to further the goals of simplicity, flexibility, and administrability. Furthermore, data limitations make it difficult to distinguish between types of local governments.²⁸⁸

General Revenue

The interim final rule adopted a definition of “general revenue” based largely on the components reported under “General Revenue from Own Sources” in the Census Bureau’s Annual Survey of State and Local Government Finances. Under the interim final rule, general revenue included revenue collected by a recipient and generated from its underlying economy, and it would capture a range of different types of tax revenues, as well as other types of revenue that are available to support government services.²⁸⁹ Specifically, revenue under the interim final rule included money that is received from tax revenue, current charges, and miscellaneous general revenues and excluded refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, revenue from utilities, social insurance trust revenues, and intergovernmental

²⁸⁴ Because the Census Bureau’s state and local government tax revenue data is reported on a quarterly frequency, fiscal base year end dates of March 31, June 30, September 30, and December 31 were used in this assessment.

²⁸⁵ Annual Survey of State and Local Government Finances (2019).

²⁸⁶ This is the range of averages that Treasury calculated by varying the aforementioned assumptions.

²⁸⁷ See, *e.g.*, Government Accountability Office, State and Local Governments: Fiscal Conditions During the COVID–19 Pandemic in Selected States (July 2021) (noting that “[s]tate and local government revenues partly depend on the overall economy, and actions to stem the spread of the virus drastically reduced economic activity.”); Board of Governors of the Federal Reserve System, Monetary Policy Report (July 9, 2021) (noting that the pandemic “pushed down state and local government tax collections” and that while some of the drag is “abating” state and local “government payrolls . . . have only edged up from their lows at the onset of the pandemic”).

²⁸⁸ Local government tax revenue data in the Census Bureau’s Quarterly Summary of State and Local Tax Revenue, *supra* note 271, is provided on an aggregated basis.

²⁸⁹ The Department also released guidance clarifying how a recipient may determine whether a particular entity is “part of the recipient’s government.” See FAQ 3.14. Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

transfers from the federal government, including transfers made pursuant to section 9901 of the ARPA.²⁹⁰ In the case of Tribal governments, it also included revenue from Tribal business enterprises.

Public Comment: Many commenters asked Treasury to include certain items in the definition of “general revenue.” For instance, several commenters that operate their own utilities asked that revenue from utilities be included, arguing that declines in utility revenue directly affect contributions to their general funds. Many of these commenters noted that moratoriums on utility shutoffs and a decline in collections have resulted in significant budgetary pressures.

Some commenters also asked for the exclusion of certain intergovernmental transfers in the definition of general revenue, including transfers of shared revenue from the state.²⁹¹ Other commenters asked for the inclusion of certain transfers from the federal government, including fees paid for services and grants that are, in effect, paid for the provision of services.

Treasury also received multiple requests to include revenue from Tribal enterprises in the definition of “general revenue” and that “Tribal enterprise” be defined broadly. Others asked for the ability to choose whether to include revenue from Tribal enterprises.

Finally, some commenters requested that the definition of general revenue exclude certain sources of revenue, such as revenue sources that do not support a general fund (*i.e.*, revenue sources that are restricted in use). Commenters also asked that general revenue exclude revenue from special assessments, settlements that make the recipient

whole for past expenditures, and one-time revenues such as revenue from the sale of property.

Treasury Response: In the final rule, Treasury has maintained the definition of “general revenue” from the interim final rule with two exceptions.

Treasury has adjusted the definition to allow recipients that operate utilities that are part of their own government to choose whether to include revenue from these utilities in their revenue loss calculation. This change responds to comments from recipients indicating that revenue from utilities is used to fund other government services and that utility revenues have declined on aggregate.²⁹² This approach is consistent with other eligible uses, which recognize decreased ability of many households to make utility payments; see section Assistance to Households, which identifies utility assistance as an enumerated eligible use of funds, including through direct or bulk payments to utilities for consumer assistance. Furthermore, for utilities or other entities (*e.g.*, certain service districts) that are not part of the recipient government, a transfer from the utility to the recipient constitutes an intergovernmental transfer and therefore is included in the definition of “general revenue.”²⁹³

Treasury has also added liquor store revenue to the definition of general revenue. The Supplemental Information to the interim final rule stated that the definition of tax revenue would include liquor store revenue, but the text of the rule did not include it. Accordingly, in the final rule, Treasury is clarifying that revenue includes liquor store revenue. However, Treasury believes revenue from government-owned liquor stores is better classified as general revenue than it is as tax revenue, so the final rule includes it as part of general revenue.

In response to requests that the definition of general revenue exclude revenue from special assessments, settlements that make the recipient whole for past expenditures, and one-time revenues such as revenue from the sale of property, Treasury is maintaining its position in the final rule that such revenue is included in general revenue. While such revenues may be less predictable than other sources of

revenue (*e.g.*, property taxes), these are not uncommon sources of revenue for recipients, and their inclusion provides a more complete view of the financial health of a recipient government and is consistent with the Census Bureau methodology. Treasury is also maintaining the exclusion of all payments from the federal government (including payments for services) from general revenue in order to avoid substantial dilution of the definition of revenue, particularly in light of extraordinary fiscal support provided during the pandemic. Treasury is maintaining the inclusion of intergovernmental transfers other than from the federal government for the reasons provided in the Supplemental Information to the interim final rule; to do otherwise would be to significantly distort the revenue calculations for local governments that regularly receive revenue sharing payments, for example, from their state governments. Treasury is also maintaining the approach that “general revenue” includes revenue from Tribal enterprises. This approach recognizes that these enterprises often form the revenue base for Tribal governments’ budgets.

To ease the burden on recipients and account for anomalous variations in revenue, as mentioned above, Treasury has incorporated a “standard allowance” option into the final rule. A recipient may choose to use the standard allowance, which under the final rule is set at up to \$10 million, not to exceed the recipient’s SLFRF award amount, as an alternative to calculating revenue loss according to the formula described above. This addition will promote administrative efficiency and simplify the revenue loss calculation for the vast majority of recipients. Treasury intends to amend its reporting forms to provide a mechanism for recipients to elect to utilize either the revenue loss formula or the standard allowance, in addition to other changes made as part of the final rule.

Aggregate Revenue Loss Calculation

Under the interim final rule, revenue loss was calculated based on aggregate revenues and therefore loss in one type of revenue could be offset by gains in another. The amount of SLFRF funds available to provide government services was based on overall net revenue loss. In the Supplementary Information to the interim final rule, Treasury asked commenters to discuss the advantages and disadvantages of, and any potential concerns with, this approach, including circumstances in which it could be necessary or

²⁹⁰ The interim final rule stated that “general revenue” and “tax revenue” excludes refunds and other correcting transactions. Instead of “excluding” refunds and other correcting transactions, the Census Bureau methodology upon which those definitions are based provides that general revenue and tax revenue are determined “net of” refunds and other correcting transactions. The use of “excluding” in the interim final rule is substantively the same as the Census Bureau methodology. However, to be consistent with the terminology used by the Census Bureau, the final rule uses “net of” instead of “excluding.” Current charges are defined as “charges imposed for providing current services or for the sale of products in connection with general government activities.” It includes revenues such as public education institution, public hospital, and toll revenues. Miscellaneous general revenue comprises of all other general revenue of governments from their own sources (*i.e.*, other than utility and insurance trust revenue), including rents, royalties, lottery proceeds, and fines.

²⁹¹ The interim final rule excluded governmental transfers from the Federal Government, but it did not exclude intergovernmental transfers from other governmental units for purposes of the revenue loss provisions.

²⁹² U.S. Energy Information Administration, Annual Electric Utility Data (October 2021), available at https://www.eia.gov/electricity/sales_revenue_price/.

²⁹³ FAQ 3.14 provides further guidance on how to determine what entities constitute a government for purposes of calculating revenue loss. See Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRFAQ.pdf>.

appropriate to calculate the reduction in revenue by source.

Public Comment: Treasury received many comments stating that revenue loss should be calculated on a source-by-source basis. Some commenters argued that a source-by-source approach would be administratively simpler. Other commenters argued that calculating revenue loss source-by-source would better reflect the impact of the COVID-19 pandemic on their ability to fund government services because revenue gains in one source cannot always be used to make up for losses in another. For similar reasons, other commenters asked that revenue loss be calculated on a fund basis.

Treasury Response: Treasury considered alternative methods (e.g., source-by-source, fund-by-fund) but ultimately determined to maintain the calculation of revenue loss in the aggregate. The pandemic has had different effects on recipients (and their revenues), and Treasury recognized that one particular type of revenue or one particular source may have experienced a greater amount of loss for some recipients. However, the statute refers only to “the reduction in revenue of such State, local government, or Tribal government.” The statute is thus clear that Treasury is to refer to the aggregate revenue reduction of the recipient due to the public health emergency. Further, this provision is designed to address declines in the recipients’ overall ability to pay for governmental services, and calculating revenue loss on an aggregate basis provides a more accurate representation of the effect of the pandemic on overall revenues and the fiscal health of the recipient. In many circumstances, recipient governments have flexibility to use revenues from an array of sources and offset declines in some sources with gains in others. While the details and configuration of this flexibility vary widely across recipient governments, calculating revenue loss on a source-by-source or fund-by-fund basis would not capture how recipient governments balance their budgets in the regular course of business. Accordingly, the final rule maintains the requirement that revenue loss is to be calculated on an aggregate basis.

Calculation Dates

Public Comment: Under the interim final rule, recipients calculate revenue loss as of the end of the calendar year. Treasury received many comments requesting that recipients be permitted to calculate revenue loss as of the end of their fiscal year. Commenters argued that doing so would be simpler and less

burdensome on recipients and that financial data as of the end of the fiscal year is audited and therefore more reliable. Commenters also argued that recipients’ fiscal years are structured around the timing of major revenue sources, and that the Census Bureau uses fiscal years in its Annual Survey.

Treasury also received comments about the use of multiple calculation dates. Several Tribal governments stated that they would not see ongoing revenue losses due to the COVID-19 public health emergency and asked to be able to determine revenue loss as of the first calculation date. Several commenters asked whether revenue loss is determined independently for each year, so that a gain in one year does not offset a loss in another, or whether revenue loss is cumulative from the beginning of the pandemic.

Treasury Response: In the final rule, Treasury has made adjustments to give recipients more flexibility with respect to calculation dates and to clarify certain elements. Specifically, the final rule provides recipients the option to choose whether to calculate revenue loss on a fiscal year or calendar year basis, though they must choose a consistent basis for loss calculations throughout the period of performance. Treasury has also clarified in the final rule that revenue loss is calculated separately for each year such that the calculation of revenue lost in one year does not affect the calculation of revenue lost in prior or future years.

Presumption That Revenue Loss Is Due to the Pandemic

As stated above, sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act provide that SLFRF funds may be used “for the provision of government services to the extent of the reduction in revenue of such . . . government due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the . . . government prior to the emergency.” As discussed in the interim final rule, although revenue may decline for reasons unrelated to COVID-19, in order to minimize the administrative burden on recipients in calculating revenue loss and take into consideration the devastating effects of the COVID-19 public health emergency, any reduction in revenue relative to the counterfactual estimate was presumed in the interim final rule to be considered revenue lost due to the pandemic.

Treasury stated in the Supplementary Information to the interim final rule that it was considering when, if ever, during the period of performance it would be appropriate to reevaluate the

presumption that all losses are attributable to the public health emergency. Treasury also sought comment on whether to take into account other factors, including actions taken by the recipient as well as the expiration of the COVID-19 public health emergency, in determining whether to presume that revenue losses are “due to” the COVID-19 public health emergency.

Public Comment: Treasury received many comments in support of the presumption, as well as some opposed. Some commenters argued that the presumption eases the administrative burden on recipients because, without it, it would be difficult to identify which losses are attributable to the COVID-19 public health emergency. Many commenters also argued that Treasury should maintain the presumption because recipients are likely to experience losses due to the public health emergency even after the end of the public health emergency. Treasury also received comments asking that it adjust any revenue loss calculation to account for tax changes enacted by the recipient. In particular, some commenters noted that some recipients had increased taxes in order to meet additional demands for government services or to address declines in revenue due to the pandemic. These tax increases have in some cases offset some or all of the actual revenue loss attributable to the public health emergency. Because the interim final rule calculates revenue loss by reference to actual revenue collected, commenters argued that the calculation of revenue loss “due to” the public health emergency needs to take into consideration the effects of tax increases by deducting the effect of these tax increases from actual revenue collected.

Treasury Response: In the final rule, Treasury has maintained the presumption that a reduction in a recipient’s revenue is due to the public health emergency with certain adjustments to respond to comments and to better account for revenue loss “due to the COVID-19 public health emergency.” The final rule makes adjustments to the presumption to take into account certain government actions to change tax policy. In particular, Treasury is adjusting the presumption to account for changes to tax policy by providing that changes in revenue that are caused by tax increases or decreases adopted after the issuance of the final rule will not be treated as due to the public health emergency.

Presumption of Revenue Loss “Due To” the Pandemic

In enacting sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act, Congress provided that a state, local government, or Tribal government could use funds to “cover costs . . . for the provision of government services,” but only “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.” In doing so, Congress recognized that the pandemic was causing significant disruption to economic activity and sought to minimize the impact of associated revenue losses on the ability of the recipient to provide government services when such services were needed most.²⁹⁴ The text of the statute itself reinforces this important context: The law specifically limits funds to cover revenue losses that both are “due to the COVID–19 public health emergency” and could impact “the provision of government services.”

Courts have recognized that the phrase “due to” can refer to various causal standards.²⁹⁵ Here, in the context of Congress’s addressing economic disruptions caused by the COVID–19 pandemic that could impact both revenues and government services, the key consideration is whether a revenue loss experienced by the recipient resulted from the exogenous impacts of the public health emergency (and were thus “due to” the pandemic) or instead from the recipient’s own discretionary actions (and, in this context, were not “due to” the pandemic). Reductions in revenue due to the public health emergency does not cover revenue reductions that resulted from a recipient’s own discretionary actions.

In the interim final rule, Treasury included a presumption that all revenue loss is due to the pandemic in order to minimize the administrative burden on recipients discussed above and take into consideration the devastating effects of the COVID–19 public health emergency. Based on comments, Treasury believes that the reasons for the presumption continue to be valid and has determined to maintain the presumption in the final rule with certain modifications. In

particular, at this point in the course of the pandemic, with the fiscal pressure on state and local governments having been significantly reduced, it is appropriate for Treasury to reassess aspects of this presumption. As discussed below, the final rule requires recipients to exclude the value of tax policy changes adopted after January 6, 2022.

Recipients of the SLFRF range from states to the smallest local governments. At the time that the interim final rule was adopted, it was important for recipients to be able to calculate with ease and certainty their amount of revenue loss so that they could begin deploying these funds to continue to maintain essential government services. To this end, the presumption in the interim final rule provided a relatively simple formula for all recipients to use, but the exigent need for recipients to immediately deploy funds for the provision of government services has decreased and the benefit of the presumption in reducing administrative burden is less relevant for those governments that are not likely to avail themselves of the standard allowance described above.

Consistent with these considerations, the final rule requires recipients to exclude revenue loss due to tax changes adopted after January 6, 2022. Eliminating revenue loss due to tax changes from the presumption is appropriate given the significance of tax revenue as a portion of all revenue for state and local governments, the direct impact of tax policy decisions on revenue collected, and the relative ease with which recipients can isolate the estimated effect of a tax change on revenue.²⁹⁶ Most state budgeting processes require a “budget score,” often developed through a consensus process with executive and legislative branch experts,²⁹⁷ and Treasury expects that larger localities, those most likely to utilize the revenue loss formula rather than the standard allowance, also regularly use revenue or budget estimates when considering changes to tax policies. As such, in many cases,

recipients already prepare estimates of the impact of tax changes on revenue, and as discussed below, Treasury will generally permit recipients to rely on such estimates in adjusting their revenue loss calculations.

Reductions in revenue that are not attributable to tax changes would continue to be subject to the presumption. A requirement that recipients evaluate the revenue effect of changes in discretionary policy actions other than tax changes would be more difficult for recipients than evaluating the changes attributable to tax changes given that state and local governments do not generally prepare estimates of the revenue effects of other actions. Finally, as noted above, taxes are the single largest source of revenue for state and local government recipients in the aggregate.

Revisions to Presumption To Address Tax Reductions

For these reasons, Treasury is providing in the final rule that changes in general revenue that are caused by tax cuts adopted after the date of adoption of the final rule (January 6, 2022) will not be treated as due to the public health emergency, and the estimated fiscal impact of such tax cuts must be added to the calculation of “actual revenue” for purposes of calculation dates that occur on or after April 1, 2022. Tax cuts include final legislative or regulatory action or a new or changed administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase and that the recipient assesses has had the effect of reducing tax revenue relative to current law. This includes the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the issuance of the final rule.

In assessing whether a tax change has had the effect of reducing tax revenue, recipients may either calculate the actual effect on revenue or rely on estimates prepared at the time the tax change was adopted. More specifically, recipients may rely on information typically prepared in the course of developing the budget (e.g., expected revenues) and/or considering tax changes (e.g., budget scores, revenue notes) to determine the amount of revenue that would have been collected in the absence of the tax cut, as long as those estimates are based on reasonable assumptions and do not use dynamic methodologies that incorporate the projected effects of macroeconomic growth, given that macroeconomic

²⁹⁴ See also sections 602(a)(1) and 603(a) of the Social Security Act (appropriating the funds for payment to recipients in order to “mitigate the fiscal effects stemming from the public health emergency”).

²⁹⁵ *U.S. Postal Service v. Postal Regulatory Comm’n*, 640 F.3d 1263 (D.C. Cir. 2011); see *Kimber v. Thiokol Corp.*, 196 F.3d 1092, 1100 (10th Cir. 1999); *Adams v. Director, OWCP*, 886 F.2d 818, 821 (6th Cir. 1989).

²⁹⁶ Treasury considered whether to also eliminate the presumption with respect to losses resulting from other changes in policy, such as decreases in user fees or fines. However, the effects of these changes are more minor overall and would be more challenging to accurately identify and quantify, so the administrability benefit of the presumption for recipients outweighs whatever distortion there might be as a result of not reflecting such changes.

²⁹⁷ See generally, National Association of State Budget Officers, *Budget Processes in the States*, (2021), available at https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-ofca152d64c2/UploadedImages/Budget%20Processes/NASBO_2021_Budget_Processes_in_the_States_S.pdf.

growth is accounted for in the counterfactual growth assumptions. Recipients that choose to calculate the actual effect of a tax change on revenue must similarly base their calculations on reasonable estimates that do not use dynamic methodologies. Recipients should apply this adjustment in determining their actual revenue totals at Step 3 in the revenue loss calculation described above.

Revisions to Presumption To Address Tax Increases

As noted above, the calculation methodology in the interim final rule implicitly assumed that recipients did not experience a reduction in revenue due to the public health emergency if they did not experience a reduction in aggregate revenue relative to the counterfactual estimate. Treasury recognizes that some recipients may have experienced a reduction in revenue due to the public health emergency that was offset by other revenue, particularly in the case of increases to tax revenue resulting from a tax increase. The final rule requires recipients that increased taxes to deduct the amount of increases to revenue attributable to such tax increase. This change is also consistent with the incorporation in the interim final rule and final rule of a counterfactual growth rate, which effectively permits recipients to count revenue losses due to the public health emergency that are offset by increased tax revenue resulting from organic growth.

For these reasons, Treasury is providing in the final rule that recipients must subtract from their calculation of actual revenue the effect of tax increases adopted after the date of adoption of this final rule (January 6, 2022) for purposes of calculation dates that occur on or after April 1, 2022. This change and the change to the final rule described above treat tax changes in a consistent manner: In the case of reduction in revenue resulting from a tax cut, a recipient must add the amount of that reduction to its calculation of actual revenue, and in the case of an increase in revenue resulting from a tax increase, a recipient must subtract the amount of additional revenue collected as a result of the tax increase from its calculation of actual revenue.²⁹⁸

²⁹⁸ The final rule does not permit recipients to reflect the effects of other changes in policy, such as increases in fees adopted after adoption of the final rule. Treasury understands that the main beneficiaries of such a change would be those recipients that will benefit from the standard allowance provided for in the final rule and that for other recipients the administrative burden on recipients needed to calculate these adjustments

As is the case with tax cuts, discussed above, tax increases that must be reflected in the calculation of revenue include final legislative or regulatory action or a new or changed administrative interpretation that increases any tax and that the recipient assesses has had the effect of increasing tax revenue relative to current law. In assessing whether a tax change has had the effect of increasing tax revenue, recipients may either calculate the actual effect on revenue or rely on estimates prepared at the time the tax change was adopted. Recipients may rely on information typically prepared in the course of developing the budget (e.g., expected revenues) and/or considering tax changes (e.g., budget scores, revenue notes) to determine the amount of revenue that was collected as a result of the tax increase as long as those estimates are based on reasonable assumptions and do not use dynamic methodologies that incorporate the projected effects of macroeconomic growth, given that macroeconomic growth is accounted for in the counterfactual growth assumptions. Recipients that choose to calculate the actual effect of a tax change on revenue must similarly base their calculations on reasonable estimates that do not use dynamic methodologies. Recipients should apply this adjustment in determining their actual revenue totals at Step 3 in the revenue loss calculation described above.

Previously Adopted Tax Changes

As discussed above, the final rule will not require recipients to reflect the revenue effects of tax increases or decreases adopted prior to the adoption of the final rule. Recipients that adopted a tax change in a previous period will not be required to recalculate the amount of revenue loss as of prior calculation dates or to reflect the fiscal impacts of such tax changes in calculation dates after the effective date of the final rule. However, the final rule will permit recipients to elect to reflect the revenue effects of their tax changes adopted between the beginning of the public health emergency and the adoption of the final rule.²⁹⁹ If a recipient elects to do so, it must do so with respect to all of its tax changes

would outweigh the benefit of having a somewhat larger amount of funds available for government services.

²⁹⁹ The final rule also addresses the possibility that some recipients may have fiscal years ending during the period between January 6, 2022 and April 1, 2022; such recipients' election to reflect tax changes from prior periods would also apply to changes during this period with respect to the calculation date in this period.

adopted between the beginning of the public health emergency and the adoption of the final rule. Treasury intends to revise its reporting requirements to permit recipients to amend their previously reported calculation periods to reflect such changes.

Determination of the Base Year

Under the ARPA and interim final rule, SLFRF funds may be used "for the provision of government services to the extent of the reduction in revenue . . . relative to revenues collected in the most recent full fiscal year" of the recipient. Therefore, the base year for the revenue loss calculation is the most recent full fiscal year prior to the COVID-19 public health emergency.

Public Comment: Treasury received multiple comments asking for flexibility in determining base year revenues. For instance, some commenters asked to use a different base year than the "most recent full fiscal year" prior to the pandemic for calculating revenue loss; others asked to be able to average prior years. Commenters stated that, for various reasons, revenue was artificially low in the last full fiscal year prior to the public health emergency, and, therefore, using revenue in that year as the base year did not accurately reflect expected revenue in a normal year. For example, several Tribes stated that unforeseeable weather events resulted in forced closure of casinos which, in turn, artificially deflated revenues in the base year. Other commenters indicated that one-time anomalies in the timing of tax collection in that year artificially pushed revenue into the following fiscal year. Similarly, a few commenters noted that tax changes that took effect in the middle of the base year may artificially skew the size of the revenue loss experienced by the recipient government.

Treasury Response: Treasury understands that recipients may have experienced events in the base year that led to lower or higher revenues than what they otherwise would have collected. The ARPA provides that revenue loss is to be determined with respect to revenue in the most recent full fiscal year prior to the pandemic, and therefore the final rule maintains its incorporation of the statutory definition.

In calculating revenue loss, recipients may use data on a cash, accrual, or modified accrual basis, provided that recipients are consistent in their choice of methodology throughout the covered period, which might help recipients adjust to certain delays in revenue receipt. Both the standard allowance and elements of the formula (e.g.,

counterfactual growth rate) incorporate generous assumptions to give recipients flexibility and to account for variation among recipients' experiences during the pandemic.

Government Services

The **SUPPLEMENTAL INFORMATION** to the interim final rule provided a non-exhaustive list of examples of services that are government services. The interim final rule also discussed why neither payment of debt service nor replenishing financial reserves constitutes government services, as these expenditures do not provide services but relate to the financing of such services. Similarly, government services under the interim final rule did not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, unless the judgment or settlement required the provision of government services.

Public Comment: Treasury received several comments requesting further clarification regarding the scope of government services, including asking for either a specific definition of government services or that a specific use be expressly deemed to be a government service. Some commenters disagreed with the exclusions from government services in the interim final rule. For instance, many of the comments Treasury received suggested that replenishing reserve funds and at least certain types of debt service should be treated as providing governmental services. Some commenters also suggested that a recipient should be able to use funds for costs incurred before March 3, 2021. Other commenters asked Treasury to maintain the prohibition on using the funds to pay debt service.

Treasury Response: Treasury continues to believe that the lists of activities that either are or are not providing government services are accurate but is clarifying here that, generally speaking, services provided by the recipient governments are "government services" under the interim final rule and final rule, unless Treasury has stated otherwise. Government services include, but are not limited to, maintenance or pay-go funded building³⁰⁰ of infrastructure, including roads; modernization of cybersecurity, including hardware,

software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services.

The aforementioned list of government services is not exclusive. However, recipients should be mindful that other restrictions may apply, including those articulated in the section Restrictions on Use. In the final rule, Treasury is maintaining the limitations on government services included in the interim final rule and has addressed and responded to public commenters on these issues in the section Restrictions on Use.

D. Investments in Water, Sewer, and Broadband Infrastructure

Summary of Interim Final Rule

Under the ARPA, recipients may use funds to make necessary investments in water, sewer, and broadband infrastructure. The interim final rule provided recipients with the ability to use funds for a broad array of uses within these categories.

The interim final rule discussed two general provisions that apply across all water, sewer, and broadband infrastructure investments. First, the interim final rule addressed the meaning of "necessary" investments as meaning those designed to provide an adequate minimum level of service and unlikely to be made using private sources of funds. Second, the interim final rule encouraged recipients to use strong labor standards in water, sewer, and broadband projects, as discussed below.

Necessary Investments

The statute limits investments to those that are necessary. As discussed in more detail below, Treasury determined that the types of water and sewer projects that were authorized under the interim final rule by reference to existing Environmental Protection Agency (EPA) programs would in all cases be necessary investments given the conditions applicable to such EPA programs. Similarly, the interim final rule's definition of eligible broadband projects as those designed to provide a certain standard of service to those households and businesses with limited existing service was based on the statutory requirement that investments in water, sewer, and broadband must be "necessary."

As discussed further below, Treasury has expanded the scope of what is an eligible water and sewer infrastructure project to include additional uses. In

particular, the final rule permits use of SLFRF funds for certain dam and reservoir restoration projects and certain drinking water projects to support population growth. The nature of these additional uses is such that additional factors must be considered in determining whether one of these additional uses is a necessary project. In addition, Treasury recognizes that there may be a need for improvements to broadband beyond those households and businesses with limited existing service as defined in the interim final rule. Treasury has replaced this specific requirement based on an understanding that broadband investments may be necessary for a broader set of reasons.

Given this expansion of what is considered in scope as a water, sewer, or broadband infrastructure project, the final rule provides a further elaboration of Treasury's understanding of the conditions under which an infrastructure project will be considered to be a necessary investment. Treasury considers a necessary investment in infrastructure to be one that is (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which may include a reasonable projection of increased need, whether due to population growth or otherwise and (2) a cost-effective means for meeting that need, taking into account available alternatives. In addition, given that drinking water is a resource that is subject to depletion, in the case of investments in infrastructure that supply drinking water in order to meet projected population growth, the project must be projected to be sustainable over its estimated useful life.

Not included in the list of criteria above is the requirement in the interim final rule that the project be unlikely to be made using private sources of funds. Given that it may be difficult to assess in a particular case what the probability of private investment in a project would be, Treasury has eliminated this standard from the meaning of necessary but still encourages recipients to prioritize projects that would provide the greatest public benefit in their respective jurisdictions.

Strong Labor Standards in Water, Sewer, and Broadband Construction

As stated in the Supplementary Information to the interim final rule, Treasury encourages recipients to carry out investments in water, sewer, or broadband infrastructure in ways that produce high-quality infrastructure, avert disruptive and costly delays, and

³⁰⁰ Pay-go infrastructure funding refers to the practice of funding capital projects with cash-on-hand from taxes, fees, grants, and other sources, rather than with borrowed sums.

promote efficiency.³⁰¹ Treasury encourages recipients to use strong labor standards, including project labor agreements (PLAs) and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also recommends that recipients prioritize in their procurement decisions employers who can demonstrate that their workforce meets high safety and training standards (e.g., professional certification, licensure, and/or robust in-house training), that hire local workers and/or workers from historically underserved communities, and who directly employ their workforce or have policies and practices in place to ensure contractors and subcontractors meet high labor standards. Treasury further encourages recipients to prioritize employers (including contractors and subcontractors) without recent violations of federal and state labor and employment laws.

Treasury believes that such practices will promote effective and efficient delivery of high-quality infrastructure projects and support the economic recovery through strong employment opportunities for workers. Such practices will also reduce the likelihood of potential project challenges like work stoppages or safety accidents, while ensuring a reliable supply of skilled labor and minimizing disruptions, such as those associated with labor disputes or workplace injuries. That will, in turn, promote on-time and on-budget delivery.

Furthermore, among other requirements contained in 2 CFR 200, Appendix II, all contracts made by a recipient or subrecipient in excess of \$100,000 with respect to water, sewer, or broadband infrastructure project that involve employment of mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704,

³⁰¹ Treasury received several comments related to its encouragement of certain wage and labor standards in the Supplementary Information to the interim final rule. Some commenters opposed this encouragement, arguing that even encouragement and reference to PLAs and prevailing wage laws could lead to confusion or make it more likely that recipients would apply labor standards in ways that would discourage competition and raise project costs. Conversely, some commenters supported the encouragement of the use of certain standards, including giving preference to employers that meet certain employment standards (e.g., those that maintain high safety and training standards) because it would support the goal of completing water, sewer, and broadband projects efficiently and safely. As in the interim final rule, this encouragement does not impose a legally binding restriction on recipients.

as supplemented by Department of Labor regulations (29 CFR part 5).

Treasury will continue to seek information from recipients on their workforce plans and water, sewer, and broadband projects undertaken with SLFRF funds. This reporting will support transparency and competition by enhancing available information on the services being provided. Since publication of the interim final rule, Treasury has provided recipients with additional guidance and instructions on the reporting requirements.³⁰²

Environmental and Other Generally Applicable Requirements

Treasury cautions that, as is the case with all projects engaged in using the SLFRF funds, all projects must comply with applicable federal, state, and local law. In the case of infrastructure projects in particular, this includes environmental and permitting laws and regulations. Likewise, as with all capital expenditure projects using SLFRF funds, projects must be undertaken and completed in a manner that is technically sound, meaning that they must meet design and construction methods and use materials that are approved, codified, recognized, fall under standard or acceptable levels of practice, or otherwise are determined to be generally acceptable by the design and construction industry.

1. Water and Sewer Infrastructure

Sections 602(c)(1)(D) and Section 603(c)(1)(D) of the Social Security Act provide that recipients may use the SLFRF funds “to make necessary investments in water [and] sewer . . . infrastructure.” The interim final rule permitted a broad range of necessary investments in projects that improve access to clean drinking water and improve wastewater and stormwater infrastructure systems. As discussed below, after review of comments received on the interim final rule, Treasury has made changes in the final rule to expand the scope of eligible water and sewer projects.

Summary of Interim Final Rule and Final Rule Structure

Background: In the interim final rule, Treasury aligned eligible uses of the SLFRF with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF) administered

³⁰² See U.S. Department of the Treasury, *Compliance and Reporting Guidance*, 21 (June 24, 2021), <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>.

by the Environmental Protection Agency (EPA). By referring to these existing programs, with which many recipients are already familiar, Treasury intended to provide flexibility to recipients to respond to the needs of their communities while facilitating recipients’ identification of eligible projects. Furthermore, by aligning SLFRF eligible uses with these existing programs, Treasury could ensure that projects using the SLFRF are limited to “necessary investments.”

Public Comment: Treasury received many comments responding to the water and sewer infrastructure provisions of the interim final rule from state, local, and Tribal governments, industry trade associations, public interest groups, private individuals, and other interested parties. Commenters requested that Treasury provide a wider set of eligible uses for water and sewer infrastructure beyond those uses articulated by the DWSRF and CWSRF, suggesting that Treasury expand the definition of necessary water and sewer infrastructure.

Treasury Response: In response to commenters, Treasury is expanding the eligible use categories for water and sewer infrastructure, discussed in further detail below. Because the interim final rule aligned the definition of necessary water and sewer infrastructure with the eligible uses included in the DWSRF and CWSRF, Treasury is reflecting in the final rule a revised standard for determining a necessary water and sewer infrastructure investment for eligible water and sewer uses beyond those uses that are eligible under the DWSRF and CWSRF.

Interpretation of Necessary Investments and Water and Sewer Infrastructure

Necessary Investments: As discussed above, Treasury considers an investment in infrastructure to be necessary if it is (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which for some eligible project categories may include a reasonable projection of increased need, whether due to population growth or otherwise and (2) a cost-effective means for meeting that need, taking into account available alternatives. In addition, in the case of investments in drinking water service infrastructure to supply drinking water to satisfy a projected increase in population, the project must also be projected to be sustainable over its estimated useful life. As detailed further below, DWSRF and CWSRF eligible projects continue to be presumed to be necessary investments under the final

rule, with the exception of projects for the rehabilitation of dams and reservoirs, which the EPA has permitted in certain circumstances under the DWSRF and, as discussed below, are addressed separately in the final rule.

In evaluating whether a project would respond to a need to achieve or maintain an adequate minimum level of service, a recipient should consider whether it would meet the needs of the population to be served and would satisfy applicable standards. For example, a drinking water project must be sized such that it provides an adequate volume of water to households and other customers and must meet applicable standards for drinking water quality under the Safe Drinking Water Act (SDWA). Similarly, a centralized wastewater treatment project should be designed to manage updated estimated flow rates and comply with Clean Water Act requirements. These requirements are already reflected in the eligibility criteria of the DWSRF and CWSRF, respectively.

In evaluating whether a project is a cost-effective means of providing the water or sewer service, the recipient should consider the need for the project, the costs and benefits of the project compared to alternatives, and the effectiveness of the project in meeting the identified need. Recipients are not required to conduct a full cost-benefit analysis; however, they should consider and analyze relevant factors. For example, a recipient may not use funds to pursue a costly dam rehabilitation to provide drinking water to a community if it could provide the same service with a significantly smaller investment by drawing water from another available reservoir, assuming that doing so would meet the other requirements of the final rule. As detailed further below, recipients are only required to assess cost-effectiveness of projects for the creation of new drinking water systems, dam and reservoir rehabilitation projects, or projects for the extension of drinking water service to meet population growth needs.

Certain DWSRF eligibilities are already subject to a cost-effectiveness test. Specifically, projects that create new drinking water systems must be a cost-effective solution to addressing the identified problem.³⁰³ The EPA also imposes a cost-effectiveness condition on dam and reservoir rehabilitation projects undertaken pursuant to its class deviation from the DWSRF rule. These projects are particularly expensive and, unlike in the case of other types of eligible projects, there are often

available alternatives to conducting these projects. Projects for the extension of drinking water service to meet population growth needs are also often particularly expensive, and there are often different ways to meet the needs of expanding populations. Treasury will accordingly require that recipients engage in a cost-effectiveness analysis when engaging in projects for the creation of new drinking water systems, dam and reservoir rehabilitation projects, or projects for the extension of drinking water service to meet population growth needs. Other types of eligible water or sewer projects will not be subject to this cost-effectiveness test, including lead line replacement and lead remediation.³⁰⁴

In the case of projects that expand drinking water service infrastructure to satisfy a projected increase in population, the project must also be sustainable, meaning that the project can continue providing the adequate minimum level of service for its estimated useful life, taking into account projected impacts of changes to the climate and other expected demands on the source of water. For example, a reservoir rehabilitation project may not be pursued if the reservoir will no longer be able to provide an adequate source of drinking water before the end of the estimated useful life of the improvements to the reservoir. In areas currently impacted by drought or where drought conditions are expected to be more frequent or more severe in the future, sources of drinking water may be diminished more quickly than in prior periods. In considering how much of a source of water will be available in the future for the drinking water project, a recipient must consider that a source of water may be drawn upon or otherwise used for other current and expected uses, including use by fish and other wildlife.

The final rule applies this sustainability condition to projects that expand drinking water service infrastructure to satisfy a projected increase in population but not to other drinking water projects. When a new source of water is required to remedy an existing threat to public health, as in the case of source projects eligible under the DWSRF, sustainability should be a consideration, but in some cases, the need to replace a contaminated source may mean that a less sustainable choice

may be made. When faced with such an issue, such as in the case of a contaminated well system, a project to replace the contaminated source can be said to be “necessary” even if the replaced source is not sustainable over the long term. Expediency may dictate that a shorter-term solution is pursued if it is cost-effective and will prevent health issues while a longer-term solution can be found. In contrast, an expansion to accommodate population growth cannot be said to be necessary if it is not sustainable over its estimated useful life.

Not included in the list of criteria above is the requirement in the interim final rule that the project be unlikely to be made using private sources of funds. Given that it may be difficult to assess in a particular case what the probability of private investment in a project would be, Treasury has eliminated this standard from the meaning of necessary but nevertheless encourages recipients to apply funds to projects that would provide the greatest public benefit.

Water and Sewer Infrastructure: As stated above, Congress provided that SLFRF funds are available for “necessary water, sewer, and broadband infrastructure.” Treasury interprets the reference to water and sewer uses consistent with the inclusion of broadband uses. Water, sewer, and broadband infrastructure all involve the provision of essential services to residents, businesses, and other consumers. As the pandemic has made clear, access to broadband has itself become essential for individuals and businesses to participate in education, commerce, work, and civic matters and to receive health care and social services.

Water and sewer services provided broadly to the public as essential services include the provision of drinking water and the removal, management, and treatment of wastewater and stormwater.³⁰⁵ Although governments are engaged in other infrastructure related to water, including irrigation projects, transportation projects, and recreation projects, such projects go beyond the scope of what is provided to all residents as an essential service. Provision of drinking water and removal, management, and treatment of

³⁰⁵ In many jurisdictions, stormwater flows into the sewer system rather than into a separate stormwater system. The separate inclusion of “water” and “sewer” infrastructure also makes clear that “water” in this context cannot refer to all uses relevant to water. Given that sewer systems carry wastewater (and often stormwater), if water infrastructure were to refer to all water-related infrastructure in this context, it would make the inclusion of sewer infrastructure redundant.

³⁰³ See 40 CFR 35.3520(b)(2)(vi).

³⁰⁴ In such cases, either the projects are presumptively cost-effective (e.g., lead projects would always be considered cost-effective given the costs imposed by lead poisoning) or a cost-effectiveness test is less relevant given the lack of available alternatives or the relatively low cost of the project.

wastewater and stormwater are the typical responsibilities of “water and sewer” authorities throughout the country, and there is a tremendous need for improvements to the ability of state, local, and Tribal governments to provide such services, including to address the consequences of deferred maintenance and additional resiliency needed to adapt to changes to the climate.³⁰⁶

Although the meaning of water and sewer infrastructure for purposes of sections 602(c)(1)(D) and 603(c)(1)(D) of the Social Security Act does not include all water-related uses, Treasury has made clear in this final rule that investments to infrastructure include a wide variety of projects. Treasury interprets the word “infrastructure” in this context broadly to mean the underlying framework or system for achieving the given public purpose, whether it be provision of drinking water or management of wastewater or stormwater.³⁰⁷ As discussed below, this can include not just storm drains and culverts for the management of stormwater, for example, but also bioretention basins and rain barrels implemented across a watershed, including on both public and private property, that together reduce the amount of runoff that needs to be managed by traditional infrastructure.

Further, Treasury understands that investments in infrastructure include

improvements that increase the capacity of existing infrastructure and extend the useful life of existing infrastructure. Accordingly, water and sewer infrastructure investment projects include those that conserve water, thereby reducing pressure on infrastructure for the provision of drinking water, and that recycle wastewater and stormwater, thereby reducing pressure on the infrastructure for treating and managing wastewater and stormwater.

As with other infrastructure projects and capital expenditure projects that are permitted as responses to the public health emergency and its negative economic impacts, costs for planning and design and associated pre-project costs are eligible uses of SLFRF funds. Costs for the acquisition of land are also eligible, but only if needed for the purposes of locating eligible project components. Recipients should ensure that they have the technical, financial, and managerial capability to ensure compliance with the requirements of the SDWA, or that the assistance will ensure compliance and the owners or operators of the systems will undertake feasible and appropriate changes in operations to ensure compliance over the long-term.

Drinking Water State Revolving Fund and Clean Water State Revolving Fund

Background: As stated above, in the interim final rule, Treasury included eligible uses of the DWSRF and the CWSRF as eligible uses of the SLFRF in the water and sewer infrastructure category. By providing that projects eligible under the DWSRF and the CWSRF are also eligible uses of SLFRF funds, the interim final rule permitted a broad range of projects that improve drinking water infrastructure, such as building or upgrading facilities and transmission, distribution, and storage systems, including replacement of lead service lines. With respect to clean water and wastewater infrastructure, the interim final rule provided that recipients may use SLFRF funds to construct publicly owned treatment infrastructure, manage and treat stormwater or subsurface drainage water, and facilitate water reuse, among other uses. Consistent with the DWSRF and the CWSRF, the interim final rule provided that SLFRF funds may be used for cybersecurity needs to protect water or sewer infrastructure, such as developing effective cybersecurity practices and measures at drinking water systems and publicly owned treatment works.

Use of DWSRF and CWSRF to Support Climate Change Adaptations. Many of

the types of projects eligible under either the DWSRF or CWSRF also support efforts to address climate change. For example, by taking steps to manage potential sources of pollution and preventing these sources from reaching sources of drinking water, projects eligible under the DWSRF and CWSRF may reduce energy required to treat drinking water. Similarly, projects eligible under the DWSRF and CWSRF include measures to conserve and reuse water, for example through projects to reuse or recycle wastewater, stormwater, or subsurface drainage water. Treasury encourages recipients to consider green infrastructure investments and projects to improve resilience to the effects of climate change. For example, more frequent and extreme precipitation events combined with construction and development trends have led to increased instances of stormwater runoff, water pollution, and flooding. Green infrastructure projects that support stormwater system resiliency could include bioretention basins that provide water storage and filtration benefits, and green streets, where vegetation, soil, and engineered systems are combined to direct and filter rainwater from impervious surfaces. In cases of a natural disaster, recipients may also use SLFRF funds for water infrastructure to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought.

Public Comment: Many commenters expressed support for the interim final rule’s alignment of the use of funds for water and sewer infrastructure under the SLFRF with the project categories provided through the EPA’s DWSRF and CWSRF programs.

Many commenters also provided recommendations about the specific types of water infrastructure projects that should be eligible under the final rule. In many of these cases, commenters recommended that Treasury include project types that are already eligible under the DWSRF and CWSRF and thus eligible under the interim final rule and final rule. For example, several commenters requested that aquifer recharge projects, or other groundwater protection and restoration projects, be included as eligible uses of SLFRF when certain aquifer recharge projects that (1) implement a nonpoint source pollution management program³⁰⁸ or (2) constitute reuse of

³⁰⁶ In addition, Treasury interprets the eligible uses of SLFRF funds against the background of the Coronavirus Relief Fund (CRF), for which the SLFRF funds are, in part, a successor. CRF recipients expressed great interest in using the CRF to pursue water infrastructure projects, including provision of drinking water and internal plumbing on Tribal lands and in Alaskan villages, and broadband projects throughout the country; Treasury permitted these projects given the connection to the public health emergency (see Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR 4182, 4190, 4192 (Jan. 15, 2021)), but the short deadline for use of funds made it difficult to use CRF funds in this way. Congress’ inclusion of the water, sewer, and broadband clause in the ARPA, along with the SLFRF funds’ longer eligible use date, is responsive to this unmet need. As discussed below, Congress in the Infrastructure Investment and Jobs Act amended sections 602(c) and 603(c) of the Social Security Act to add a new paragraph as sections 602(c)(4) and 603(c)(5), respectively, providing that SLFRF funds may be used to meet non-federal matching requirements of any authorized Bureau of Reclamation project. This authority was added as a separately enumerated eligible use regardless of whether the underlying project would be an eligible use of SLFRF funds under the water and sewer infrastructure eligible use category.

³⁰⁷ See, e.g., section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362), defining “green infrastructure” as “the range of measures that use plant or soil systems, permeable pavement or other permeable surfaces or substrates, stormwater harvest and reuse, or landscaping to store, infiltrate, or evapotranspire stormwater and reduce flows to sewer systems or to surface waters.”

³⁰⁸ Specifically, this would include desalination projects that decrease the burden on aquifers where there is causal relationship between aquifer withdrawals and saltwater intrusion if the projects implement a nonpoint source pollution

Continued

wastewater, stormwater, or subsurface drainage water are in fact eligible uses under the CWSRF. Furthermore, under the DWSRF, eligible projects include certain aquifer storage and recovery systems for water storage.

Treasury Response: Eligible projects articulated in the DWSRF and CWSRF continue to be eligible uses of SLFRF funds under the final rule. Recognizing that recipients have faced challenges interpreting eligible use categories under the interim final rule or cross-referencing EPA program materials to interpret eligible project types, Treasury is including in this Supplementary Information additional information on the types of projects eligible under the DWSRF and CWSRF. Treasury emphasizes that this further clarification does not represent a change in eligibility. Treasury encourages recipients to reference EPA handbooks for the DWSRF and CWSRF, which provide further information and detail about the types of projects eligible under those programs and thus under the final rule.

Eligible projects under the DWSRF. Eligibilities under the DWSRF, the interim final rule, and the final rule include projects that address present or prevent future violations of health-based drinking water standards. These include projects needed to maintain compliance with existing national primary drinking water regulations for contaminants with acute and chronic health effects. Projects to replace aging infrastructure are also eligible uses if they are needed to maintain compliance or further the public health protection objectives of section 1452 of the SDWA.³⁰⁹ The following project categories are eligible under the DWSRF, were eligible under the interim final rule, and continue to be eligible under the final rule:

(i) *Treatment projects*, including installation or upgrade of facilities to

management program under section 319 of the Clean Water Act. This could include projects in which desalinated seawater is injected into the aquifer to mitigate or prevent salt water intrusion, as well as projects in which brackish water is removed from an aquifer, desalinated, and returned to the aquifer.

³⁰⁹ See 42 U.S.C. 300j–12(a)(2)(B) (limiting financial assistance used by a public water system to expenditures (including expenditures for planning, design, siting, and associated preconstruction activities, or for replacing or rehabilitating aging treatment, storage, or distribution facilities of public water systems, but not including monitoring, operation, and maintenance expenditures of a type or category which the Administrator of the EPA has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under 42 U.S.C. 300g–1 or otherwise significantly further the health protection objectives of the SDWA); See also 40 CFR 35.3520(b).

improve the quality of drinking water to comply with primary or secondary standards and point of entry or central treatment under section 1401(4)(B)(i)(III) of the SDWA.

(ii) *Transmission and distribution projects*, including installation or replacement of transmission and distribution pipes to improve water pressure to safe levels or to prevent contamination caused by leaks or breaks in the pipes.

(iii) *Source projects*, including rehabilitation of wells or development of eligible sources to replace contaminated sources.

(iv) *Storage projects*, including installation or upgrade of eligible storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering a public water system.

(v) *Consolidation projects*, including projects needed to consolidate water supplies where, for example, a supply has become contaminated or a system is unable to maintain compliance for technical, financial, or managerial reasons.

(vi) *Creation of new systems*, including those that, upon completion, will create a community water system to address existing public health problems with serious risks caused by unsafe drinking water provided by individual wells or surface water sources. Eligible projects are also those that create a new regional community water system by consolidating existing systems that have technical, financial, or managerial difficulties. Projects to address existing public health problems associated with individual wells or surface water sources must be limited in scope to the specific geographic area affected by contamination. Projects that create new regional community water systems by consolidating existing systems must be limited in scope to the service area of the systems being consolidated.

Ineligible projects under the DWSRF. Federally-owned public water systems and for-profit noncommunity water systems are not eligible to receive DWSRF funds and therefore SLFRF funds.³¹⁰ The acquisition of water rights, laboratory fees for routine compliance monitoring, and operation and maintenance expenses are not costs associated with investments in infrastructure and thus would not be eligible under the final rule.³¹¹ Projects needed primarily to serve future population growth are also ineligible under the DWSRF; the treatment of such projects under the final rule is discussed

separately below under “Expansion of Drinking Water Service.” Projects eligible under the DWSRF must be sized only to accommodate a reasonable amount of population growth expected to occur over the useful life of the project.

Eligible projects under the CWSRF.

The final rule continues to allow the use of SLFRF funds for projects eligible under the CWSRF, consistent with the interim final rule. Under the CWSRF, a project must meet the criteria of one of the following CWSRF eligibilities to be eligible for assistance. Section 603(c) of the Clean Water Act (CWA)³¹² provides that the CWSRF can provide assistance:

(i) to any municipality, intermunicipal, interstate, or state agency for construction of publicly owned treatment works (as defined in section 212 of the CWA);³¹³

(ii) for the implementation of a management program established under section 319 of the CWA;³¹⁴

(iii) for the development and implementation of a conservation and management plan under section 320 of the CWA;³¹⁵

(iv) for the construction, repair, or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage. Eligible projects include, but are not limited to, the construction of new decentralized systems (e.g., individual onsite systems and cluster systems), as well as the upgrade, repair, or replacement of existing systems.

(v) for measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water. Publicly and privately owned, permitted and unpermitted projects that manage, reduce, treat, or recapture stormwater or subsurface drainage water are eligible. For example, projects that are specifically required by a Municipal Separate Storm Sewer System (MS4) permit are eligible, regardless of ownership. Projects may include, but are not limited to green roofs, bioretention basins, roadside plantings, porous pavement, and rainwater harvesting.

(vi) to any municipality, intermunicipal, interstate, or state agency for measures to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse. Eligible projects include, but are not limited to, the installation, replacement, or upgrade of water meters; plumbing fixture retrofits or replacement; and gray water recycling. Water audits and water conservation plans are also eligible.

³¹² 33 U.S.C. 1383(c).

³¹³ 33 U.S.C. 1292.

³¹⁴ 33 U.S.C. 1329.

³¹⁵ 33 U.S.C. 1330.

³¹⁰ See 40 CFR 35.3520(d)(1).

³¹¹ See *id.* at § 35.3520(e)(2)–(4).

Equipment to reuse effluent (e.g., gray water, condensate, and wastewater effluent reuse systems) is eligible.

(vii) for the development and implementation of watershed projects meeting the criteria set forth in section 122 of the CWA.³¹⁶ Projects that develop or implement a watershed pilot project related to at least one of the six areas identified in section 122 of the CWA are eligible: Watershed management of wet weather discharges, stormwater best management practices, watershed partnerships, integrated water resource planning, municipality-wide stormwater management planning, or increased resilience of treatment works.

(viii) to any municipality, intermunicipal, interstate, or state agency for measures to reduce the energy consumption needs for publicly owned treatment works. Projects may include, but are not limited to, the installation of energy efficient lighting, HVAC, process equipment, and electronic equipment and systems at publicly owned treatment works. Planning activities, such as energy audits and optimization studies are also eligible.

(ix) for reusing or recycling wastewater, stormwater, or subsurface drainage water. Projects involving the reuse or recycling of wastewater, stormwater, or subsurface drainage water are eligible. This includes, as part of a reuse project, the purchase and installation of treatment equipment sufficient to meet reuse standards. Other eligible projects include, but are not limited to, distribution systems to support effluent reuse, including piping the effluent on the property of a private consumer, recharge transmission lines, injection wells, and equipment to reuse effluent (e.g., gray water, condensate, and wastewater effluent reuse systems).

(x) for measures to increase the security of publicly owned treatment works. Security measures for publicly owned treatment works might include, but are not limited to, vulnerability assessments, contingency/emergency response plans, fencing, security cameras/lighting, motion detectors, redundancy (systems and power), secure chemical and fuel storage, laboratory equipment, securing large sanitary sewers, and tamper-proof manholes. The CWSRF cannot fund operations and maintenance activities. Therefore, maintaining a human presence (i.e., security guards) and monitoring activities are not eligible.

Other Clarifications of DWSRF and CWSRF Eligible Project Categories

Public Comment: Several commenters requested that Treasury provide clarification of the requirements associated with use of SLFRF funds for necessary investments in water and sewer infrastructure.

Treasury Response: After release of the interim final rule, Treasury clarified in further guidance that, while recipients must ensure that water and sewer infrastructure projects pursued are eligible under the final rule, recipients are not required to obtain project pre-approval from Treasury or any other federal agency when using SLFRF funds for necessary water and sewer infrastructure projects unless otherwise required by federal law. For projects that are being pursued under the eligibility categories provided through the DWSRF or CWSRF programs, project eligibilities are based on federal project categories and definitions for the programs and not on each state's eligibility or definitions. While reference in the final rule to the DWSRF, CWSRF, or other federal water programs is provided to assist recipients in understanding the types of water and sewer infrastructure projects eligible to be funded with SLFRF, recipients do not need to apply for funding from the applicable state programs or through any federal water program. Similarly, besides eligible project categories, the final rule does not incorporate other program requirements or guidance that attach to the DWSRF, CWSRF, or other federal water programs. However, as noted above, recipients should be aware of other federal or state laws or regulations that may apply to construction projects or water and sewer projects, independent of SLFRF funding conditions, and that may require pre-approval from another federal or state agency.

Expanded Eligible Uses for Water and Sewer Infrastructure Summary

Public Comment: Many commenters requested broader flexibility in the use of SLFRF funds for water and sewer infrastructure projects that are not eligible under the DWSRF and CWSRF. These commenters argued that localities are best situated to identify the highest-need water and sewer projects in their communities. Several Tribal government commenters noted that Tribes have different water and sewer infrastructure needs than states and localities and that additional flexibility in the use of funds would lift current

barriers to improving infrastructure on Tribal lands.

To achieve additional flexibility, commenters suggested a range of options for broadening the eligible use of SLFRF funds for necessary water and sewer infrastructure. For example, several commenters suggested Treasury broaden the eligibilities provided under the interim final rule to include project types eligible under other federal water and sewer programs.

Treasury Response: Treasury agrees that additional flexibility for use of SLFRF funds is warranted and is providing expanded eligibilities as described below, several of which address specific areas of need outlined by Tribal and rural communities.

As discussed below, Treasury has incorporated into the final rule projects that are eligible under certain programs established by the EPA under the Water Infrastructure Improvements for the Nation Act (WIIN Act). Other water-related grant programs cited by commenters include projects that are otherwise already covered by the final rule, for example because they are covered as eligible under the DWSRF or the CWSRF, or projects that are ineligible under the final rule because they are beyond the scope of the meaning of water and sewer projects for purposes of ARPA. To minimize the need for recipients of SLFRF funds to cross reference eligibilities across multiple federal programs, which may exacerbate current challenges to understanding eligibility under SLFRF, Treasury is providing detailed information related to expanded eligibilities within the text of this **SUPPLEMENTARY INFORMATION** for the final rule.

Stormwater Infrastructure

Public Comment: Several commenters requested that additional stormwater infrastructure projects be included as eligible uses of SLFRF funds under the final rule. Commenters suggested that culvert repair and resizing and replacement of storm sewers is necessary to address increased rainfall brought about by a changing climate. Other commenters noted that rural communities that do not manage their own sewer systems may rely on this type of water infrastructure.

Treasury Response: The CWSRF includes a broad range of stormwater infrastructure projects, and as such these projects were eligible under the interim final rule and continue to be eligible under the final rule. These projects include gray infrastructure projects, such as traditional pipe, storage, and treatment systems. Projects

³¹⁶ 33 U.S.C. 1274.

that manage, reduce, treat, or recapture stormwater or subsurface drainage water are also eligible, including real-time control systems for combined sewer overflow management, and sediment control. Culvert infrastructure projects are eligible under the CWSRF if they (1) implement a nonpoint source management plan, (2) implement National Estuary Program Comprehensive Conservation and Management Plan, or (3) implement a stormwater management plan with the goal of providing a water quality benefit. Stormwater projects under the CWSRF also encompass a number of eligible green infrastructure categories, such as green roofs, green streets, and green walls, rainwater harvesting collection, storage, management, and distribution systems, real-time control systems for harvested rainwater, infiltration basins, constructed wetlands, including surface flow and subsurface flow (e.g., gravel) wetlands, bioretention/bioswales (e.g., bioretention basins, tree boxes), permeable pavement, wetland, riparian, or shoreline creation, protection, and restoration, establishment or restoration of urban tree canopy, and replacement of gray infrastructure with green infrastructure including purchase and demolition costs.

In addition to the eligible uses under the CWSRF, Treasury is expanding the eligible uses under the final rule to include stormwater system infrastructure projects regardless of whether there is an expected water quality benefit from the project. Treasury anticipates that this eligible use will allow recipients to manage increased volumes of stormwater as a result of changes to the climate. For example, the final rule now permits the use of SLFRF funds for the repair, replacement, or removal of culverts or other road-stream crossing infrastructure to the extent the purpose of the project is to manage stormwater. In addition, Treasury understands that the repair, replacement, or removal of culverts may necessitate the repair or upgrade of roads. As noted in guidance issued after the interim final rule, recipients may use SLFRF funds for road repairs and upgrades that interact directly with an eligible stormwater infrastructure project. All stormwater infrastructure projects undertaken should incorporate updated design features and current best practices.

Private Wells and Septic Systems

Public Comment: Several commenters requested that the scope of eligible projects be expanded to allow for the expenditure of SLFRF funds on private wells or septic systems. Commenters

noted that wells may be contaminated with dangerous substances, including arsenic, lead, radon, and PFAS (per- and polyfluoroalkyl). Commenters also suggested that, because rural and underserved communities are often reliant on these infrastructure types for their drinking water or wastewater needs, lack of appropriate funding to maintain these systems could present health and safety issues that disproportionately affect certain communities.

Treasury Response: Consistent with the CWSRF, the installation, repair, or replacement of private septic units continues to be an eligible use of SLFRF funds under the final rule. For example, eligible projects include those that address groundwater contamination resulting from faulty septic units and those that would connect failing septic systems to centralized wastewater treatment. Consistent with the DWSRF, connecting homes served by a private well to a public water system is an eligible use of SLFRF funds.

In addition, Treasury has provided in the final rule that recipients may use SLFRF funds for an expanded set of infrastructure projects that improve access to and provision of safe drinking water for individuals served by residential wells. Eligible projects under this category include rehabilitation of private wells, testing initiatives to identify contaminants in wells, and treatment activities and remediation strategies that address contamination.

Remediating Lead in Water

Public Comment: Several commenters emphasized the need to fully remediate lead contamination, especially in structures that serve the public or populations like children that are particularly vulnerable to the effects of lead exposure, such as schools and daycares. Many American households and an estimated 400,000 schools and childcare centers currently lack safe drinking water.³¹⁷

Treasury Response: The replacement of lead service lines, up to premise plumbing, is an eligible use under the DWSRF and continues to be an eligible use of SLFRF funds. Such projects are eligible regardless of the pipe material of the replacement lines and ownership of the property on which the service line is located. Lead service line replacement projects can serve households, schools, or any other

entities. Given the lifelong impacts of lead exposure for children and the widespread prevalence of lead service lines, Treasury encourages recipients to consider projects to replace lead service lines.

In addition, Treasury is providing in the final rule that for lead service line replacement projects, recipients must replace the full length of the service line, and not just a partial portion of the service line. Some water utilities, when replacing service lines, will only replace the “public portion” of the service line and physically slice through the lead service line at the public/private line. This action can result in elevated drinking water lead levels for some period of time after replacement, suggesting the potential for harm, rather than benefit during that time period.³¹⁸ Requiring replacement of the full length of the service line is also consistent with the requirements of the EPA’s Lead and Copper Rule Revisions for water systems that have an action level exceedance for lead³¹⁹ and certain other water systems.³²⁰

Treasury is expanding eligible uses of SLFRF funds to include infrastructure projects eligible under EPA grant programs authorized by the WIIN Act.³²¹ Eligible projects under these programs include the installation or re-optimization of corrosion control treatment, replacing lead service lines, replacing galvanized pipes downstream of a lead service line (other than lead pipes within a home as discussed below), and maintaining an inventory of the drinking water system’s service lines. Water quality testing, compliance monitoring, and remediation activities in schools and other childcare facilities, as well as activities necessary to respond to a contaminant, are eligible uses of SLFRF funds.³²² Remediation

³¹⁸ See EPA Science Advisory Board, Evaluation of the Effectiveness of Partial Lead Service Line Replacements, (September 2011), <https://www.epa.gov/sdwa/science-advisory-board-evaluation-effectiveness-partial-lead-service-line-replacements> (advising against partial lead service line replacement).

³¹⁹ Environmental Protection Agency, *supra* note 188.

³²⁰ Environmental Protection Agency, National Primary Drinking Water Regulations: Lead and Copper Rule Revisions, 86 FR 4198, 40 CFR 141.84, and preamble at 4215, January 15, 2021, <https://www.federalregister.gov/d/2020-28691>; scheduled to become effective December 16, 2021, Environmental Protection Agency, 86 FR 31939, <https://www.federalregister.gov/d/2021-12600>.

³²¹ Eligible uses of funds include those eligible under the Small, Underserved, and Disadvantaged Communities Grant (Section 2104), Reduction in Lead Exposure via Drinking Water Grant Program (Section 2105) and Lead Testing in School and Child Care Program Drinking Water Grant Program (Section 2107).

³²² Such testing and remediation programs would be an eligible use of SLFRF funds given that they

³¹⁷ The White House, Updated Fact Sheet: Bipartisan Infrastructure Investment and Jobs Act (August 2, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/02/updated-fact-sheet-bipartisan-infrastructure-investment-and-jobs-act/>.

activities such as replacement of faucets, internal plumbing, and fixtures in schools and childcare facilities are also an eligible use of SLFRF funds.

Consistent with the EPA programs, replacement of lead pipes within a home is not eligible under the final rule because the vast majority of lead contamination cases can be solved by replacing lead service lines (including on public and private property) and faucets and fixtures themselves. As such, replacement of lead pipes within a home would not be considered a cost-effective means for achieving the desired level of service and thus would not be a "necessary" investment. The provision of bottled water is also not an eligible use of SLFRF funds under this eligible use category, as it is not an investment in infrastructure. However, bottled water in areas with an action level exceedance for lead in water may be an eligible use of SLFRF funds under a separate eligible use category for "remediation of lead paint and other lead hazards;" see Assistance to Households in Public Health and Negative Economic Impacts.

Water filtration systems are eligible under the EPA grant programs and the final rule as long as they are installed as a permanent part of a facility's system and not intended for temporary use. Conducting remediation, follow-up monitoring, and conducting public education and outreach about the availability of infrastructure programs, such as water testing and fixture replacement programs funded with SLFRF funds or otherwise, are also eligible projects. Finally, recipients should note that "remediation of lead paint and other lead hazards" is a separate eligible use category and a broader range of programs and services may be eligible under that section, including investments that are not infrastructure; see the eligible use for "remediation of lead paint and other lead hazards" in section Assistance to Households in Public Health and Negative Economic Impacts.

Dams and Reservoirs

Public Comment: Many commenters requested that Treasury broaden eligibilities to include dams and reservoirs, infrastructure that commenters noted may in its current state be unsafe and could put surrounding communities at risk. Some

would help a recipient determine whether an infrastructure project, such as a lead line replacement, is necessary. In contrast, as mentioned above, the costs of continual testing that is part of a drinking water or wastewater facilities' operating costs would not be considered part of an infrastructure project.

commenters argued that dams and reservoirs play an important role in providing municipal water supply and water to irrigate farmland, including in areas impacted by recent droughts. Other commenters noted that a large number of dams are currently classified as high-hazard structures, the failure of which would have severe consequences for public safety and the local environment. With respect to reservoirs, commenters articulated that changing climate conditions have necessitated upgrades to reservoir infrastructure to ensure existing facilities can meet the local water needs of a community. Commenters noted that communities facing drought may also need to adjust or enhance reservoirs to maintain adequate water supply.

In contrast, several commenters suggested that infrastructure projects related to dams and reservoirs should not be considered eligible uses of SLFRF funds. These commenters noted that alternate sources of funding exist for dam and reservoir projects and that dams and reservoir infrastructure could result in negative impacts to Tribal communities and negative environmental impacts, including harm to wildlife habitats.

Treasury Response: Treasury understands that many dams and reservoirs in need of rehabilitation are dams and reservoirs whose primary purpose is to provide drinking water. As discussed above, SLFRF funds are available for projects related to the provision of drinking water. Moreover, since issuance of the interim final rule, the EPA has adopted a class deviation from the DWSRF regulations that permits such dam and reservoir rehabilitation projects in certain circumstances.³²³ In approving this class deviation, the EPA recognized that many dams used for drinking water are aging and deteriorating and pose a public health risk to communities; that current dam conditions do not meet state safety standards; and that reservoir capacity has diminished and requires dredging to meet drinking water needs of the existing population.

Treasury's final rule provides that funds may be used for rehabilitation of dams and reservoirs if the primary purpose of the dam or reservoir is for drinking water supply and the rehabilitation project is necessary for continued provision of drinking water

supply. In considering whether a dam or reservoir project is necessary for the provision of drinking water supply, a recipient may take into consideration future population growth in certain circumstances, as discussed under "Expansion of Drinking Water Service Infrastructure" below, but the project must in any case be designed to support no more than a reasonable level of projected increased need. The recipient must also determine that the project is cost-effective, *i.e.*, that there are not significantly superior alternatives that are available, taking into consideration the relative costs and benefits of the project as compared to those alternatives.

This change to the final rule would permit a wide variety of projects.³²⁴ The limitation in the final rule to rehabilitation of existing dams and reservoirs reflects the scope of the EPA class deviation referenced above and Treasury's understanding of the significant need for investments in rehabilitation to address deterioration of dams and the diminished capacity of reservoirs. Further, Treasury expects that in many cases it would be considerably more difficult to demonstrate that construction of a new dam or reservoir would be necessary for the purpose of the provision of drinking water than is the case for rehabilitation of dams and reservoirs already serving that purpose for a particular population, particularly given opportunities to meet drinking water needs through water reuse and conservation efforts. For these reasons, and given that the relatively short period of availability of the funds makes new dam and reservoir construction with these funds less likely, Treasury has limited the scope of the final rule to dam and reservoir rehabilitation projects.

As discussed above, Treasury has determined that ARPA does not authorize the use of SLFRF funds for uses other than the provision of drinking water and the management of wastewater and storm water. As such, the final rule does not include infrastructure projects related to dams and reservoirs as eligible uses of SLFRF funds unless they meet the conditions discussed above.

³²⁴ As noted in the EPA's class deviation, examples of dam rehabilitation projects include spillway reconstruction or repair; dam resurfacing, patching, or other structural repairs, including minimal height increases if needed to maintain the structural integrity of the dam; grouting for seepage control or liquefaction remediation (*e.g.*, epoxy resin, asphalt, or rock); repair or replacement of drainage systems; and seismic stability efforts (*e.g.*, anchors). Examples of reservoir rehabilitation projects include sedimentation dredging and reservoir lining.

³²³ See EPA, Approval of Class Exception from the Regulatory Prohibitions on the Use of Drinking Water State Revolving Fund for Rehabilitation of Dams and Reservoirs (July 14, 2021), available at https://www.epa.gov/system/files/documents/2021-07/dwsrf-class-deviation-dam-reservoir-rehab-2021_0.pdf.

Public Comment: Several commenters requested that the removal of dams and associated habitat restoration should be eligible uses of SLFRF funds, noting that in some cases, dam removal will improve water quality while removing long-term operational expenses for the recipient.

Treasury Response: Dam removal projects and associated stream and habitat restoration projects are eligible uses of the CWSRF and continue to be eligible under the final rule when the removal implements either a nonpoint source management program plan or a National Estuary Program Comprehensive Conservation and Management Plan or when the removal will provide a water quality benefit. Habitat restoration projects more generally may also be eligible under the CWSRF and the final rule if they constitute a form of stormwater infrastructure.

Expansion of Drinking Water Service Infrastructure

Public Comment: Commenters asked for the ability to use funds for drinking water projects for the purpose of meeting needs arising from future growth, which, given the restrictions applicable to the DWSRF, was not permitted under the interim final rule.

Treasury Response: As provided for in the SDWA, the DWSRF is meant to serve the public health needs of the existing population. The EPA regulation implementing the DWSRF program provides that projects needed primarily to serve future population growth are not eligible uses of the DWSRF. A project that is intended primarily to address public health or regulatory compliance issues for the existing service population may be sized for a “reasonable” amount of population growth over the useful life of the project.³²⁵

ARPA does not include the same limitation as the SDWA. Accordingly, the final rule provides that recipients may use SLFRF funds for projects that are needed to support increased population in certain cases. ARPA limits projects to those investments that are “necessary.” As discussed above, Treasury interprets this to mean that the investments must be (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which for some eligible project categories may include a reasonable projection of increased need, whether due to population growth or otherwise and (2) a cost-effective means for meeting that need, taking into account

available alternatives. For this eligible use category, expansion of drinking water service infrastructure, the project must also be projected to be sustainable over its estimated useful life.

Investments must be determined to be necessary when they are initiated. Accordingly, Treasury is clarifying in the final rule that the need identified for a water or sewer project may include a need arising from reasonable expectations of future population growth, provided that it is necessary at the time the investment is initiated for the recipient to make the investment to meet this growth. For example, a recipient expecting increased population during the period of performance may install a drinking water treatment plant to meet that growth. In addition, a recipient expecting increased population growth outside the period of performance may install the treatment plant if the planning and construction timeline for the project would require work to begin during the performance period in order to meet the expected population growth. A recipient may install transmission lines as part of the development of new housing occurring during the period of performance. In this case, the housing development must be in progress; a recipient may not use the SLFRF funds to install a water main, for example, to an undeveloped tract in the expectation that in the future that tract will be developed with housing, because there would be no need for that investment to be made at the time it is initiated.

For the reasons discussed above, if a project is undertaken to address expected growth in population, the project must also be sustainable, meaning that the project can continue providing the adequate minimum level of service for its estimated useful life, taking into account projected impacts of changes to the climate and other expected demands on the source of water. In considering how much of a source of water will be available in the future for the drinking water project, a recipient must consider that a source of water may be drawn upon or otherwise used for other current and expected uses, including use by fish and other wildlife. A drinking water project that is designed to address a growing population cannot be considered a necessary investment if the source of drinking water will cease to be available to meet the population’s needs before the end of the estimated useful life of the project. In such a case, a recipient should consider alternative sources for drinking water. See “Interpretation of Necessary Investments and Water and

Sewer Infrastructure” above for more information.

Non-Federal Matching Requirements for Authorized Bureau of Reclamation Projects

The Infrastructure Investment and Jobs Act amends sections 602(c) and 603(c) of the Social Security Act to add an additional eligible use of SLFRF funds, providing that SLFRF funds “may be used for purposes of satisfying any non-Federal matching requirement required for [an authorized Bureau of Reclamation project].”³²⁶

This amendment permits the use of SLFRF funds to meet non-federal matching requirements of any authorized Bureau of Reclamation project, regardless of whether the underlying project would be an eligible use of SLFRF funds under the water and sewer infrastructure eligible use category. These amendments are effective as of March 11, 2021, as if included in the ARPA at the time of its enactment.³²⁷ Treasury will provide further guidance to recipients on the scope of Bureau of Reclamation water projects and expenses covered by this provision.

Floodplain Management and Flood Mitigation Projects

Public Comment: Several commenters requested that projects to address floodwater, including floodplain management and flood mitigation projects, be included as an eligible use of SLFRF funds. Within this category of floodplain management and flood mitigation infrastructure, several commenters requested that the installation of levees, flood walls, sea walls, elevation projects, dredging, or nature-based flood mitigation projects be included as eligible projects.

Treasury Response: Treasury notes that some floodplain management and flood mitigation infrastructure projects, including green infrastructure designed to protect treatment works from flood waters and flood impact are currently eligible under the CWSRF and therefore continue to be eligible under the final rule.

Treasury has not included floodplain management and flood mitigation projects more generally as eligible under the final rule. Although floodplain management and flood mitigation are functions of many state and local governments, they are not the sort of generally-provided essential services included within the meaning of water

³²⁵ See 40 CFR 35.3520(e)(5).

³²⁶ See Public Law 117–58, 40909(a)–(b) (Nov. 15, 2021).

³²⁷ See Public Law 117–58 § 40909(c).

and sewer projects under the ARPA, as discussed above.

Irrigation

Public Comment: Some commenters requested that irrigation projects be an eligible use because they consider such projects to be critical infrastructure. Several commenters supported this request by noting that irrigation systems may be used to replenish aquifers and recharge wells, in addition to delivering water for irrigation. One commenter also noted that the national irrigation system is antiquated and in need of repair.

Treasury Response: Some irrigation projects were eligible under the interim final rule and continue to be eligible under the final rule as a result of their inclusion as eligible projects under the CWSRF. For example, water efficient irrigation equipment that reduces the runoff of nutrients and implements a management program established under section 319 of the CWA and/or a conservation and management plan under section 320 of the CWA are eligible uses under the CWSRF and therefore continue to be an eligible use of SLFRF funds under the final rule. Likewise, projects to receive and distribute reclaimed water for irrigation systems or other agricultural use are eligible under the CWSRF and therefore continue to be an eligible use under the final rule. Unlike projects for the improvement of irrigation systems generally, these reclaimed water projects are related to wastewater treatment and stormwater management, which are within the scope of the meaning of water and sewer infrastructure for purposes of ARPA.

Treasury considered commenter requests for inclusion of additional irrigation infrastructure and determined that irrigation projects more generally are not permitted under the final rule. Although these types of projects may be water-related infrastructure, they are not the sort of generally-provided essential services included within the meaning of water and sewer projects under ARPA, as discussed above.

Consumer Incentive Programs

Public Comment: One commenter requested that consumer incentive programs in the areas of water use efficiency, conservation, green infrastructure, reuse, and other distributed solutions be an allowable use of SLFRF.

Treasury Response: The DWSRF and CWSRF eligibilities include the development and implementation of incentive and educational programs that address and promote water conservation, source water protection,

and efficiency related to infrastructure improvements, e.g., incentives such as rebates to install green infrastructure such as rain barrels or promote other water conservation activities. Treasury clarifies that such project types were eligible under the interim final rule and continue to be eligible under the final rule.

2. Broadband Infrastructure

Under the ARPA, recipient governments may use SLFRF funds to make “necessary investments in . . . broadband infrastructure.” In the Supplementary Information to the interim final rule, Treasury interpreted necessary investments in infrastructure as investments “designed to provide an adequate minimum level of service and [that] are unlikely to be made using private sources of funds.” Treasury explained that, with respect to broadband specifically, such necessary investments include projects that “establish [] or improve [] broadband service to underserved populations to reach an adequate level to permit a household to work or attend school, and that are unlikely to be met with private sources of funds.”

Summary of Interim Final Rule, Public Comments, and Treasury Response

Summary of Interim Final Rule: In implementing the ARPA, the interim final rule provided that eligible broadband infrastructure investments are limited to those that are designed to provide service to unserved or underserved households or businesses, defined as those that lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload. The interim final rule also provided that eligible projects under the SLFRF are limited to those that are designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. In instances where it would not be practicable for a project to deliver such service speeds because of the geography, topography, or excessive costs associated with such a project, the interim final rule provided that the project would be required to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds.

In addition, Treasury, in the Supplementary Information to the interim final rule, encouraged recipients to pursue a number of other objectives.

First, Treasury encouraged recipients to prioritize investments in fiber-optic infrastructure wherever feasible and focus on projects that deliver a physical broadband connection by prioritizing projects that achieve last-mile connections. Second, Treasury encouraged recipients to integrate affordability options into their program design. Third, Treasury encouraged recipients to prioritize support for local networks owned, operated, or affiliated with local governments, nonprofits, and cooperatives. Fourth, Treasury encouraged recipients to avoid investing in locations with existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, in order to avoid duplication of efforts and resources. Finally, following release of the interim final rule, Treasury provided further guidance clarifying some aspects of broadband infrastructure eligibility, specifically on flexibility for recipients to determine eligible areas to be served,³²⁸ middle-mile projects,³²⁹ pre-project development costs,³³⁰ broadband connections to schools or libraries,³³¹ and the applicability of the National Environmental Policy Act (NEPA) and the Davis-Bacon Act.³³²

Summary of Public Comments: Treasury received several comments on the interim final rule’s requirements regarding eligible areas for investment and build-to speed standards, as well as Treasury’s encouragements in the Supplementary Information of the interim final rule. Many commenters found the interim final rule’s requirement to limit projects to those designed to provide service to unserved or underserved households or businesses to be appropriately focused on hard-to-reach areas. In contrast, other commenters argued that this requirement was too restrictive and that it would limit the ability for some recipients, particularly local governments, to invest in broadband infrastructure.

Separately, some commenters supported the interim final rule’s requirement that eligible projects be built to reliable speeds of 100 Mbps symmetrical, with an exception for areas where it was impracticable, and encouragement that projects be built with fiber-optic infrastructure, while a

³²⁸ See FAQ 6.8, 6.9, 6.11. Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

³²⁹ See FAQ 6.10. *Id.*

³³⁰ See FAQ 6.12. *Id.*

³³¹ See FAQ 6.16. *Id.*

³³² See FAQ 6.4, 6.17. *Id.*

few others argued that the interim final rule should remain technology-neutral and that lower speed standards would be more appropriate for today's usage needs.

Summary of Treasury Response: In response to the comments, the final rule expands eligible areas for investment by requiring recipients to invest in projects designed to provide service to households and businesses with an identified need for additional broadband infrastructure investment, which would include but not be limited to a lack of broadband service reliably delivering certain speeds. In addition, as discussed further below, the final rule further supports the expansion of affordable access to broadband service for households by requiring that recipients use a provider that participates in a qualifying affordability plan. Treasury encourages recipients to prioritize projects that are designed to provide service to locations not currently served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed.

The final rule maintains the interim final rule's requirement that eligible projects be designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds. As was the case under the interim final rule, in cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, eligible projects may be designed to reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed. Treasury continues to encourage recipients to prioritize investments in fiber-optic infrastructure wherever feasible and to focus on projects that will achieve last-mile connections, whether by focusing directly on funding last-mile projects or by ensuring that funded middle-mile projects have commitments in place to support new and/or improved last-mile service.

The final rule requires recipients to address the affordability needs of low-income consumers in accessing broadband networks funded by SLFRF, given that such a project cannot be considered a necessary investment in broadband infrastructure if it is not affordable to the population the project would serve. Recipients must require the service provider for a completed broadband infrastructure investment project that provides service to households to either participate in the

Federal Communications Commission's (FCC) Affordable Connectivity Program (ACP), or otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP.

Treasury also recognizes the importance of affordable broadband access for all consumers beyond those that are low-income. As part of their project selection process, recipients are encouraged to consult with the community on the general affordability needs of the target markets in the proposed service area. Additionally, recipients are encouraged to require that services provided by a broadband infrastructure project include at least one low-cost option offered without data usage caps and at speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning. Recipients will be required to report speed, pricing, and any data allowance information as part of mandatory reporting to Treasury.

The final rule also clarifies that subsidies to households and communities impacted by the pandemic to access the internet, broadband adoption programs, digital literacy programs, and device programs are eligible programs to respond to the public health and negative economic impacts of the pandemic under sections 602(c)(1)(A) and 603(c)(1)(A). See section Assistance to Households in Negative Economic Impacts.

Treasury continues to encourage recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and cooperatives. In addition, to the extent recipients are considering deploying broadband to locations where there are existing enforceable federal or state funding commitments for reliable service at speeds of at least 100 Mbps download speed and 20 Mbps upload speed, recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investment that is not met by existing federal or state funding commitments. Recipients must also ensure that SLFRF funds will not be used for costs that will be reimbursed by the other federal or state funding streams. Further, Treasury highlights that recipients are subject to the prohibition on use of grant funds to procure or obtain certain telecommunications and video surveillance services or equipment as outlined in 2 CFR 200.216 and 2 CFR

200.471 and clarifies that modernization of cybersecurity for existing and new broadband networks are eligible uses of funds under sections 602(c)(1)(D) and 603(c)(1)(D).

Finally, this Supplementary Information to the final rule incorporates and confirms guidance issued by Treasury following the interim final rule regarding middle-mile projects,³³³ pre-project development costs,³³⁴ broadband connections to schools or libraries,³³⁵ and applicability of the National Environmental Policy Act (NEPA) and Davis-Bacon Act.³³⁶

The remainder of this section provides additional details on the final rule. Specifically, these sections address: (1) Eligible areas for investment; (2) build-to speed standards; (3) affordability; (4) public networks; (5) duplication of efforts and resources; (6) cybersecurity; and (7) use of funds to meet non-federal match under the Infrastructure Investment and Jobs Act.

Eligible Areas for Investment

The interim final rule limited eligible broadband investments to projects focused on delivering service to unserved or underserved locations, defined as households or businesses that lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload. This targeted approach was generally consistent with certain speed thresholds used in other federal programs to identify eligible areas for federal investment in broadband infrastructure, such as the FCC's Rural Digital Opportunity Fund (RDOF) program and the National Telecommunication and Information Administration's (NTIA's) Broadband Infrastructure Program, and generally aligns with the FCC's benchmark for an "advanced telecommunications capability" for wireline broadband services.

Public Comment: Many commenters discussed the disadvantages of such an approach. Some commenters, including several local government recipients, argued that limiting investments to locations without access to reliable wireline 25/3 Mbps³³⁷ was too

³³³ See FAQ 6.10. Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

³³⁴ See FAQ 6.12. *Id.*

³³⁵ See FAQ 6.16. *Id.*

³³⁶ See FAQ 6.4, 6.17. *Id.*

³³⁷ In the remainder of this Supplementary Information, "25/3 Mbps" refers to broadband infrastructure that is designed to reliably meet or exceed at least 25 Mbps download speeds and 3

restrictive because some urban jurisdictions are already mostly or entirely covered by a network with at least 25/3 Mbps speeds yet lack widespread broadband adoption for various reasons. Commenters suggested that recipients would benefit from greater flexibility to provide necessary investments in broadband access in areas that are nominally covered by speeds of at least 25/3 Mbps, such as to provide affordable broadband access in low-income areas or to address service quality and reliability issues. Further, commenters argued that Treasury's requirement that new projects meet minimum reliable speeds of 100 Mbps symmetrical was inconsistent with the requirement that broadband infrastructure projects focus on those with access to significantly lower speeds, and further noted that several states have already expanded the focus of their broadband programs beyond those without reliable access to speeds of 25/3 Mbps. Commenters argued that if the limitation to unserved and underserved households and businesses were maintained, the definition of unserved and underserved households and businesses should be revised to include households and businesses currently served by higher standards. Commenters proposed a number of alternative cutoff speeds, including 25/25 Mbps, 50/10 Mbps, and 100 Mbps symmetrical. Others expressed support for providing flexibility for recipients to make their own determination on eligible areas for investment. These commenters referenced studies indicating that 25/3 Mbps is inadequate for today's modern household or business needs.

Some commenters advocated for unserved and underserved areas to be prioritized while providing flexibility for recipients to serve areas beyond those designated as unserved or underserved. Reflecting the perceived restrictiveness of the interim final rule approach, some commenters asked for assurance that projects conducted under other categories of SLFRF eligible uses, specifically to respond to the public health and negative economic impacts of the pandemic under sections 602(c)(1)(A)–(C) and 603(c)(1)(A)–(C), were not barred by the presence of 25/3 Mbps service, including “gap networks,” which are networks designed to offer low-cost or no-cost internet access for lower-income

Mbps upload speeds. “100 Mbps” symmetrical refers to broadband infrastructure that is designed to reliably meet or exceed at least 100 Mbps download speeds and 100 Mbps upload speeds.

households with low broadband adoption rates.

Commenters suggested additional factors to be incorporated in the consideration of locations that are eligible to be served. Many commenters suggested that affordability should be considered a key factor when determining whether a community has access to broadband, as the presence of 25/3 Mbps service does not necessarily mean the service is financially accessible to the area's residents. Commenters noted that surveys indicate that affordability, not lack of coverage, is the most significant barrier for most Americans who do not have robust broadband service in their households. Some advocated that the final rule allow for investments in areas with existing reliable wireline access at or above 25/3 Mbps as long as existing broadband service has been unaffordable for a certain segment of the population; others advocated that Treasury presume eligibility when investments are made in certain areas, such as Qualified Census Tracts or neighborhoods with persistent poverty, or are made by Tribal governments. Separately, some commenters noted that Treasury should provide more clarification on what constitutes a “reliable” connection, including providing details as to latency, jitter, and other technical specifications that would meet that standard, and what it means for certain technologies, such as copper and other outdated technologies, to be deemed presumptively unreliable.

Other commenters supported the interim final rule's approach on eligible areas for investment or suggested tightening eligibility even further. They argued that higher speed thresholds beyond 25/3 Mbps would likely lead to investments in or building of new broadband infrastructure in areas already served by broadband at speeds these commenters considered sufficient; these areas, commenters suggested, are less in need of federal assistance and permitting investments here could divert funding away from rural areas to more densely populated areas.

Treasury Response: The final rule expands eligible areas for investment by requiring recipients to invest in projects designed to provide service to households and businesses with an identified need for additional broadband infrastructure investment. Recipients have flexibility to identify a need for additional broadband infrastructure investment: Examples of need include lack of access to a connection that reliably meets or exceeds symmetrical 100 Mbps download and upload speeds, lack of

affordable access to broadband service, or lack of reliable broadband service. Recipients are encouraged to prioritize projects that are designed to provide service to locations not currently served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed, as many commenters indicated that those without such service constitute hard-to-reach areas in need of subsidized broadband deployment.

Households and businesses with an identified need for additional broadband infrastructure investment do not have to be the only ones in the service area served by an eligible broadband infrastructure project. Indeed, serving these households and businesses may require a holistic approach that provides service to a wider area, for example, in order to make ongoing service of certain households or businesses within the service area economical.

Consistent with further guidance issued by Treasury,³³⁸ in determining areas for investment, recipients may choose to consider any available data, including but not limited to documentation of existing broadband internet service performance, federal and/or state collected broadband data, user speed test results, interviews with community members and business owners, reports from community organizations, and any other information they deem relevant.

In evaluating such data, recipients may take into account a variety of factors, including whether users actually receive internet service at or above the speed thresholds at all hours of the day, whether factors other than speed such as latency, jitter, or deterioration of the existing connections make their user experience unreliable, and whether the existing service is being delivered by legacy technologies, such as copper telephone lines (typically using Digital Subscriber Line technology) or early versions of cable system technology (DOCSIS 2.0 or earlier),³³⁹ and other factors related to

³³⁸ See FAQ 6.11. Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRFAQ.pdf>.

³³⁹ Legacy technologies such as copper telephone lines (typically using Digital Subscriber Line technology) and early versions of cable system technology (DOCSIS 2.0 or earlier) typically lag on speeds, latency, and other factors, as compared to more modern technologies like fiber-optic. See, e.g., https://www.fcc.gov/sites/default/files/tech_transitions_network_upgrades_that_may_affect_your_service.pdf (comparing copper to fiber and noting that copper wire networks have “limited speeds,” are “susceptible to signal interference/loss,” and have a “relatively short life”); <https://>

Continued

the services to be provided by the project. In addition, recipients may consider the actual experience of current broadband customers when making their determinations; whether there is a provider serving the area that advertises or otherwise claims to offer broadband at a given speed is not dispositive.

Build-To Speed Standards

The interim final rule provided that a recipient may use funds to make investments in broadband infrastructure that is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds. In cases where it is not practicable, because of the excessive cost of the project or the geography or topography of the area to be served by the project, eligible projects may be designed to reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, so long as it is scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed. Relatedly, Treasury in the **SUPPLEMENTARY INFORMATION** to the interim final rule encouraged recipients to prioritize investments in fiber-optic infrastructure wherever feasible and to prioritize projects that achieve last-mile connections.

Public Comment: Many commenters discussed the advantages of setting minimum symmetrical download and upload speeds of reliable 100 Mbps as the speed threshold for new projects. Some commenters indicated support for the interim final rule's standard as it takes into account growing demands on internet use resulting from pandemic broadband usage and suggested that such a standard will help to ensure that networks built with SLFRF funds remain valuable for years to come, even as demands continue to accelerate, particularly on upload speeds. Some also indicated that the interim final rule standard has the effect of prioritizing the use of fiber-optic infrastructure to deliver such speeds, which some noted was a "gold standard" future-proof technology, although some commenters noted that other technologies like fixed wireless have been shown to deliver such speeds in certain circumstances.

Other commenters suggested that 100 Mbps symmetrical speeds were unnecessary given current broadband

usage needs and that such high standards may have the potential to slow down expansion to unserved or underserved rural areas. Some argued that setting this symmetrical threshold may limit the type of technologies that can be used, thereby decreasing competition and limiting flexibility to recipients whose communities might be better served by technologies such as wireless solutions or inexpensive gap networks. Commenters suggested alternate minimum speeds, ranging from 25/3 Mbps (which some argued best balances reaching all communities and maximizing the impact of federal funds) to 100/20 Mbps (which some argued best serves the typical broadband usage patterns of households and businesses, including new pandemic-driven needs). A few commenters suggested a higher minimum speed, such as gigabit speeds, advocating that such speeds were necessary for a network to last at least a decade.

Many commenters supported the interim final rule's lower speed standards for projects where it is impracticable to meet minimum reliable speeds of 100 Mbps symmetrical, as it provides flexibility for recipients to invest in hard-to-reach areas, such as those in mountainous regions. A few commenters indicated that Treasury should more clearly define the characteristics of a location eligible for this exception. Some indicated that the minimum standard for all new projects should be 100 Mbps symmetrical. In contrast, others argued that scalability to 100 Mbps symmetrical should not be a requirement to meet today's demands, particularly in hard-to-reach areas.

Some commenters requested that Treasury clarify eligibility for middle-mile projects as these projects potentially provide connectivity to far-reaching areas, while other commenters suggested that last-mile projects generally require more capital investment and are therefore most in need of government support.

Treasury Response: The final rule maintains the interim final rule's requirement that eligible projects be designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds, with the interim final rule's exception for projects where it is impracticable to build to such speeds due to excessive cost, geography, or topography of the area to be served by the project. Given the build time associated with broadband infrastructure projects, these standards will enable SLFRF funds to fund lasting infrastructure that will be able to accommodate increased network demand once the network is

complete,³⁴⁰ while providing flexibility for certain locations to meet lower speed standards where 100 Mbps symmetrical speeds are impracticable.

To illustrate the accelerating need for higher upload speeds, by one measure, mean upload speeds as of October 2021 increased to 75.21 Mbps as compared to 62.11 Mbps a year earlier.³⁴¹ Jurisdictions are increasingly responding to the growing demands of their communities for high speeds; for example, Illinois requires 100 Mbps symmetrical service as the construction standard for their state broadband grant programs. The 100 Mbps symmetrical standard accounts for increased pandemic internet usage and provides adequate upload speeds for individuals and businesses to accommodate interactive applications such as virtual learning and videoconferencing, while also helping ensure that funding is responsibly used to provide a true and lasting benefit for years to come. Treasury continues to encourage recipients to prioritize investments in fiber-optic infrastructure wherever feasible, as such advanced technology enables the next generation of application solutions for all communities and is capable of delivering superior, reliable performance and is generally most efficiently scalable to meet future needs.³⁴² In designing these projects, recipients should ensure that the broadband infrastructure provides "reliable" service at required speeds and are not required to rely on providers' advertised speeds in their assessments.

Consistent with further guidance issued by Treasury,³⁴³ while recipients are permitted to make investments in "middle-mile" connections that otherwise satisfy the requirements of the final rule, Treasury continues to encourage recipients to focus on

³⁴⁰ Using the Federal Communications Commission (FCC) Broadband Speed Guide, a household with two telecommuters and two to three remote learners today is estimated to need 100 Mbps download to work simultaneously. See Federal Communications Commission, Broadband Speed Guide, available at <https://www.fcc.gov/consumers/guides/broadband-speed-guide> (last visited October 28, 2021).

³⁴¹ United States' Mobile and Broadband Internet Speeds—Speedtest Global Index, available at <https://www.speedtest.net/global-index/united-states#fixed>.

³⁴² Bennett Cyphers, The Case for Fiber to the Home, Today: Why Fiber is a Superior Medium for 21st Century Broadband, Electronic Frontier Foundation (October 16, 2019), <https://www.eff.org/wp/case-fiber-home-today-why-fiber-superior-medium-21st-century-broadband>.

³⁴³ See FAQ 6.10, Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

data.fcc.gov/download/measuring-broadband-america/2020/2020-Fixed-Measuring-Broadband-America-Report.pdf (comparing fiber with DSL and cable technologies on a number of dimensions); <https://www.eff.org/wp/case-fiber-home-today-why-fiber-superior-medium-21st-century-broadband> (providing a technical background comparing fiber technology to other legacy technologies).

projects that will achieve last-mile connections—whether by focusing directly on funding last-mile projects or by ensuring that funded middle-mile projects have commitments in place to support new and/or improved last-mile service.

Affordability

The interim final rule encouraged recipients to consider ways to integrate affordability options into their program design but did not require recipients to take particular actions. The interim final rule also provided that assisting households with internet access and digital literacy is an eligible use of SLFRF funds under sections 602(c)(1)(A) and 603(c)(1)(A) to respond to the negative economic impacts of COVID-19.

Public Comment: Many commenters suggested that Treasury provide recipients with a broader set of tools to tackle what the commenters characterized as an affordability crisis in the broadband sector. As noted above, some commenters proposed that Treasury consider affordability when determining whether an area is unserved or underserved by broadband. Some commenters indicated that the final rule should allow for the construction of broadband networks in low-income neighborhoods including low-cost or no-cost gap networks, even in areas with existing service at the speeds required under the interim final rule. Other commenters voiced support for direct subsidies to low-income communities to afford broadband service, which would provide additional incentives for providers to serve these communities.

Treasury Response: In response to many commenters that highlighted the importance of affordability in providing meaningful access to necessary broadband infrastructure, the final rule provides additional requirements to address the affordability needs of low-income consumers in accessing broadband networks funded by SLFRF. Recipients must require the service provider for a completed broadband infrastructure investment project that provides service to households to:

- Participate in the Federal Communications Commission's (FCC) Affordable Connectivity Program (ACP); or
- Otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP.

Recipients must require providers to participate in or provide access to these programs through the life of the ACP. This requirement will no longer apply once the SLFRF-funded broadband infrastructure is no longer in use.

Furthermore, Treasury also recognizes the importance of affordable broadband access for all consumers beyond those that are low income. As part of their project selection process, recipients are encouraged to consult with the community on the general affordability needs of the target markets in the proposed service area. Additionally, recipients are encouraged to require that services provided by a broadband infrastructure project include at least one low-cost option offered without data usage caps at speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning. Treasury will require recipients to report speed, pricing, and any data allowance information as part of their mandatory reporting to Treasury.

Further, Treasury is clarifying that, as a response to the public health and negative economic impacts of the pandemic, recipients may provide households and communities impacted by the pandemic with subsidies to help pay for internet service, digital literacy programs, broadband adoption programs, and device programs that provide discounted or no-cost devices for low-income households to access the internet. For further discussion of this eligible use category, see the section internet Assistance in Assistance to Households in Public Health and Negative Economic Impacts.

Public Networks

The interim final rule encouraged recipients to prioritize support for local networks owned, operated, or affiliated with local governments, nonprofits, and cooperatives.

Public Comment: Many commenters voiced their support for Treasury's encouragement that recipients work with governmental or community entities to establish local networks, arguing that they have been shown to effectively provide broadband access to areas that would otherwise be left with unaffordable or insufficient service. These commenters suggested that, since these entities are less driven by financial returns to investment than private providers, in some circumstances they may be able to provide robust service at a lower price as compared to private providers, along with potentially increasing local competition in a service area.

Other commenters argued against Treasury's encouragement, remarking that private businesses have a robust track record of serving hard-to-reach customers. These commenters argued that commercial providers have greater technical and operational expertise in deploying and operating broadband networks and may be able to construct broadband networks with greater efficiency. Additionally, some commenters argued that providing what they considered an unfair competitive advantage for government- or community-owned or operated networks may hurt consumers over time.

Treasury Response: The final rule maintains the interim final rule's encouragement for recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and cooperatives, given that these networks have less pressure to generate profits and a commitment to serve entire communities.³⁴⁴ This encouragement provides flexibility for recipients to select providers that best fit their needs, while noting the critical role that networks owned, operated, or affiliated with local governments and community organizations can play in providing sufficient coverage, affordable access, or increased competition in the broadband sector.

Duplication of Efforts and Resources

Public Comment: Some commenters raised concerns that Treasury's encouragement in the interim final rule that recipients avoid funding projects in locations with an existing agreement to provide service that reliably delivers 100/20 Mbps by December 31, 2024 was too restrictive. Commenters noted that many plans do not always lead to a successful and complete deployment, as issues may arise that prevent such infrastructure from deploying on time or at all, and that several existing federal grants were designed and awarded before the onset of the COVID-19 pandemic and do not meet the critical broadband needs highlighted by the pandemic. Other commenters argued that Treasury's encouragement to avoid duplication of resources should be strengthened, as investing in areas with existing agreements would be an inefficient duplication of efforts.

Treasury Response: Given the final rule's revised requirements on eligible areas for investment, this

³⁴⁴ The Executive Office of the President, Community-Based Broadband Solutions (January 2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/community-based_broadband_report_by_executive_office_of_the_president.pdf.

Supplementary Information to the final rule also modifies the interim final rule's requirements around duplication of resources. Since recipients must ensure that the objective of the broadband projects is to serve locations with an identified need for additional broadband investment, the final rule provides that, to the extent recipients are considering deploying broadband to locations where there are existing enforceable federal or state funding commitments for reliable service at speeds of at least 100 Mbps download speed and 20 Mbps upload speed, recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investment that is not met by existing federal or state funding commitments. Recipients must also ensure that SLFRF funds will not be used for costs that will be reimbursed by the other federal or state funding streams.

Cybersecurity

Public Comment: Several commenters expressed concern about the cybersecurity of new broadband projects funded with SLFRF funds and urged Treasury to prohibit recipients from utilizing SLFRF funds to procure equipment from certain providers from the People's Republic of China that may pose a national security risk. These commenters pointed out that the 2019 National Defense Authorization Act (NDAA) and the FCC's Universal Service Fund have similar prohibitions. Further, several commenters requested that Treasury explicitly include cybersecurity costs as an eligible use for broadband infrastructure investment given the growing threat of cyber-attacks and cyber-intrusions into the nation's infrastructure.

Treasury Response: Treasury highlights that investments in broadband infrastructure must be carried out in ways that comply with applicable federal laws, including the 2019 NDAA. Among other requirements contained in 2 CFR part 200, 2 CFR 200.216 implements certain provisions of the NDAA and contains prohibitions on the use of federal financial assistance to procure or obtain certain telecommunications and video surveillance services or equipment provided or produced by designated entities, including certain entities owned or controlled by the People's Republic of China. In addition, 2 CFR 200.471 provides that certain telecommunications and video surveillance costs associated with 2 CFR 200.216 are unallowable.

Further, the final rule allows for modernization of cybersecurity for existing and new broadband infrastructure as an eligible use under sections 602(c)(1)(D) and 603(c)(1)(D) as such investments are necessary for the reliability and resiliency of broadband infrastructure.³⁴⁵ Recipients may provide necessary investments in cybersecurity, including modernization of hardware and software, for existing and new broadband infrastructure regardless of their speed delivery standards. The final rule maintains the interim final rule's provision that allows for broader modernization of cybersecurity, including hardware, software, and protection of critical infrastructure as an eligible provision of government services, to the extent of revenue loss due to the pandemic, under sections 602(c)(1)(C) and 603(c)(1)(C).

Use of Funds To Meet Non-Federal Match Under the Infrastructure Investment and Jobs Act

The Infrastructure Investment and Jobs Act specifies that, except as otherwise provided, an entity using funding under section 60102 of the law for broadband deployment "shall provide, or require a subgrantee to provide, a contribution, derived from non-Federal funds (or funds from a Federal regional commission or authority) . . . of not less than 25 percent of project costs."³⁴⁶ It further states that the matching contribution may include funds provided to an eligible entity or subgrantee under the American Rescue Plan Act for the purpose of deployment of broadband service, which includes funds provided under the SLFRF program.

SLFRF and the program established under section 60102 of the Infrastructure Investment and Jobs Act are separate programs with separate requirements. While section 60102 allows states and other eligible entities to use SLFRF funds as the source of matching funds for broadband deployment, the requirements of the SLFRF program still apply. As such, recipients that use SLFRF funds to meet the section 60102 matching requirement will continue to be subject to the requirements of the SLFRF program.

³⁴⁵ For more on the importance of cybersecurity to the reliability and resiliency of broadband networks, see: Federal Communications Commission, <https://docs.fcc.gov/public/attachments/FCC-10-63A1.doc>; Brookings Institute, Protecting the Cybersecurity of America's Networks (February 11, 2021), <https://www.brookings.edu/blog/techtank/2021/02/11/protecting-the-cybersecurity-of-americas-networks/>.

³⁴⁶ See Infrastructure Investment and Jobs Act, Public Law 117–58 (2021).

III. Restrictions on Use

While recipients have considerable flexibility to use funds to address the diverse needs of their communities, some restrictions on use of funds apply. The ARPA includes two statutory provisions that further define the boundaries of the statute's eligible uses. First, section 602(c)(2)(A) of the Social Security Act provides that states and territories may not "use the funds . . . to either directly or indirectly offset a reduction in . . . net tax revenue . . . resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax . . . or delays the imposition of any tax or tax increase." Second, sections 602(c)(2)(B) and 603(c)(2) prohibit all recipients, except Tribal governments, from using funds for deposit into any pension fund. These restrictions support use of funds only for the congressionally permitted purposes described in the Eligible Uses section by providing a backstop against the use of funds for purposes outside of the eligible use categories provided for in the statute.

In addition to the restrictions on use of funds provided for in the ARPA statute, the interim final rule noted that several uses of funds would be ineligible under any eligible use category, including as a response to the public health and negative economic impacts of the pandemic or as a "government service" under the revenue loss eligible use category. Specifically, use of funds for debt service, to replenish financial reserves, or to satisfy an obligation arising from a judicial settlement or judgment were ineligible uses of funds under the eligible use categories for public health and negative economic impacts and revenue loss. These restrictions apply to all recipients.

Recipients should note that restrictions on use of funds for debt service, to replenish financial reserves, or to satisfy an obligation arising from a judicial settlement or judgment apply to all eligible use categories, not just the eligible use categories in which they were discussed in the interim final rule.

Recipients are also subject to other restrictions on use of funds in the ARPA, the Award Terms and Conditions, and other federal laws. As discussed further below, uses of funds may not conflict with the overall statutory purpose of the ARPA to reduce the spread of COVID-19. Per the Award Terms and Conditions, recipients must adopt and abide by policies to prevent conflicts of interest. Finally, recipients are reminded that other federal laws

also apply to uses of funds, including environmental and civil rights laws.

To enhance clarity, this **SUPPLEMENTARY INFORMATION** for the final rule consolidates these restrictions on use of funds into one section and makes clear that they apply to all eligible use categories and any use of funds under the program by recipients to whom each specific restriction applies.

This section discusses the aforementioned restrictions, public comments received, and Treasury's response to these comments. For clarity, Treasury has divided the following discussion into (A) statutory restrictions under the ARPA, which include (1) offsetting a reduction in net tax revenue, and (2) deposits into pension funds, and (B) other restrictions on use, which include (1) debt service and replenishing reserves, (2) settlements and judgments, and (3) general restrictions.

A. Ineligible Uses of Funds Under the ARPA Statute

1. Offset a Reduction in Net Tax Revenue

For states and territories (recipient governments³⁴⁷), section 602(c)(2)(A)—the offset provision—prohibits the use of SLFRF funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation³⁴⁸ during the covered period. If a state or territory uses SLFRF funds to offset a reduction in net tax revenue resulting from a change in law, regulation, or interpretation, the ARPA provides that the state or territory must repay to Treasury an amount equal to the lesser of (i) the amount of the applicable reduction attributable to the impermissible offset and (ii) the amount of SLFRF funds received by the state or territory. A state or territory that uses SLFRF funds to offset a reduction in net tax revenue does not forfeit its entire allocation of SLFRF funds (unless it misused the full allocation to offset a reduction in net tax revenue) or any non-SLFRF funding.

The interim final rule implements these conditions by establishing a framework for states and territories to determine the cost of changes in law, regulation, or interpretation that reduce tax revenue and to identify and value

the sources of funds that will offset—*i.e.*, cover the cost of—any reduction in net tax revenue resulting from such changes. The interim final rule recognizes three sources of funds that may offset a reduction in net tax revenue other than SLFRF funds: Organic revenue growth, increases in revenue due to policy changes (*e.g.*, an increase in a tax rate), and certain cuts in spending.

Specifically, the interim final rule establishes a step-by-step process for determining whether, and the extent to which, SLFRF funds have been used to offset a reduction in net tax revenue, based on information reported by the recipient government:

- First, each year, each recipient government will identify and value the changes in law, regulation, or interpretation that would result in a reduction in net tax revenue, as it would in the ordinary course of its budgeting process. The sum of these values in the year for which the government is reporting is the amount it needs to “pay for” with sources other than SLFRF funds (total value of revenue reducing changes).

- Second, the interim final rule recognizes that it may be difficult to predict how a change would affect net tax revenue in future years and, accordingly, provides that if the total value of the changes in the year for which the recipient government is reporting is below a de minimis level, as discussed below, the recipient government need not identify any sources of funding to pay for revenue reducing changes and will not be subject to recoupment.

- Third, a recipient government will consider the amount of actual tax revenue recorded in the year for which it is reporting. If the recipient government's actual tax revenue is greater than the amount of tax revenue received by the recipient for the fiscal year ending 2019, adjusted annually for inflation, the recipient government will not be considered to have violated the offset provision because there will not have been a reduction in net tax revenue.

- Fourth, if the recipient government's actual tax revenue is less than the amount of tax revenue received by the recipient government for the fiscal year ending 2019, adjusted annually for inflation, in the reporting year the recipient government will identify any sources of funds that have been used to permissibly offset the total value of covered tax changes other than SLFRF funds. These are:

- State or territory tax changes that would increase any source of general

fund revenue, such as a change that would increase a tax rate; and

- Spending cuts in areas not being replaced by SLFRF funds.

The recipient government will calculate the value of revenue reduction remaining after applying these sources of offsetting funding to the total value of revenue reducing changes—that is, how much of the tax change has not been paid for. The recipient government will then compare that value to the difference between the baseline and actual tax revenue. A recipient government will not be required to repay to Treasury an amount that is greater than the recipient government's actual tax revenue shortfall relative to the baseline (*i.e.*, fiscal year 2019 tax revenue adjusted for inflation). This “revenue reduction cap,” together with Step 3, ensures that recipient governments can use organic revenue growth to offset the cost of revenue reductions.

- Finally, if there are any amounts that could be subject to recoupment, Treasury will provide notice to the recipient government of such amounts along with an explanation of such amounts. This process is discussed in greater detail in section Remediation and Recoupment of this Supplementary Information.

Together, these steps allow Treasury to identify the amount of reduction in net tax revenue that both is attributable to covered changes and has been directly or indirectly offset with SLFRF funds.

Overview of Comments: Many commenters supported the framework established under the interim final rule. These commenters argued that the offset provision, and the interim final rule's implementation of the offset provision, was essential to ensuring SLFRF funds are used in a manner consistent with the statute's defined eligible uses and, in particular, to support the use of SLFRF funds to build public sector capacity. Several commenters argued that the framework should be made more restrictive; for example, some comments advocated that the offset provision be applied to local governments.

Other commenters argued that the offset provision and the interim final rule's implementation of the offset provision is too restrictive, with some asserting that the offset provision prohibits states from making changes to reduce taxes. Many of these commenters argued that the offset provision presents constitutional concerns. These commenters asserted that the offset provision is ambiguous and the restriction is unrelated to the purpose of the ARPA. These commenters also

³⁴⁷ In this sub-section, “recipient governments” refers only to states and territories. In other sections, “recipient governments” refers more broadly to eligible governments receiving funding from the SLFRF.

³⁴⁸ For brevity, this phrase is referred to as “changes in law, regulation, or interpretation” for the remainder of this **SUPPLEMENTARY INFORMATION**.

argued that the generous amount of SLFRF funds provided to those governments gave recipient governments little choice as to whether to accept the SLFRF funds and, as a result, the offset provision is coercive. In describing these concerns and arguments, several of these commenters referenced litigation regarding the offset provision.³⁴⁹ Many of these commenters also expressed concern regarding the interim final rule's implementation of the offset provision. Some of these commenters argued that Treasury lacked the authority to implement the provision, asserting that the significance of the provision required Congress to make an explicit delegation of rulemaking authority and provide clearer principles by which Treasury should implement the provision. Finally, one commenter argued that the offset provision should only apply if the recipient expressly and intentionally uses SLFRF funds to offset a reduction in revenue, arguing that the term "offset" implies a deliberate use SLFRF funds to "pay for" a tax cut.

As discussed in the interim final rule, the offset provision does not prevent a recipient government from enacting a broad variety of tax changes. Rather, the offset provision prevents a recipient government from using SLFRF funds to offset a revenue reduction resulting from a tax cut. A recipient government would only be considered to have used SLFRF funds to offset a reduction in net tax revenue resulting from changes in law, regulation, or interpretation if, and to the extent that, the recipient government could not identify sufficient funds from sources other than SLFRF funds to offset the reduction in net tax revenue. Only if sufficient funds from other sources cannot be identified to cover the full cost of the reduction in net tax revenue resulting from changes in law, regulation, or interpretation, will the remaining amount not covered by these sources be considered to have been offset by SLFRF funds, in contravention of the offset provision. Consistent with the statutory text, the approach taken in the interim final rule recognizes that, because money is fungible, even if SLFRF funds are not explicitly or directly used to cover the costs of changes that reduce net tax revenue, those funds may be used in a manner inconsistent with the statute by indirectly being used to substitute for the state's or territory's funds that

would otherwise have been needed to cover the costs of the reduction. As discussed below, the scope of changes in law, regulation, or interpretation is further limited to those that the recipient government voluntarily enacted during the covered period.

Congress has the authority under the Spending Clause in Article I, section 8 of the Constitution to specify the permissible and impermissible uses of federal grants. The Supreme Court has repeatedly "upheld Congress's authority to condition the receipt of funds on the States' complying with restrictions on the use of those funds, because that is the means by which Congress ensures that the funds are spent according to its view of the 'general Welfare.'" ³⁵⁰ "The power to keep a watchful eye on expenditures . . . is bound up with congressional authority to spend in the first place." ³⁵¹ Assertions that the amount of SLFRF funds are sufficiently large to be coercive are inconsistent with the Supreme Court's reasoning in *NFIB*, which distinguished between conditions placed on new federal funds and conditions placed on existing federal funds and not based on the size of funds.³⁵² Further, the conditions placed on the use of SLFRF funds under the ARPA—both the eligible uses and additional limitations on deposits into pension funds and the offset provision—were well known to recipient governments prior to recipient governments requesting to receive SLFRF funds. Finally, the ARPA provides Treasury with the express authority "to issue such regulations as may be necessary or appropriate to carry out" section 602, which includes the offset provision.

A number of commenters expressed concern regarding the burden associated with complying with the offset provision and the interim final rule. Similarly, other commenters argued that the framework provided in the interim final rule complicated implementation

of the offset provision. Treasury took several steps to minimize burden for recipient governments in the interim final rule. For example, the interim final rule incorporates the types of information and modeling already used by states and territories in their own fiscal and budgeting processes. By incorporating existing budgeting processes and capabilities, states and territories will be able to assess and evaluate the relationship of tax and budget decisions to uses of SLFRF funds based on information they likely have or can readily obtain. This approach ensures that recipient governments have the information they need to understand the implications of their decisions regarding the use of SLFRF funds—and, in particular, whether they are using the funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or interpretation, making the funds potentially subject to recoupment. To further reduce burden, Treasury is considering whether the scope of reporting requirements can be further tailored.

As described in greater detail below, Treasury is finalizing its implementation of the offset provision largely without change. This approach is consistent with the text of the ARPA. The remainder of this section discusses and responds to comments on specific aspects of the framework.

1. Definitions

Covered change. The offset provision is triggered by a reduction in net tax revenue resulting from "a change in law, regulation, or administrative interpretation." Consistent with this language, the interim final rule defines a "covered change" to include any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period. Thus, the offset provision applies only to actions for which the change in policy occurs during the covered period; it excludes regulations or other actions that implement a change or law substantively enacted prior to March 3, 2021. For example, covered changes do not include a change in rate that is triggered automatically and based on statutory or regulatory criteria in effect prior to the covered period.³⁵³ Changed

³⁴⁹ See, e.g., *State of West Virginia v. U.S. Department of the Treasury*, No. 7:21-cv-00465-LSC, 2021 WL 2952863 (N.D. Ala. Jul. 14, 2021); *State of Ohio v. Yellen*, No. 1:21-cv-181, 2021 WL 2712220 (S.D. Ohio Jul. 1, 2021).

³⁵⁰ *National Fed'n of Indep. Bus. v. Sebelius (NFIB)*, 567 U.S. 519, 580 (2012) (plurality opinion); see, e.g., *South Dakota v. Dole*, 483 U.S. 203, 206–208 (1987); *Gruver v. Louisiana Bd. of Supervisors for Louisiana State Univ. Agric. & Mech. Coll.*, 959 F.3d 178, 183 (5th Cir.), cert. denied, 141 S. Ct. 901 (2020). For additional discussion of these issues, see, e.g., *Brief Reply for Appellants, Ohio v. Yellen*, No. 21–3787 (6th Cir. Oct. 26, 2021).

³⁵¹ *Sabri v. United States*, 541 U.S. 600, 608 (2004).

³⁵² The new federal funds offered by the Affordable Care Act totaled \$100 billion per year. Even the dissenting Justices agreed that "Congress could have made just the new funding provided under the ACA contingent on acceptance of the terms of the Medicaid Expansion," although they disagreed with the majority about whether that funding condition was severable. *NFIB* at 687–688 (joint dissent).

³⁵³ For example, a state law that sets its earned income tax credit (EITC) at a fixed percentage of the federal EITC will see its EITC payments automatically increase—and thus its tax revenue reduced—because of the federal government's expansion of the EITC in the ARPA. See, e.g., Tax

administrative interpretations would not include corrections to replace prior inaccurate interpretations; such corrections would instead be treated as changes implementing legislation enacted or regulations issued prior to the covered period. The operative change in those circumstances is the underlying legislation or regulation that occurred prior to the covered period. Moreover, only changes within the control of the state or territory are considered covered changes. Finally, covered changes do not include changes that simply conform with recent changes in federal law (including those to conform to recent changes in federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program).

Scope of Covered Changes

Public Comment: Several commenters argued that the definition of covered change, and thus the limitations of the offset provision, should apply to subsidies for businesses. Similarly, other commenters requested that Treasury clarify that the offset provision applies to tax abatements and reductions in corporate taxes, even if administered by a sub-unit of the recipient government. Citing to empirical research and other evidence, these commenters argued that these types of economic development policies were poorly administered, reduced public sector capacity, and were ineffective at achieving stated objectives of creating jobs, increasing income, and increasing economic growth. On the other hand, some commenters argued that, because subsidies were economically similar to some tax cuts, neither action should be considered a covered change and subject to the offset provision. Finally, other commenters requested that Treasury clarify whether covered changes must be broad-based policies or whether administrative decisions applicable to individuals would be considered covered changes.

Treasury Response: Section 602(c)(2)(A) applies to any change that “reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise or delays the imposition of any tax or tax increase.” Accordingly, and consistent with this statutory text, the final rule applies to covered changes that reduce any tax, which can include tax abatements, but does not apply to loans,

grants, or other types of interventions that do not reduce tax revenue.³⁵⁴ In addition, by including changes in regulation or administrative interpretation, in addition to changes in law, within the scope of the offset provision, the ARPA recognizes that a recipient government may make a covered change through its legislature or may delegate the authority to make a covered change including, but not limited to, to a sub-unit of government. Treasury has revised the definition of “covered change” in the final rule using the statutory language above to make clear that the offset provision only applies to such changes in law, regulation, or administrative interpretation. With respect to the question of whether covered changes could include administrative decisions applicable to individuals, as discussed above, a covered change includes a change in law, regulation, or administrative interpretation that reduces any tax. Such changes may apply to one or more individuals or entities, provided that—consistent with the statutory text—they result from a change in law, regulation, or administrative interpretation.

Prior Enactment and Phase-In

Public Comment: A number of commenters expressed concern, or requested clarification, regarding changes that were enacted prior to the covered period but take effect or phase-in during the covered period. Several commenters argued that the definition of covered change should include changes that were made prior to the covered period but that phase-in during the covered period.

Treasury Response: As discussed above, the offset provision is triggered by a reduction in net tax revenue resulting from “a change in law, regulation, or administrative interpretation” made during the covered period. Consistent with the statutory text, “covered change” is defined to include any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period.

Conformity

Public Comment: A number of commenters requested clarification on the scope of covered changes. Specifically, several commenters

requested clarification on the scope of changes that would be considered as conforming to recent changes in federal law. These commenters requested that Treasury clarify whether actions to selectively conform with federal law would be considered covered changes and requested clarification regarding the extent to which changes would be considered “recent.” For example, these commenters requested clarification regarding conformance with the Global Intangible Low-Taxed Income provision of the 2017 Tax Cuts and Jobs Act. Some commenters further argued that changes that selectively conform or decouple from the Internal Revenue Code should be included within scope of covered changes and thus subject to the offset provision.

Treasury Response: The final rule maintains the treatment of changes that simply conform with recent changes in federal law, such as those to conform to recent changes in federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program³⁵⁵ and including other changes over the past several years. Regardless of the particular method of conformity and the effect on net tax revenue, Treasury views such changes as permissible under the offset provision.

Accordingly, and for the reasons discussed above, Treasury is maintaining the definition of covered change without change.

Tax revenue. The interim final rule’s definition of “tax revenue” is based on the Census Bureau’s definition of taxes, used for its Annual Survey of State Government Finances.³⁵⁶ It provides a consistent, well-established definition with which states and territories will be familiar and is consistent with the approach taken in section Revenue Loss of this **SUPPLEMENTARY INFORMATION** describing the implementation of sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act regarding revenue loss. A number of commenters expressed concern and requested clarification regarding the definition of “tax revenue.” These comments and responses are discussed in section Revenue Loss of this Supplemental Information and, for the reasons discussed above, Treasury is finalizing the definition of tax revenue without

Policy Center, How do state earned income tax credits work?, <https://www.taxpolicycenter.org/briefing-book/how-do-state-earned-income-tax-credits-work/> (last visited May 9, 2021).

³⁵⁴ Assistance must be consistent with eligible uses of SLFRF funds. See section Eligible Uses of this **SUPPLEMENTARY INFORMATION**.

³⁵⁵ See Statement on State Fiscal Recovery Funds and Tax Conformity, April 7, 2021, available at <https://home.treasury.gov/news/press-releases/jy0113>.

³⁵⁶ U.S. Census Bureau, Annual Survey of State and Local Government Finances Glossary, <https://www.census.gov/programs-surveys/state/about/glossary.html> (last visited Apr. 30, 2021).

change and maintaining a consistent definition of “tax revenue.”³⁵⁷

Baseline. For purposes of measuring a reduction in net tax revenue, the interim final rule measures actual changes in tax revenue relative to a revenue baseline (baseline). The baseline is calculated as fiscal year 2019 (FY 2019) tax revenue indexed for inflation in each year of the covered period, with inflation calculated using the Bureau of Economic Analysis’s Implicit Price Deflator.³⁵⁸

Public Comment: Some commenters expressed concern regarding the choice of FY 2019 as the baseline, arguing that the choice lacked justification and would make the offset provision more restrictive as applied to recipient governments that experienced a decline in revenue independent of making any covered changes.

Treasury Response: Measuring a “reduction” in net tax revenue requires identification of a baseline. In other words, a “reduction” can be assessed only by comparing two amounts. The Act defines “covered period” to begin on March 3, 2021, and thus the baseline year must end prior to March 3, 2021. As discussed in the interim final rule, FY 2019 is the last full fiscal year prior to the COVID–19 public health emergency, and thus is consistent with the statutory definition and does not include the extraordinary effects of the pandemic that began in 2020. Further, as discussed above, the interim final rule recognizes three potential ways that a recipient government may offset or “pay for” a reduction in net tax revenue due to a covered change: Increases in taxes, decreases in spending, and organic revenue growth. U.S. gross domestic product rebounded to exceed its pre-pandemic level in 2021,³⁵⁹ suggesting that an FY 2019 pre-

pandemic baseline is a reasonable comparator for future revenue levels and provides recipients with flexibility to identify organic growth as a permissible offset. Finally, this baseline year is consistent with the approach directed by sections 602(c)(1)(C) and 603(c)(1)(C), which identify the “most recent full fiscal year of the [state, territory, or Tribal government] prior to the emergency” as the comparator for measuring revenue loss. For these reasons, Treasury is finalizing the definition of “baseline” without change.

The interim final rule includes several other definitions that are applicable to the implementation of the offset provision, such as the term “reporting year.”³⁶⁰ Commenters did not express concern regarding other definitions in the interim final rule.

2. Framework

The interim final rule provides a step-by-step framework, to be used in each reporting year, to determine whether a state or territory used SLFRF funds to offset a reduction in net tax revenue. Consistent with section 602(c)(2) and the interim final rule, the final rule applies to states and territories:

(1) *Covered changes that reduce tax revenue.* Under the interim final rule, a recipient government identifies and values covered changes that the recipient government predicts will have the effect of reducing tax revenue in a given reporting year, similar to the way it would in the ordinary course of its budgeting process. The interim final rule states that the value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government’s existing approach for measuring the effects of fiscal policies, and that measures these effects relative to a current law baseline. If the recipient would prefer, the covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s).³⁶¹ Further, estimation approaches may not use dynamic methodologies that incorporate the

projected effects of macroeconomic growth because macroeconomic growth is accounted for separately in the framework.

Estimation

Public Comment: A number of commenters expressed concern that estimating the value of covered changes required a number of assumptions and that the actual effects of covered changes on tax revenue would be difficult to predict. Several commenters expressed support for the interim final rule’s approach to dynamic scoring methodologies, and one commenter argued that the final rule should prohibit the use of prior cash balances in calculations of permissible tax cuts.

Treasury Response: Treasury recognizes that estimating the effects of covered changes requires assumptions and that many other factors influence the amount of tax revenue received. The interim final rule addresses these concerns in several ways. First, in general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities. In addition, by relying on scoring methodologies that do not incorporate projected effects of macroeconomic growth, the estimation of the value of covered changes relies on fewer assumptions and thus provide greater consistency among states and territories. Finally, as discussed below, the interim final rule includes a de minimis threshold, below which the sum of covered changes will be deemed not to have any revenue-reducing effects.

Timing of the Impact of Covered Changes

Public Comment: Several commenters expressed concern that recipient governments, to evade the offset provision, may backload the costs of certain covered changes outside of the covered period, and advocated that covered changes be instead evaluated as the net present value in the year that the covered change is enacted. These commenters argued that some tax cuts could have effects on tax revenue for many decades or could be structured to take effect after the end of the covered period.

Treasury Response: As discussed in section Timeline for Use of SLFRF Funds, SLFRF funds must be used to cover costs incurred prior to December 31, 2024. Accordingly, SLFRF funds

³⁵⁷ As discussed in section Revenue Loss of this Supplementary Information, for purposes of measuring revenue lost due to the pandemic under sections 602(c)(1)(C) and 603(c)(1)(C), recipients must adjust the amount of revenue lost to reflect changes that resulted from a tax increase or decrease. These adjustments do not apply to or affect the definition of tax revenue.

³⁵⁸ U.S. Department of Commerce, Bureau of Economic Analysis, GDP Price Deflator, <https://www.bea.gov/data/prices-inflation/gdp-price-deflator> (last visited Apr. 30, 2021). The FY 2019 baseline revenue is adjusted annually for inflation to allow for direct comparison of actual tax revenue in each year (reported in nominal terms) to baseline revenue in common units of measurement; without inflation adjustment, each dollar of reported actual tax revenue would be worth less than each dollar of baseline revenue expressed in 2019 terms.

³⁵⁹ Economy Statement by Catherine Wolfram, Acting Assistant Secretary for Economy Policy, for the Treasury Borrowing Advisory Committee November 1, 2021 (Nov. 1, 2021), available at <https://home.treasury.gov/news/press-releases/jy0453>.

³⁶⁰ One commenter requested clarification that references to fiscal year refer to the fiscal year of the recipient. “Reporting year” is defined in the interim final rule and final rule to mean “a single year or partial year within the covered period, aligned to the current fiscal year of the State or Territory during the covered period.”

³⁶¹ By permitting recipient governments to use actual or estimated values, the interim final rule and final rule provide flexibility to recipients and thus minimizes burden.

generally would not be able to offset a reduction in net tax revenue occurring after December 31, 2024.

For these reasons, Treasury is maintaining this element of the interim final rule without change.

(2) *In excess of the de minimis.* Under the framework established in the interim final rule, after establishing that a covered change occurred, the recipient government next calculates the total value of all covered changes in the reporting year resulting in revenue reductions, identified in Step 1. If the total value of the revenue reductions resulting from these changes is below the de minimis level, the recipient government is deemed not to have any revenue-reducing changes for the purpose of determining the recognized net reduction. If the total is above the de minimis level, the recipient government must identify sources of in-year revenue to cover the full costs of changes that reduce tax revenue. Under the interim final rule, the de minimis level is calculated as 1 percent of the reporting year's baseline.

Public Comment: Many commenters supported the inclusion of the de minimis, noting that the de minimis protects recipients from penalty resulting from minor or incidental changes, minimizes administrative burden, and enhances predictability of the application of the offset provision. Some commenters expressed concern that the fixed threshold could result in cliff effects.

Treasury Response: A clear de minimis threshold supports recipient governments' compliance with the offset provision. A de minimis level recognizes the inherent challenges and uncertainties that recipient governments face, and thus allows relatively small reductions in tax revenue without consequence. In other words, states and territories may make many small changes to alter the composition of their tax revenues or implement other policies with marginal effects on tax revenues. They may also make changes based on projected revenue effects that turn out to differ from actual effects, unintentionally resulting in minor revenue changes that are not fairly described as "resulting from" tax law changes. However, a de minimis does not automatically result in consequences under the offset provision, since a recipient government could demonstrate that other, non-SLFRF funds to offset a net reduction in tax revenue. Accordingly, any cliff effects associated with a clear de minimis threshold are mitigated by other aspects of the framework.

Public Comment: Commenters expressed a range of views regarding the amount of the de minimis. Some commenters argued that the de minimis was too generous, noting that the choice of 1 percent could, in some cases, permit reductions in net tax revenue of hundreds of millions of dollars. These commenters advocated that the de minimis be lowered (e.g., to 25 basis points) or be tied to a fixed amount. Other commenters argued that the choice of de minimis was not well supported by the statute, advocated for a larger de minimis and suggested that the amount be tied to the recipient government's total expenditures in the prior fiscal year.

Treasury Response: Treasury adopted a de minimis threshold as an administrative accommodation for the reasons discussed above. As discussed in the interim final rule, Treasury determined that the 1 percent de minimis level reflects the historical reductions in revenue due to minor changes in state fiscal policies and was determined by assessing the historical effects of state-level tax policy changes in state EITCs implemented to effect policy goals other than reducing net tax revenues.³⁶²

For these reasons, Treasury is adopting the 1 percent de minimis without change.

(3) *Safe harbor.* Next, under the interim final rule, if the revenue reduction caused by the covered changes exceeds the 1 percent de minimis threshold, the recipient government compares the reporting year's actual tax revenue to the baseline. If actual tax revenue is greater than the baseline, Treasury will deem the recipient government not to have any recognized net reduction for the reporting year, and therefore to be in a safe harbor and outside the ambit of the offset provision. This approach is consistent with the ARPA, which contemplates recoupment of SLFRF funds only in the event that such funds are used to offset a reduction in net tax revenue. If net tax revenue has not been reduced, the offset provision does not apply. In the event that actual tax revenue is above the baseline, the organic revenue growth that has occurred, plus any other revenue-raising changes, by definition must have been enough to offset the in-year costs of any covered changes. One commenter argued that the offset for organic growth be adjusted to reflect population growth. To minimize administrative burden, and

for the reasons discussed above, Treasury is maintaining the measurement of actual tax revenue without adjustment for population growth.

(4) *Consideration of other sources of funding.* The recipient government will then identify and calculate the total value of changes that could pay for revenue reduction due to covered changes and sum these items. This amount can be used to pay for up to the total value of revenue-reducing changes in the reporting year. These changes consist of two categories:

(a) *Tax and other increases in revenue.* The recipient government must identify and consider covered changes in policy that the recipient government predicts will have the effect of increasing general revenue in a given reporting year. Recipient governments should use the same approach to identify and value covered changes that increase tax revenue as applied to covered changes that reduce tax revenue. For the reasons discussed above, Treasury is adopting these aspects of identifying and valuing covered changes without change.

(b) *Covered spending cuts.* A recipient government also may cut spending in certain areas to pay for covered changes that reduce tax revenue, up to the amount of the recipient government's net reduction in total spending as described below. These changes must be reductions in government outlays in an area where the recipient government has not spent SLFRF funds. To better align with existing reporting and accounting, the interim final rule considers the department, agency, or authority from which spending has been cut and whether the recipient government has spent SLFRF funds on that same department, agency, or authority. If the recipient government has not spent SLFRF funds in a department, agency, or authority, the full amount of the reduction in spending counts as a covered spending cut, up to the recipient government's net reduction in total spending. If they have spent SLFRF funds in such department, agency, or authority, the SLFRF funds generally would be deemed to have replaced the amount of spending cut and only reductions in spending above the amount of SLFRF funds spent on the department, agency, or authority would count. This approach—allowing only spending reductions in areas where the recipient government has not spent SLFRF funds to be used as an offset for a reduction in net tax revenue—aims to prevent recipient governments from using SLFRF funds to supplant state or territory funding in the eligible use

³⁶² Data provided by the Urban-Brookings Tax Policy Center for state-level EITC changes for 2004–2017.

areas, and then using those state or territory funds to offset tax cuts. Such an approach helps ensure that SLFRF funds are not used to “indirectly” offset revenue reductions due to covered changes.

Department, Agency, or Authority

Public Comment: Several commenters supported the interim final rule’s approach to considering spending cuts at the department, agency, or authority level, on the basis that this approach is supported by the statutory language prohibiting SLFRF funds from being used to “directly or indirectly” offset a reduction in net tax revenue. On the other hand, some commenters argued that the methodology for identifying offsetting spending cuts was too restrictive; specifically, that measurement at the agency or department-level may not adequately account for the size and various programs that could occur in one agency or department. One commenter argued that recipient governments should instead be permitted to consider spending cuts on a more granular sub-unit of a department but noted that this additional flexibility would come at the cost of transparency and clarity.

Treasury Comment: Treasury recognizes that some recipients may vary in their budgeting processes, with some budgeting on a department level and others budgeting at more or less granular sub-units of government. Relying on spending at a department, agency, or authority level allows recipient governments to report how SLFRF funds have been spent using reporting units already incorporated into their budgeting process.

Spending Cuts Baseline

Under the interim final rule, to calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient government must first consider whether there has been a reduction in total net spending, excluding SLFRF funds (net reduction in total spending). This approach ensures that reported spending cuts actually create fiscal space, rather than simply offset other spending increases. A net reduction in total spending is measured as the difference between total spending in each reporting year, excluding SLFRF funds spent, relative to total spending for the recipient’s fiscal year ending in 2019, adjusted for inflation. Measuring reductions in spending relative to 2019 reflects the fact that the fiscal space created by a spending cut persists so long as spending remains below its original

level, even if it does not decline further, relative to the same amount of revenue.

Public Comment: Several commenters expressed concern regarding the measurement of spending cuts relative to the recipient’s FY 2019, for example arguing that the choice did not take into account increases in spending in 2020. As one commenter noted, the fiscal year 2020 required extraordinary intervention by recipient governments and the ongoing public health emergency continues to require extraordinary intervention.

Treasury Response: FY 2019 provides a reasonable and relatively generous baseline for considering spending because it is the last full fiscal year prior to the COVID–19 public health emergency and governments’ extraordinary efforts to address the impact of the pandemic. This approach also aligns with the FY 2019 baseline for measuring revenue loss. Measuring spending cuts from year to year would, by contrast, not recognize any available funds to offset revenue reductions unless spending continued to decline, failing to reflect the actual availability of funds created by a persistent change and limiting the discretion of states and territories.

For the reasons discussed above, Treasury is adopting the approach taken in the interim final rule without change.

(5) *Identification of amounts subject to recoupment.* If a recipient government (i) reports covered changes that reduce tax revenue (Step 1); (ii) to a degree greater than the de minimis (Step 2); (iii) has experienced a reduction in net tax revenue (Step 3); and (iv) lacks sufficient revenue from other, permissible sources to pay for the entirety of the reduction (Step 4), then the recipient government will be considered to have used SLFRF funds to offset a reduction in net tax revenue, up to the amount that revenue has actually declined. That is, the maximum value of the reduction revenue due to covered changes that a recipient government must cover is capped at the difference between the baseline and actual tax revenue.³⁶³ In the event that the baseline is above actual tax revenue but the difference between them is less than the sum of revenue reducing changes that are not paid for with other, permissible sources, organic revenue growth has implicitly offset a portion of the reduction. The revenue reduction cap implements this approach for

permitting organic revenue growth to cover the cost of tax cuts.

Finally, a recipient government may request reconsideration of any amounts identified in a notice from Treasury as subject to recoupment under this framework. Comments and responses to the recoupment process are discussed in section Remediation and Recoupment of this Supplemental Information.

3. Reporting

To facilitate the implementation of the framework above, and in addition to reporting required on eligible uses, recipient governments are required to report certain information. The interim final rule indicated that Treasury would provide additional guidance at a later date and that, on an annual basis, it expected each recipient government would be required to provide the following information:

- Actual net tax revenue for the reporting year;
- Each revenue-reducing change made to date during the covered period and the in-year value of each change;
- Each revenue-raising change made to date during the covered period and the in-year value of each change; and
- Each covered spending cut made to date during the covered period, the in-year value of each cut, and documentation demonstrating that each spending cut is covered as prescribed under the interim final rule.

Since the adoption of the interim final rule, Treasury has provided guidance on reporting regarding eligible uses and has required recipient governments to indicate whether they have made covered changes and the value of such changes.³⁶⁴

Reporting Burden

Public Comment: Some commenters argued that the framework for identifying and reporting impermissible offsets was burdensome and that the burdens should be accounted for under Executive Order 13132 (Federalism, August 4, 1999).

Treasury Response: Taking into consideration comments received regarding burden, Treasury is considering a tiered approach to reporting on the offset provision. Specifically, under this approach, a recipient would only be required to report information to the extent needed to determine whether SLFRF funds had been used to offset a reduction in net tax revenue. For example, a recipient government would be required to report

³⁶³ This cap is applied in section 35.8(c) of the final rule, calculating the amount of funds used in violation of the tax offset provision.

³⁶⁴ See Reporting Guidance, Section C.11, available at <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>.

information regarding permissible offsets only if it had also reported covered changes that were in excess of the de minimis and had reported a net reduction in tax revenue. Treasury will provide additional guidance and instructions on the reporting requirements at a later date.

As discussed in section Regulatory Analyses of this Supplemental Information, Treasury maintains that the final rule does not have federalism implications within the meaning of Executive Order 13132 (Federalism, August 4, 1999). In the ARPA, Congress requires states and territories to repay the Secretary for amounts used in violation of the prohibition on using SLFRF funds to offset reductions in net tax revenue, and it authorizes the Secretary to issue regulations to carry out this limitation and other requirements of the statute. Section 6(b) of Executive Order 13132 contemplates that certain regulations will be required by statute, as is the case with the interim final rule and the final rule, in which case section 6(b)(2)(B)'s requirement to include a federalism summary impact statement in the Supplementary Information to the regulation does not apply. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected state, local, and Tribal government officials and associations in the process of developing the interim final rule.

Reporting Transparency

Public Comment: Several commenters argued that information supporting the net tax offset calculation should be publicly available. Some of these commenters requested that reporting be made available in a machine-readable format, and others advocated that recipient governments disclose this information on their local budget agency's website. These commenters argued that making information regarding tax changes publicly available would increase transparency and accountability. Further, several commenters suggested that Treasury provide a mechanism for citizens to register their concerns about particular tax actions.

Treasury Response: As discussed in other sections, reporting requirements promote transparency and accountability for the general public and constituents of recipient governments to understand how state, local, and Tribal governments have used SLFRF funds. Since the publication of the interim final rule, Treasury issued supplementary reporting guidance in the Compliance and Reporting Guidance

and in the User Guide: Treasury's Portal for Recipient Reporting (User Guide), which addresses the particular content and form of required reporting. Treasury will continue to issue updated guidance prior to each reporting period clarifying any modifications to requested report content and will continue to consider how reporting can best support transparency and accountability while minimizing recipient administrative burden. Further, as discussed in the section Remediation and Recoupment, Treasury may address potential violations of this final rule based on both information submitted from recipients, either through quarterly reports or self-reporting, and from other sources of information (e.g., information submitted from the public).

2. Deposit Into Pension Funds

Background: Subsection 602(c)(2)(B) of the Social Security Act provides that "[n]o State or territory may use funds made available under this section for deposit into any pension fund." Similarly, subsection 603(c)(2) of the Social Security Act provides that "[n]o metropolitan city, nonentitlement unit of local government, or county may use funds made available under this section for deposit into any pension fund."

For purposes of this restriction on pension deposits, the interim final rule defined deposit to mean "an extraordinary payment of an accrued, unfunded liability." The interim final rule also specified that a deposit does not include routine contributions made as part of a payroll obligation, such as the normal cost component of a pension contribution or the component that consists of amortization of unfunded liabilities calculated by reference to the employer's payroll costs. The interim final rule applied the restriction on pension deposits to all recipients.

Public Comment: Several commenters observed that the statutory restriction on deposits into pension funds does not apply to Tribal governments.

Treasury Response: In response, Treasury is clarifying in the final rule that the pension restriction does not apply to Tribal governments.

Public Comment: Treasury also received a comment expressing concern that the interim final rule permitted recipients to make a larger than usual pension contribution, so long as the timing of that contribution aligns with the historical timing of contributions.

Treasury Response: The interim final rule prohibited the use of SLFRF funds from the ARPA to make extraordinary payments, and the **SUPPLEMENTARY INFORMATION** to the interim final rule said that a payment would be an

extraordinary payment if it reduces a liability incurred prior to the start of the COVID-19 public health emergency and occurs outside the recipient's regular timing for making the payment. At the same time, however, as suggested by the comment Treasury received, a payment made at the regular time for pension contributions may very well be an extraordinary payment, for example, if it is larger than a regular payment would have been. Such a payment would be a restricted use.

Public Comment: Other commenters asked which pension contributions are permitted.

Treasury Response: To be an eligible use of SLFRF funds, a use must (1) be eligible under one of the eligible use categories and (2) not contravene any of the applicable restrictions on uses of funds. Some pension contributions may be eligible because they both fit within an eligible use category and do not contravene the restriction on deposits into pension funds (i.e., they are not an extraordinary payment of an accrued, unfunded liability). For example, payroll and covered benefits for public health and safety staff responding to COVID-19 are an eligible use of funds to respond to the public health and negative economic impacts of the pandemic; routine pension contributions as part of an employee's regular covered benefits are permissible under that eligible use category.

B. Other Restrictions on Use of Funds

1. Debt Service and Replenishing Financial Reserves

The **SUPPLEMENTARY INFORMATION** to the interim final rule provided that debt service is not an eligible use of funds either to respond to the public health emergency or its negative economic impacts or as a provision of government services to the extent of revenue loss.³⁶⁵ The interim final rule also provided that replenishing financial reserves (e.g., rainy day funds) is not an eligible use of funds either to respond to the public health emergency or its negative economic impacts or as a provision of

³⁶⁵ "[G]overnment services would not include interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or fees or issuance costs associated with the issuance of new debt. For the same reasons, government services would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, except if the judgment or settlement required the provision of government services." 86 FR 26796-97 (May 17, 2021).

government services to the extent of revenue loss.³⁶⁶

As explained in greater detail below, Treasury, in the final rule, has retained these restrictions and is clarifying that these restrictions on the use of SLFRF funds apply to all eligible use categories.

Public Comments

Several commenters suggested that debt service and reserve replenishment should qualify as the provision of a government service and be an eligible use of funds, up to the amount of revenue loss due to the pandemic. Many commenters indicated that they had been forced to borrow money or dip into reserve funds to continue providing government services during the public health emergency and that using SLFRF funds for resulting debt service or reserve replenishment costs should therefore be considered a government service.

Many comments from Tribal governments noted that their governments depend on revenue from Tribal enterprises to pay government debts and provide services. The comments suggest that it should be an eligible use of SLFRF to replace lost revenue from these enterprises that would typically be used to pay debt service costs. Other commenters argued that paying the interest or principal on debt should in some cases be considered provision of government services and an eligible use of funds as such expenditures facilitate the provision of government services.

Some commenters argued that debt costs or reserve drawdowns during the public health emergency constitute a negative economic impact to recipient governments, and thus debt service or reserve replenishment should be an eligible use to respond to that negative economic impact. For example, several commenters suggested that there should be a specific carve-out allowing the use of SLFRF funds for debt service on debt incurred for government services after January 27, 2020, the start of the public health emergency, or short-term debt incurred for this purpose. Others suggested that recipient governments should be able to service debt, up to the amount of debt incurred in direct response to the pandemic. These commenters generally reasoned that the cost of responding to the public health emergency and its negative economic impacts prior to APRA's passage

constitutes a negative economic impact of the pandemic.

Some commenters argued that the specific impacts of the pandemic on the travel, tourism, and hospitality sector had affected their ability to meet debt service costs. For example, some commenters explained that specific tax streams (e.g., hotel room taxes) or revenue sources (e.g., hospitality generally) are tied to specific debt instruments and that these revenue sources had declined during the public health emergency; commenters argued that this constitutes a negative economic impact that SLFRF funds should be permitted to address.

Finally, some commenters questioned why servicing debt incurred after March 3, 2021 for an otherwise eligible project (e.g., a broadband infrastructure project) would not be an eligible use of funds.

On the other hand, many commenters expressed support for the interim final rule's prohibition on use of funds for debt service and reserve replenishment. These commenters largely argued that SLFRF funds should be used to provide current services to communities in response to the public health emergency and that use of funds for debt service or reserve replenishment represented, respectively, payment for past costs or savings for potential future costs. In addition to the prohibition on debt service and reserve replenishment, some commenters suggested that the final rule should also prevent funds from being used for state UI trust fund replenishment or for paying off debt owed through UI trust funds. One commenter argued that Treasury should further restrict recipient governments, for example by preventing recipients from making cuts to an allowable budget item, filling the budget gap with SLFRF funds, and then using the savings from the initial cut for debt service or reserve replenishment.

Treasury Response

The final rule maintains the restriction on the use of funds for debt service or reserve replenishment for the reasons described below and clarifies that this restriction applies to all eligible use categories.

First, debt service and reserve replenishment costs do not constitute the provision of services to constituents. As noted in the interim final rule, financing expenses—such as issuance of debt or payment of debt service—do not provide services or aid to citizens. Similarly, contributions to rainy day funds and similar financial reserves constitute savings for future spending needs. As such, these expenses do not respond to the current and ongoing

public health and negative economic impacts of the pandemic, nor do they provide a government service.

Second, payments from the SLFRF are intended to be used prospectively (see section Timeline for Use of SLFRF Funds). The interim final rule provided that funds may be used for costs incurred beginning on March 3, 2021, which Treasury has maintained in the final rule. Use of funds for debt service on indebtedness issued prior to March 3, 2021 necessarily entails using funds for costs incurred during prior time periods, rather than the present response to the public health emergency and its negative economic impacts or to provide government services.

Third, SLFRF funds provide recipients with substantial latitude to use funds to support the diverse needs in their communities. With SLFRF resources available, recipients have less need to incur debt for otherwise-eligible SLFRF uses.

Finally, given the strong performance of overall revenues and low municipal bond yields, state and local governments generally do not face high levels of fiscal stress. Limits on debt service or replenishment of reserves would not have a substantial impact on recipients' ability to provide services. The ratio of state and local debt-to-GDP, which spiked briefly during the pandemic, has recovered to its pre-pandemic level and remains well below levels seen during the Great Recession.³⁶⁷

2. Settlements and Judgments

The interim final rule also provided that satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding would not be an eligible use of funds to respond to the public health and negative economic impacts of the pandemic or as a government service provided under the revenue loss eligible use category. However, if the judgment or settlement requires the recipient to provide services that are otherwise eligible under an SLFRF eligible use category, specifically if the settlement or judgment requires the recipient to provide services to respond to the COVID-19 public health emergency or its negative economic impacts or to provide government services, then those costs are eligible uses of SLFRF funds.

³⁶⁶ "In addition, replenishing financial reserves (e.g., rainy day or other reserve funds) would not be considered provision of a government service, since such expenses do not directly relate to the provision of government services."

³⁶⁷ Table Z.1 of the Financial Accounts of the United States, Board of Governors of the Federal Reserve System, and Table 1.1.5 of National Income and Product Accounts, Bureau of Economic Analysis.

In other words, satisfaction of a settlement or judgment itself is not itself an eligible use of funds, unless the settlement requires the recipient to provide services or incur other costs that are eligible uses of SLFRF funds.

In the final rule, Treasury is maintaining the interim final rule approach and clarifying that it applies to all eligible use categories and any use of funds under the SLFRF program.

3. General Restrictions

In addition to the above restrictions, there are three general restrictions that apply to SLFRF funds. These restrictions, which reflect existing laws and regulations, the Award Terms and Conditions, and application of the ARPA statute, applied under the interim final rule, and they continue to apply under the final rule.

A primary purpose of the SLFRF in the ARPA is to support efforts to stop the spread of COVID-19.³⁶⁸ As discussed above, recipients of SLFRF funds are required to comply with the Award Terms and Conditions established for the use of such funds. The interim final rule and final rule implement this objective by, in part, providing that recipients may use SLFRF funds for COVID-19 mitigation and prevention.³⁶⁹ See section Public Health in Public Health and Negative Economic Impacts.

The CDC has provided recommendations and guidelines to help mitigate and prevent COVID-19 and has identified vaccines and masks as two of the best tools to prevent the spread of COVID-19. The interim final rule and final rule help support recipients in stopping the spread of COVID-19 through these recommendations and guidelines. Consistent with the purpose of the ARPA and as implemented through the interim final rule and final rule, a recipient may not use SLFRF funds for a program, service, or capital expenditure that includes a term or condition that undermines efforts to stop the spread of COVID-19. A program or service that imposes conditions on participation or acceptance of the service that would undermine efforts to stop the spread of COVID-19 or discourage compliance with recommendations and guidelines in CDC guidance for stopping the spread of COVID-19 is not a permissible use of SLFRF funds.

In other words, recipients may not use funds for a program that undermines

practices included in the CDC's guidelines and recommendations for stopping the spread of COVID-19. This includes programs that impose a condition to discourage compliance with practices in line with CDC guidance (e.g., paying off fines to businesses incurred for violation of COVID-19 vaccination or safety requirements), as well as programs that require households, businesses, nonprofits, or other entities not to use practices in line with CDC guidance as a condition of receiving funds (e.g., requiring that businesses abstain from requiring mask use or employee vaccination as a condition of receiving SLFRF funds).

Second, a recipient may not use SLFRF funds in violation of the conflict of interest requirements contained in the Award Terms and Conditions or the Office of Management and Budget's Uniform Guidance, including any self-dealing or violation of ethics rules. Recipients are required to establish policies and procedures to manage potential conflicts of interest.³⁷⁰ Treasury may provide further guidance on the types of activities or conflicts that the recipient's policies and procedures must cover.

Lastly, recipients should also be cognizant that federal, state, and local laws and regulations, outside of SLFRF program requirements, may apply. Recipients may not use revenue loss funds, for instance, to violate other background laws that limit the scope of activities that may be conducted as "government services," including other state and federal laws. State and local procurement, contracting, and conflicts-of-interest laws and regulations may include applicable requirements, including, for example, required procurement processes for contractor selection or competitive price setting. Furthermore, recipients are also required to comply with other federal, state, and local background laws, including environmental laws³⁷¹ and federal civil rights and nondiscrimination requirements, which include prohibitions on discrimination on the basis of race, color, national origin, sex, (including sexual orientation

and gender identity), religion, disability, or age, or familial status (having children under the age of 18).

IV. Program Administration Provisions

The interim final rule included several sections that described the processes and requirements for administering the program on an ongoing basis, specifically: Distribution of funds, transfer of funds, use of funds for program administration, reporting on the use of funds, and remediation and recoupment of funds used for ineligible purposes.

To enhance clarity, this **SUPPLEMENTARY INFORMATION** for the final rule organizes these issues into one section on Program Administration Provisions. Recipients should also consult Treasury's Compliance and Reporting Guidance for additional information on program administration processes and requirements, including the applicability of the Uniform Guidance.

A. Payments in Tranches to Local Governments and Certain States

Section 602(b)(6)(A)(ii) of the Social Security Act authorizes the Secretary to withhold payment of up to 50 percent of the amount allocated to each state and territory for a period of up to 12 months from the date on which the state or territory provides its statutorily-required certification to the Secretary. The Social Security Act requires any such withholding be based on the unemployment rate in the state or territory as of the date of the certification.

Under the interim final rule, Treasury provided that it would withhold 50 percent of the amount allocated from any state that had an unemployment rate less than two percentage points above its unemployment rate in February 2020 as of the date the state submitted its initial certification for payment of funds pursuant to section 602(d)(1) of the Social Security Act. Based on data available at the time of the issuance of the interim final rule, this threshold was expected to result in a majority of states being paid in two tranches. Treasury did not split the payments of any territories.

Public Comment: One commenter asked Treasury to allow a state to request release of the portion of the state's second tranche payment after the state could demonstrate that it had allocated the entirety of the first tranche, a need to continue ongoing programs, and a desire to avoid borrowing costs. Another commenter asked Treasury to clarify whether states that received half their funding in the

³⁶⁸ See Sec. 602(a)(1); 603(a)(1); 602(c)(1); 603(c)(1).

³⁶⁹ See 35.6(b); Coronavirus State and Local Fiscal Recovery Funds, 86 FR at 26786.

³⁷⁰ Specifically, the Award Terms and Conditions provide that "[r]ecipient understands and agrees it must maintain a conflict of interest policy consistent with 2 CFR 200.318(c), and that such conflict-of-interest policy is applicable to each activity funded under this award. Recipients and subrecipients must disclose in writing to Treasury or the pass-through agency, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 CFR 200.112."

³⁷¹ An exception is statutes that do not apply unless explicitly stated, including, e.g., the National Environmental Policy Act and the Davis-Bacon Act.

first payment would receive their second half payment within 12 months. Similarly, some recipients requested clarification on whether they could obligate second tranche funds before receipt or use second tranche funds for costs incurred prior to receipt.

Treasury Response: The final rule maintains the approach in the interim final rule with two modifications. As described in the interim final rule, splitting payments for most states provides consistency with payments to local governments and encourages states to adapt their use of funds to developments that arise in the course of the economic recovery. Moreover, SLFRF funds may be used for costs incurred during the period of performance. Recipients may use their jurisdiction's budgeting and procurement practices and laws to determine how and when second tranche funds may be obligated.

The final rule makes two adjustments for operational purposes. First, the final rule provides that Treasury expects to make all second tranche payments to states available beginning 12 months from the date that funding was first made available by Treasury (May 10, 2021) regardless of when each individual state submitted its initial certification. This should increase clarity and consistency on the timing of second tranche payments for both states and Treasury. Second, also to ease recipient states' administrative burden, the final rule strikes a requirement from the interim final rule that states must certify for their second tranche payments and file all required reports at least 30 days prior to the date on which their second payment is made available. The final rule simply requires that states certify for their second tranche payment and file all required reports before receiving their second tranche payment, with no 30 day wait period required.

B. Payments to Nonentitlement Units of Local Government (NEUs) and Units of Local Government (UGLGs) Within Non-UGLG Counties

The interim final rule established requirements related to distributions of SLFRF funds by states and territories to NEUs and UGLGs within non-UGLG counties. Specifically, the interim final rule provided that the total distribution to an NEU cannot exceed 75 percent of the most recent budget for the NEU (the 75 percent budget cap); a requirement set forth in section 603(b)(2)(C)(iii) of the Social Security Act. The interim final rule **SUPPLEMENTARY INFORMATION** defined the NEU's budget for purposes of calculating the 75 percent budget cap as the NEU's "most recent annual total

operating budget, including its general fund and other funds, as of January 27, 2020." The interim final rule further provided that states and territories must permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the 75 percent budget cap. Further, the interim final rule prohibited states and territories from placing additional conditions or requirements on distributions to NEUs beyond those required by the statute, the interim final rule, or Treasury's guidance and from offsetting any debt owed by such NEUs against such distributions.

Commenters predominantly focused on the definition of an NEU's budget for purposes of calculating the 75 percent budget cap, NEU allocations and eligibility, and the prohibition on states and territories imposing additional conditions or requirements in the NEU distribution process.

Definition of NEU Budget

Public Comment: Commenters suggested that Treasury provide greater clarification on the definition of an NEU's "most recent budget" for purposes of the 75 percent budget cap calculation. Treasury provided updated guidance on its interpretation of the 75 percent budget cap on June 30, 2021, and a commenter suggested that Treasury incorporate such updated interpretation into the **SUPPLEMENTARY INFORMATION** of the final rule.

Treasury Response: Consistent with the Update on Interpretation for the 75 Percent Budget Cap Calculation published on June 30, 2021,³⁷² the **SUPPLEMENTARY INFORMATION** of the final rule defines an NEU's budget for purposes of calculating the 75 percent budget cap as its total annual budget, including both operating and capital expenditure budgets, in effect as of January 27, 2020. The guidance also gives states and territories flexibility to provide further guidance to their NEUs to operationalize the 75 percent budget cap. Given the variance in local financial accounting, this updated definition will better facilitate states' and territories' distribution of SLFRF funds to NEUs.

Allocations and Eligibility

Public Comment: Many commenters provided feedback on specific allocation calculations and eligibility of local governments for NEU funding.

³⁷² Treasury's Update on Interpretation for the 75 Percent Budget Cap Calculation can be found at: <https://home.treasury.gov/system/files/136/NEU-Update-75-Percent-Budget-Cap.pdf>.

Commenters addressed how a locality was classified as an NEU or metropolitan city, deviations between Treasury's allocation calculations and earlier estimates from other sources, treatment of unincorporated areas, sources for population data, and Treasury's allocation of NEU funding to states and territories based on the population of a state and territory outside of its metropolitan cities. Two commenters proposed that Treasury provide an appeal process for localities that were not identified on the List of Local Governments used by states and territories as part of the process in which a state or territory determines the eligibility of an NEU in accordance with Treasury guidance, or for Minor Civil Divisions (MCDs) that were denied funding as part of a facts-and-circumstances test undertaken by a weak-MCD state.

Treasury Response: Neither the interim final rule nor the final rule addresses eligibility or allocations issues, and comments on these topics are outside the scope of this rulemaking. These questions are addressed in other Treasury guidance, including the Guidance on Distribution of Funds to Non-entitlement Units of Local Government and Non-entitlement Unit of Local Government Definitional and Data Methodology guidance documents available on Treasury's website.³⁷³ Because Treasury interpreted the definition of an NEU³⁷⁴ in accordance with the statute and established an NEU distribution process in May 2021, the final rule does not incorporate an appeals process regarding the definitions or the facts-and-circumstances test used for eligibility determinations.

Prohibition on Additional Conditions or Requirements in the NEU Distribution Process

Public Comment: One commenter expressed support for Treasury's prohibition on states and territories

³⁷³ The Guidance on Distribution of Funds to Nonentitlement Units of Local Government can be found at this link: https://home.treasury.gov/system/files/136/NEU_Guidance.pdf. The Nonentitlement Unit of Local Government Definitional and Data Methodology can be found at this link: https://home.treasury.gov/system/files/136/NEU_Methodology.pdf.

³⁷⁴ Treasury has interpreted NEU to generally include both incorporated places and MCDs with active functioning governments, subject to the state determining, in the case of weak-MCD States, that a weak MCD has the legal and operational capacity to accept SLFRF funds and provides a broad range of services that would constitute eligible uses under ARPA. More details can be found in the Nonentitlement Unit of Local Government Definitional and Data Methodology, available at https://home.treasury.gov/system/files/136/NEU_Methodology.pdf.

placing additional conditions or requirements on distributions to NEUs. This prohibition restricts states and territories from imposing limitations on NEUs' use of SLFRF funds based on an NEU's proposed spending plan or other policies, offsetting any debt owed by an NEU against the NEU's distribution, or providing funding on a reimbursement model. In particular, the commenter noted that a reimbursement model would lead to inequities in accessing SLFRF funds.

Treasury Response: The final rule maintains and finalizes the prohibition on states and territories placing additional conditions or requirements on distributions to NEUs as well as to any UGLGs within counties that are non-UGLGs. Such conditions or requirements may contravene the statutory requirement that states and territories make distributions based on population and within the statutorily defined timeframe.

Other Provisions

Treasury did not receive substantive comments on the requirement that states and territories permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the 75 percent budget cap, or Treasury's interpretation of the 75 percent budget cap applying only to a consolidated government's NEU allocation under section 603(b)(2) but not to a consolidated government's county allocation under section 603(b)(3). Further, Treasury did not receive substantive comments on the interim final rule's allowance that states and territories be able to use SLFRF funds under section 602(c)(1)(A) to fund expenses related to administering payments to NEUs and units of general local government. As such, the final rule maintains these provisions as written in the interim final rule without modification.

Treasury received some comments that are not addressed because they are beyond the scope of the NEU provision of the interim final rule or not authorized by the statute, including comments related to state accounting practices, re-allocations of NEU allocations that exceed the 75 percent budget cap, and concerns around eligible uses under SLFRF that small local governments may find particularly salient.

C. Timeline for Use of SLFRF Funds

The interim final rule provided that "[a] recipient may only use funds to cover costs incurred during the period

beginning March 3, 2021 and ending December 31, 2024." The interim final rule also provides that the period of performance will run until December 31, 2026, which will provide recipients an additional two years during which they may expend funds for costs incurred (*i.e.*, obligated).

As explained in more detail below, in the final rule Treasury is maintaining these time periods. Treasury will retain March 3, 2021 as the first date when costs may be incurred, to provide for forward-looking or prospective use of funds and to align with the start date of the "covered period" as such term is used in section 602(c)(2)(A). The deadline for costs to be incurred—which the final rule clarifies means obligated—December 31, 2024, is specified in the ARPA statute, and Treasury will retain 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.

Public Comments. Some commenters expressed concerns about costs incurred before March 3, 2021 not being covered and recommended the "start date" be changed to January 2020 to coincide with the declaration of the public health emergency. These commenters argued that recipient governments began incurring costs to respond to COVID-19 and its economic impacts in January 2020 and that prior federal fiscal relief, such as relief provided in the Coronavirus Aid, Relief, and Economic Security Act, did not fully compensate recipient governments for these costs. These commenters recommended that costs incurred before March 3, 2021 that otherwise fit within eligible use categories for SLFRF should be permissible uses of funds.

Some commenters asked Treasury to clarify whether local governments are subject to the same covered period as states and territories beginning March 3, 2021. Commenters noted that section 603(g) of the Social Security Act does not contain the same definition of "covered period" as section 602(g)(1) of the Social Security Act, which references a statutory provision that only applies to states and territories.

Many commenters requested that the deadline for costs to be incurred and the period of performance be extended due to the longer timeline for completing water and sewer projects. One commenter requested that recipients be able to split projects into different phases so that funds could be expended on larger, longer term projects (*e.g.*, by obligating funds on one portion of the project by the statutory deadline). One commenter recommended that the

period of performance be extended for at least two additional years beyond the expenditure deadline set forth in the interim final rule, *i.e.*, until December 31, 2028. One commenter wrote that the final rule should allow for extended projects (*e.g.*, over a time horizon of more than ten years) for recipients working to develop long-term water supplies to prepare for extreme drought.

Treasury Response. In the final rule, Treasury is maintaining March 3, 2021 as the date when recipients may begin to incur costs using SLFRF funds. As described in the interim final rule, use of SLFRF funds is forward looking and the eligible use categories provided by statute are all prospective in nature. While recipients may identify and respond to negative economic impacts that occurred during 2020, the costs incurred to respond to these impacts remain prospective. Further, Treasury considers the beginning of the covered period for purposes of determining compliance with section 602(c)(2)(A) to be a relevant reference point for this purpose that provides some flexibility for recipients that began incurring costs in the anticipation of enactment of the ARPA or in advance of the issuance of the interim final rule and receipt of payment.

Finally, establishing an earlier start date would permit governments to use funds received in 2021 to satisfy obligations incurred in 2020. This use raises a substantial risk of SLFRF funds being used to supplant other recipient funds previously used to pay for such 2020 obligations, freeing funds for recipients to use for any purpose rather than eligible uses of SLFRF funds under the ARPA. Permitting such usage would undermine the provisions setting forth permissible and impermissible uses in the statute. Therefore, a reading of the statute permitting use of funds prior to March 3, 2021 would be inconsistent with the statutory structure.

In the final rule, Treasury is also maintaining the deadlines by which funds must be obligated (*i.e.*, December 31, 2024) and by which such obligations must be liquidated (*i.e.*, December 31, 2026). The December 31, 2024 deadline by which eligible costs must be incurred is established by statute. Treasury is finalizing its interpretation of "incurred" to be equivalent to the definition of "obligation," based on the definition used for purposes of the Uniform Guidance. Treasury is also maintaining the period of performance, which will run through December 31, 2026, and provides the deadline by which recipients must expend obligated funds. Most recipients received SLFRF funds in the spring and summer of 2021,

meaning that 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.

D. Transfers of Funds

Under section 602(c)(3) of the Social Security Act, a state, territory, or Tribal government may transfer SLFRF funds to a “private nonprofit organization . . . a Tribal organization . . . a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of state or local government.” Similarly, section 603(c)(3) authorizes a local government to transfer SLFRF funds to the same entities (other than Tribal organizations). Separately, section 603(c)(4) authorizes a local government to transfer SLFRF funds to the state in which it is located.

Entities Eligible for a Transfer Under Sections 602(c)(3) and 603(c)(3)

Regarding transfers permitted under sections 602(c)(3) and 603(c)(3) of the Act, the interim final rule Supplementary Information clarified that the lists of transferees in these sections are not exclusive and that state, local, territorial, and Tribal governments may transfer funds to other constituent units of government or private entities beyond those specified in the statute.

Public Comment: Several commenters supported Treasury’s interpretation of eligible transferees in sections 602(c)(3) and 603(c)(3) as nonexclusive. However, many commenters asked for greater clarity as to whether specific entities not listed in Treasury’s examples of eligible subrecipients, such as nonprofits and Tribal governments, were eligible transferees. One commenter also asked whether a recipient may transfer SLFRF funds to a higher level of government, such as a locality to the county in which it is located.

Treasury Response: The final rule clarifies that, in addition to the entities enumerated in sections 602(c)(3) and 603(c)(3), 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 at 2 CFR 200.331–200.333. Eligible subrecipients include, but are not limited to, other units of government (including Tribal governments), nonprofits and other civil society organizations, and private entities. Further, the final rule clarifies that transfers may be made to both constituent or non-constituent units of

government. For example, county A may transfer SLFRF funds to county B as long as county B abides by the use restrictions applicable to county A and the transfer would constitute an eligible use of the funds by county A. County A must receive a benefit proportionate to the amount transferred.

As detailed in the interim final rule Supplementary Information, once transfers are received, the transferee must abide by the restrictions on use applicable to the transferor under the ARPA and other applicable law, regulations, and program guidance. Further, the transferor remains responsible for monitoring and overseeing the subrecipient’s use of SLFRF funds and other activities related to the award to ensure that the subrecipient complies with the statutory and regulatory requirements and the Award Terms and Conditions. Recipients also remain responsible for reporting to Treasury on their subrecipients’ use of payments from the SLFRF for the duration of the award.

Pooling Funds

Public Comment: Several commenters asked for clarification about whether they may pool SLFRF funds for a project with other recipients, including when doing so involves a transfer to another entity, such as a regional organization or government that undertakes projects on behalf of a number of local governments. Commenters also asked for clarification on the oversight and reporting obligations that would result from such transfers.

Treasury Response: Consistent with guidance issued following the interim final rule,³⁷⁵ the final rule clarifies that recipients may pool SLFRF funds for projects, provided that the project is itself an eligible use of SLFRF funds for each recipient that is contributing to the pool of funds and that recipients are able to track the use of funds in line with the reporting and compliance requirements of the SLFRF. In general, when pooling funds for regional projects, recipients may expend funds directly on the project or transfer funds to another government or other entity that is undertaking the project on behalf of multiple recipients. To the extent recipients undertake regional projects via transfer to another organization or government, recipients would need to comply with the rules on transfers specified in the final rule

SUPPLEMENTARY INFORMATION. A

³⁷⁵ Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRFAQ.pdf>.

recipient may transfer funds to a government outside its boundaries (e.g., county transfers to a neighboring county), provided that the transferor can document that the transfer constitutes an eligible expense of the transferor government and that its jurisdiction receives a benefit proportionate to the amount transferred.

Blending and Braiding of Funds

Treasury is clarifying in the final rule that, consistent with further guidance issued by Treasury following the interim final rule,³⁷⁶ recipients may fund a project with both SLFRF funds and other sources of funding, provided that the costs are eligible costs under each source program and are compliant with all other related statutory and regulatory requirements and policies. The recipient must comply with applicable reporting requirements for all sources of funds supporting the SLFRF projects and with any requirements and restrictions on the use of funds from the supplemental funding sources and the SLFRF program. Specifically,

- All funds provided under the SLFRF program must be used for projects, investments, or services that are eligible under the SLFRF program. SLFRF funds may not be used to fund an activity that is not, in its entirety, an eligible use under the SLFRF program. For example:

- SLFRF funds may be used in conjunction with other sources of funds to make an investment in water infrastructure that is eligible under section 602 or 603 of the Social Security Act and the final rule.

- SLFRF funds could *not* be used to fund the entirety of a water infrastructure project that was partially, although not entirely, an eligible use under Treasury’s final rule. However, the recipient could use SLFRF funds only for a smaller component project that does constitute an eligible use, while using other funds for the remaining portions of the larger planned water infrastructure project that do not constitute an eligible use. In this case, the “project” for SLFRF purposes under this program would be only the eligible use component of the larger project.

- In addition, because SLFRF funds must be obligated by December 31, 2024, and recipients must expend all funds under the award no later than December 31, 2026, recipients must be able to, at a minimum, determine and report to Treasury on the amount of SLFRF funds obligated and expended and when such funds were obligated and expended.

³⁷⁶ See FAQ 4.10. *Id.*

Scope of a 603(c)(4) Transfer

Unlike in the case of a transfer under sections 602(c)(3) or 603(c)(3), the interim final rule **SUPPLEMENTARY INFORMATION** specified that transfers from a local government to the state under section 603(c)(4) will result in a cancellation or termination of the award on the part of the transferor local government and a modification of the award to the transferee state.

Public Comment: Two commenters suggested that Treasury expand section 603(c)(4) beyond transfers from localities to the state to include transfers from counties to their constituent local governments, which would incentivize counties to augment funds to address the needs of local governments. These commenters noted that counties are disincentivized to make transfers under section 603(c)(3), as is currently allowed, as such transfers would require that counties provide oversight and monitoring over its subrecipients.

Treasury Response: Section 603(c)(4), by its terms, applies only to transfers from local governments to states. Accordingly, the final rule must maintain the interim final rule's limitation of section 603(c)(4) transfers as applicable only to transfers from local governments to states. Expansions of section 603(c)(4) transfer authority beyond transfers from local governments to states were not explicitly authorized by Congress. As such, transfers under section 603(c)(4) may only be made by local governments to the state in which they are located.

Congress enumerated two separate transfer provisions for local governments—section 603(c)(3) and section 603(c)(4)—that use different language and were intended to operate differently. Section 603(c)(4) contains prefatory language (“Notwithstanding paragraph (1)”—a reference to the eligible SLFRF uses) that section 603(c)(3) does not. In other words, section 603(c)(4) transfers are not required to constitute an eligible use of the funds from the perspective of the transferor local government, but section 603(c)(3) transfers are required to constitute an eligible use. A transfer to accomplish an eligible use fits within the recipient-subrecipient framework.

Further, treating section 603(c)(3) transfers as leading to a cancellation of the award for the transferor local government would result in scenarios that are inconsistent with the statutory language. An award cancellation pursuant to a section 603(c)(3) transfer would result in either (1) non-governmental entities becoming award recipients under the program, which

would contravene the purpose of SLFRF or (2) transfers to governmental and non-governmental entities being treated in a distinct and inconsistent manner. That is, section 603(c)(3) transfers to governmental entities would lead to award cancellation but section 603(c)(3) transfers to non-governmental entities would lead to a recipient-subrecipient relationship. Therefore, in the final rule, Treasury maintains its distinct treatment of a section 603(c)(3) transfer and section 603(c)(4) transfer.

The final rule clarifies that a transfer under section 603(c)(4) will result in a modification, termination, or cancellation of the award on the part of the transferor local government and a modification of the award to the transferee state or territory. As detailed in the **SUPPLEMENTARY INFORMATION** to the interim final rule, the transferor must provide notice of the transfer to Treasury in a format specified by Treasury. Until the local government provides such notice and Treasury provides confirmation of its acceptance of the notice, the local government will remain responsible for ensuring that the SLFRF award is being used in accordance with the Award Terms and Conditions, section 602 or 603 of the Social Security Act, the final rule, and program guidance including reporting on such uses of the award funds to Treasury.

A state that receives a transfer from a local government under section 603(c)(4) will be bound, by statute, by all of the use restrictions set forth in section 602(c) with respect to the use of those SLFRF funds, including the prohibitions on use of such SLFRF funds to offset certain reductions in taxes or to make deposits into pension funds. The state will be responsible as the prime recipient for the use and reporting on any funds transferred under section 603(c)(4) by the local government. Such transferred funds will be subject to the Award Terms and Conditions previously accepted by the state in connection with its SLFRF award.

Subrecipient Transfers

Public Comment: Commenters sought clarification as to how funds may be transferred from a recipient to another entity. For instance, one commenter requested that recipients be able to advance funds to subrecipients as opposed to reimbursing subrecipients for expenses incurred.

Treasury Response: Treasury did not specify in the interim final rule whether recipients may advance funds to subrecipients. This omission was not intended to prevent recipients from

advancing funds to subrecipients, consistent with the various methods permitted under the Uniform Guidance. Given the broad flexibility that recipients have in selecting eligible uses and the broad variety of potential subrecipients, Treasury believes that specifying a single method of advancement or reimbursement would add unnecessary administrative difficulty to program administration. Recipients may determine the optimal payment structure for the transfer of funds (e.g., advance payments, reimbursement basis, etc.) from recipients to subrecipients. Ultimately, recipients must comply with the eligible use requirements and any other applicable laws or requirements and are responsible for the actions of their subrecipients.

E. Administrative Expenses

The interim final rule permitted, under the heading “[e]xpenses to improve efficacy of public health or economic relief programs,” use of funds for “[a]dministrative costs associated with the recipient’s COVID-19 public health emergency assistance programs, including services responding to the COVID-19 public health emergency or its negative economic impacts, that are not federally funded.”

Following release of the interim final rule, Treasury issued Compliance and Reporting Guidance that provided that “recipients may use funds for administering the SLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements. Further, costs must be reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405. Pursuant to the SLFRF Award Terms and Conditions, recipients are permitted to charge both direct and indirect costs to their SLFRF award as administrative costs. Direct costs are those that are identified specifically as costs of implementing the SLFRF program objectives, such as contract support, materials, and supplies for a project. Indirect costs are general overhead costs of an organization where a portion of such costs are [sic] allocable to the SLFRF award such as the cost of facilities or administrative functions like a director’s office.”³⁷⁷ Several commenters

³⁷⁷ U.S. Department of the Treasury, Recipient Compliance and Reporting Responsibilities, as of November 5, 2021; <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal->

Continued

requested clarity on which administrative expenses are permissible uses of funds and how recipients should structure administrative costs.

In the final rule, Treasury is clarifying that direct and indirect administrative expenses are permissible uses of SLFRF funds and are a separate eligible use category from “[e]xpenses to improve efficacy of public health or economic relief programs,” which refers to efforts to improve the effectiveness of public health and economic programs through use of data, evidence, and targeted consumer outreach. For details on permissible direct and indirect administrative costs, recipients should refer to Treasury’s Compliance and Reporting Guidance.³⁷⁸ Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect costs.

F. Treatment of Loans

The interim final rule allowed recipients to use SLFRF funds to make loans for uses that are otherwise eligible (for example, for small business assistance). Subsequent guidance clarified how recipients must track and dispose of program income from loans, consistent with the statutory requirements for the timing of SLFRF expenditures.

SLFRF funds must be used to cover “costs incurred” by the recipient between March 3, 2021 and December 31, 2024. The interim final rule provided that SLFRF funds must be obligated by December 31, 2024 and expended by December 31, 2026. In using SLFRF funds to make loans, recipients must be able to determine the amount of funds used to make a loan and must comply with restrictions on the timing of the use of funds and with restrictions in the Uniform Guidance.

When SLFRF funds are used as the principal for loans, there is an expectation that a significant share of the loaned funds will be repaid. Thus, recipients may not simply consider the full amount of loaned funds to be permanently expended and must appropriately account for the return of loaned funds.

For loans that mature or are forgiven on or before December 31, 2026, the recipient must account for the use of funds on a cash flow basis, consistent with Treasury’s guidance regarding loans made by recipients using payments from the Coronavirus Relief

Fund.³⁷⁹ Recipients may use SLFRF funds to fund the principal of the loan and in that case must track repayment of principal and interest (*i.e.*, “program income,” as defined under 2 CFR 200). When the loan is made, recipients must report the principal of the loan as an expense.

Repayment of principal may be re-used only for eligible uses and is subject to restrictions on the timing of the use of funds. Interest payments received prior to the end of the period of performance will be considered an addition to the total award and may be used for any purpose that is an eligible use of funds under the statute and final rule. Recipients are not subject to restrictions under 2 CFR 200.307(e)(1) with respect to such payments.

For loans with maturities longer than December 31, 2026, the recipient must estimate the cost to the recipient of extending the loan over the life of the loan. In other words, at origination, the recipient must measure the projected cost of the loan and may use SLFRF funds for the projected cost of the loan. Recipients have two options for estimating this amount: They may estimate the subsidy cost (*i.e.*, net present value of estimated cash flows) or the discounted cash flow under current expected credit losses (*i.e.*, CECL method). See further guidance issued by Treasury for further explanation.³⁸⁰

Public Comment: Many commenters asked for further clarification on the treatment of loans and the calculation of “costs incurred.” Some commenters requested that grants made for eligible activities prior to December 31, 2024 to a revolving loan fund, an economic development corporation, a land bank, or a similar facility should be considered obligated and expended at the time of the grant. This would allow funds to be expended by the grantee beyond the covered period and for funds returned to the grantee to be re-invested in further uses outside of the covered period.

Treasury Response: The final rule maintains the treatment of loans from the interim final rule and subsequent guidance, as discussed above. This approach is consistent with the statutory requirement that funds be used for costs incurred for eligible purposes by December 31, 2024 and is consistent

with standard accounting practices and the Uniform Guidance.

G. Use of Funds for Match or Cost-Share Requirements

As a general matter and as referenced in the **SUPPLEMENTARY INFORMATION** to the interim final rule, funds provided under one federal program may not be used by a recipient to meet the non-federal match or cost-share requirements of another federal program.

However, Treasury has since determined that, consistent with this general principle and the requirements of the Uniform Guidance at 2 CFR 200.306(b)(5), the funds available under sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act for the provision of government services, up to the amount of the recipient’s reduction in revenue due to the public health emergency, generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. Federal funds that constitute revenue sharing to state and local governments may generally be used to meet non-federal match requirements.³⁸¹ The broad eligible uses of the SLFRF funds available under sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act, combined with the purpose of these provisions (which is to provide general fiscal assistance to governments facing revenue losses due to the public health emergency), demonstrate that these funds are revenue sharing. They thus should generally be permitted to be used to meet the non-federal match and cost-share requirements of other federal programs. As such, the SLFRF funds available for the provision of government services, up to the amount of the recipient’s reduction in revenue due to the public health emergency, may be used to meet the non-federal match requirements of the Drinking Water State Revolving Fund and Clean Water State Revolving Fund programs administered by the EPA, for example.

Pursuant to 2 CFR 200.306(b) of the Uniform Guidance, if funds are legally available to meet the match or cost-share requirements of an agency’s federal program, such awarding agency is required to accept such funds for the purpose of that program’s match or cost-share requirements except in the circumstances enumerated in that section. The Office of Management and Budget has authority under 2 CFR

³⁷⁹ Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR at 4192.

³⁸⁰ See FAQ 4.11. Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

³⁸¹ See U.S. Government Accountability Office, *Principles of Federal Appropriations Law, Third Edition, Volume II*, p. 10–99, GAO–06–382SP (February 2006), <https://www.gao.gov/assets/gao-06-382sp.pdf>.

recovery-funds/recipient-compliance-and-reporting-responsibilities.

³⁷⁸ *Id.*

200.102 of the Uniform Guidance to issue waivers of this requirement on request of the relevant awarding agency. Analogous requirements and waiver authorities may be present in other regulations. If a recipient seeks to use SLFRF funds to satisfy match or cost-share requirements for a federal grant program, it should first confirm with the relevant awarding agency that no waiver has been granted for that program, that no other circumstances enumerated under 2 CFR 200.306(b) would limit the use of SLFRF funds to meet the match or cost-share requirement, and that there is no other statutory or regulatory impediment to using the SLFRF funds for the match or cost-share requirement. Note that SLFRF funds may not be used as the non-federal share for purposes of a state's Medicaid and CHIP programs because the Office of Management and Budget has approved a waiver as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations.

SLFRF funds beyond those that are available under sections 602(c)(1)(C) or 603(c)(1)(C) of the Social Security Act for the provision of government services may not be used to meet the non-federal match or cost-share requirements of other federal programs other than as specifically provided for by statute. For example, as discussed in other sections of this final rule, section 40909 of the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-federal match requirements of any authorized Bureau of Reclamation project, and section 60102 of the Infrastructure Investment and Jobs Act provides that the SLFRF may be used to meet the non-federal match requirements of the broadband infrastructure program authorized under that section (see sections Water and Sewer Infrastructure and Broadband Infrastructure).

H. Reporting

The interim final rule established Treasury's authority to collect information from recipients through requested reports and any additional requests for information. The interim final rule also provided Treasury flexibility to extend or accelerate reporting deadlines and to modify requested content for the Interim Report, Project and Expenditure reports, and Recovery Plan Performance reports.

The **SUPPLEMENTARY INFORMATION** of the interim final rule provided initial guidance on the reporting requirements for the SLFRF funds. States (defined to include the District of Columbia), territories, metropolitan cities, counties,

and Tribal governments were required to submit one interim report and quarterly Project and Expenditure reports thereafter. Non-entitlement units of local government were not required to submit an interim report. States, territories, and metropolitan cities and counties with a population greater than 250,000 residents were also required to submit an annual Recovery Plan Performance report to Treasury. The Supplementary Information of the interim final rule provided guidance on the deadlines and content required for each type of report.

Public Comment: Treasury received many comments on the content and specific data elements required of program reporting. Some commenters expressed enthusiasm for including particular details in reporting to promote transparency. Other commenters requested that Treasury streamline reporting requirements to avoid imposing undue administrative burdens and compliance costs. Many commenters requested further clarification on or amendments to particular elements of reporting content. Some commenters requested that reports and specific reporting elements be public, including a request for a public website with a number of programmatic data metrics about the use of SLFRF funds. Some commenters sought clarification and guidance for using the reporting portal, which allows recipients to upload the required information, or requested user modifications to the portal. Finally, some commenters requested that Treasury provide example materials and reporting metrics to aid recipient understanding.

Treasury Response: Since the publication of the interim final rule, Treasury issued supplementary reporting guidance in the Compliance and Reporting Guidance and in the User Guide: Treasury's Portal for Recipient Reporting (User Guide).³⁸² Treasury has addressed many of these comments in the Compliance and Reporting Guidance and User Guide and will continue to issue updated guidance prior to each reporting period clarifying any modifications to requested report content. Treasury notes that the interim final rule did not address the specific content and data elements required in reporting, the reporting portal or submission process, and the specific

form of reporting (e.g., example templates, machine readability); comments on these topics are outside the scope of the final rule and, as noted, are addressed instead in Compliance and Reporting Guidance.

Reporting Deadlines

Public Comment: Treasury received comments requesting various changes to reporting deadlines to ease compliance burdens. For example, Treasury received several comments requesting that Treasury delay early reporting deadlines for various reasons, including to align with the timeline for issuing a final rule and to allow for more time for recipients to determine SLFRF allocations. Commenters also requested changes to the immediacy of reporting, for example requesting that Treasury allow expenses to be reported with a lag instead of the quarter in which they were accrued or that reports be due 90 days after period close instead of 30 days after the close of a reporting period. Some commenters requested changes to the reporting frequency, for example to report biannually rather than quarterly.

Treasury Response: Treasury has clarified reporting deadlines in the Compliance and Reporting guidance.³⁸³ Treasury is retaining the reporting deadline of 30 days after the close of the reporting period to ensure timely accounting of the use of SLFRF funds; this timeline also aligns with practices in many other federal programs. The final rule maintains Treasury's discretion to extend or delay reporting deadlines.

Administrative Costs for Reporting and Compliance

Public Comment: Many commenters sought clarification about whether various administrative costs related to reporting and compliance were eligible uses of funds and asked for clarification on the limits of such use.

Treasury Response: Treasury notes that administrative costs are generally allowable uses of SLFRF funds, including for reporting. For additional information on administrative expenses, please see section Administrative Expenses under Program Administration Provisions.

Uniform Guidance

Public Comment: The **SUPPLEMENTARY INFORMATION** of the interim final rule clarified that SLFRF funds were generally subject to the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit

³⁸² U.S. Department of the Treasury, Recipient Compliance and Reporting Responsibilities, as of November 5, 2021; <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities>.

³⁸³ *Id.*

Requirements for Federal Awards (2 CFR part 200) (the Uniform Guidance), including the cost principles and restrictions on general provisions for selected items of cost. Treasury received many comments requesting clarification about or modifications to the applicability of the Uniform Guidance on various issues.

For example, one commenter requested that Treasury remove requirements that expenditures of funds be made in conformance with the Uniform Guidance, particularly in case of expenditures made during period from March 3, 2021 to the release of the interim final rule, while other comments requested that Treasury raise the single-audit threshold from \$750,000 to \$5 million. Commenters sought clarification on items such as: The applicability of the Uniform Guidance for funds that are used for the provision of government services, the applicability of particular sections of the cost principles provided in subpart E of the Uniform Guidance, the applicability of the procurement provisions of the Uniform Guidance, and requirements for subrecipient reporting.

Treasury Response: Recipients of SLFRF funds are subject to the provisions of the Uniform Guidance (2 CFR part 200) from the date of award to the end of the period of performance on December 31, 2026 unless otherwise specified in this rule or program-specific guidance. Costs must follow the requirements in 2 CFR 200 Subpart E, Cost Principles, including procurement standards. Recipients that receive an aggregate amount of federal financial assistance in a given fiscal year that exceeds the Single Audit threshold are subject to the requirements in 2 CFR 200 Subpart F, Audit Requirements, unless otherwise specified in program-specific guidance.

SLFRF funds transferred to subrecipients are also subject to reporting and Uniform Guidance requirements. Additional information about the definition of subrecipients is available in the section Distinguishing Subrecipients versus Beneficiaries.

Recipients should refer to the Assistance Listing for details on the specific provisions of the Uniform Guidance that do not apply to this program. The Assistance Listing is available on SAM.gov. Additional changes to compliance and reporting guidelines, including any clarifications on Uniform Guidance requirements, will be addressed in Compliance and Reporting Guidance and the User Guide.³⁸⁴

I. Remediation and Recoupment

Sections 602(e) and 603(e) of the Social Security Act provide the Secretary with the power to recoup “funds used in violation” of the Social Security Act. The interim final rule implemented these provisions by establishing a process for recoupment. Treasury may identify funds used in violation of the Social Security Act based on information submitted by recipients, including as part of reporting requirements, as well as information from other sources.³⁸⁵ If a potential violation is identified, Treasury will provide the recipient an initial written notice of the amount subject to recoupment along with an explanation of such amounts. A recipient then has 60 calendar days following receipt of a recoupment notice to submit a request for reconsideration containing any information it believes supports its use of funds. Within 60 calendar days of receipt of the request for reconsideration, the interim final rule provided that a recipient will receive a final notice of the Secretary’s decision to affirm, withdraw, or modify the recoupment notice. If the recipient did not submit a request for reconsideration, the initial notice of recoupment would be deemed a final notice. A recipient would then be required to repay any amounts subject to recoupment within 120 calendar days of either the initial recoupment notice, if the recipient does not request reconsideration, or the final recoupment notice, if the recipient does request reconsideration.

Public Comments

Treasury received several comments on the process for recoupment. For instance, some commenters, including many Tribal governments, requested additional time to file a request for reconsideration and submit repayment to ensure that small entities have the time necessary to carry out any logistical steps and consult with counsel. Treasury was also asked to align its recoupment process with that of the Office of the Inspector General and other departmental administrative processes to resolve findings, agency decisions, and related timelines. One commenter asked if the 120-calendar-day time limit for repayment was based on the initial notice, rather than a final decision issued by the Secretary. Several commenters expressed concern regarding the recoupment process, arguing that consideration of “all relevant facts and circumstances” provided Treasury with too much

authority and created ambiguity. Other commenters urged Treasury to establish a robust enforcement and compliance program and process and advocated for the creation of a whistleblower mechanism or public complaint process to allow public and private entities to report suspected misuses of funds. Finally, some commenters requested clarification regarding the process after a violation is identified and becomes final. One commenter also asked to allow recipients to amend reports deemed to contain ineligible expenses and inform recipients how the agency intends to resolve instances where a use was later deemed unacceptable. Another commenter asked if recouped funds could be released back to the recipient.

Commenters also expressed concern about Treasury’s authority to recoup funds used in violation of the tax offset provision. Some commenters requested additional clarity around when tax cuts would trigger Treasury’s recoupment authority and the duration of Treasury’s authority to seek recoupment of such funds.

Treasury Response

The final rule largely preserves the process established in the interim final rule but includes several adjustments to clarify certain elements.

Like the interim final rule, the final rule provides that, after an initial determination is made that a recipient has used SLFRF funds in violation of the law, a recipient may submit a request for reconsideration concerning any amounts identified in a notice provided by Treasury. If a recipient chooses to seek reconsideration of the initial notice, the recipient must submit a request for reconsideration as provided under the final rule. If a recipient does not request reconsideration, the initial notice that the recipient received will be deemed the final notice.³⁸⁶ Treasury has clarified that a recipient must invoke and exhaust the procedures available under section 35.10 of the final rule prior to seeking judicial review of a recoupment decision. Consistent with Section 602(b)(6)(A)(ii)(III) of the Social Security Act, if a state or territory is required to repay funds pursuant to the Secretary’s recoupment authority, the Secretary may reduce the amount payable to the state or territory in a second tranche payment by the amount that the state or territory would be required to repay as recoupment.

In the final rule, Treasury has clarified that, if it identifies a potential

³⁸⁵ Treasury will also consider the tax offset provision on an annual basis.

³⁸⁶ Funds subject to recoupment cannot later be returned.

³⁸⁴ *Id.*

violation,³⁸⁷ it may request additional information from a recipient before initiating the recoupment process and, where necessary, provide written notice to the recipient along with an explanation of such amounts potentially subject to recoupment. Furthermore, Treasury has also made clear that it retains the ability to expedite or extend timelines in any adjudication or pre-adjudication process pursuant to section 35.4(b) of the final rule, although the general timelines set forth in the interim final rule are maintained in the final rule.

This process is intended to provide the recipient with an adequate opportunity to present additional information regarding its uses of funds and provides flexibility for recipients to determine the information relevant to the particular facts and circumstances. It is also flexible enough to align with other adjudication procedures in other ARPA recovery programs administered by the Office of Recovery Programs at Treasury. As discussed above, the initial notice will provide recipients with an explanation of the identified potential violation in order to provide recipients with a meaningful opportunity to respond. Such initial notice will generally include information regarding the specific use of SLFRF funds and the source of such information.³⁸⁸ This process also will allow the Secretary to take into consideration the information provided by recipients, along with other relevant information, to ensure SLFRF funds are used in a manner consistent with the Social Security Act.

Finally, Treasury expects to work with recipients to support the use of SLFRF funds consistent with the law. For example, Treasury may request additional information from a recipient before initiating the recoupment process. In addition, Treasury may pursue other forms of remediation and monitoring in conjunction with, or as an alternative to, recoupment.³⁸⁹ These efforts may include working with recipients to identify and substitute permissible uses of SLFRF funds or amending uses of SLFRF funds to comply with applicable restrictions.

In response to comments regarding the amount of time provided to respond to an initial notice, the final rule clarifies that Treasury retains the ability

to expedite or extend timelines in any adjudication or pre-adjudication process pursuant to section 35.4(b) of the final rule, although the general timelines set forth in the interim final rule are maintained in the final rule.

V. Regulatory Analyses

Executive Orders 12866 and 13563

Regulatory Impact Assessment

This final rule is a “significant regulatory action” under section 3(f) of Executive Order 12866 for the purposes of Executive Orders 12866 and 13563 because it is likely to have an annual effect on the economy of \$100 million or more.

As explained below, this regulation meets a substantial need: ensuring that recipients—states, territories, Tribal governments, and local governments—of SLFRF funds fully understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress’ intent to provide necessary relief to recipient governments adversely impacted by the COVID-19 public health emergency. Furthermore, as required by Executive Orders 12866 and 13563, Treasury has weighed the costs and benefits of this final rule and varying alternatives and has reasonably determined that the benefits of the final rule to recipients and their communities far outweigh any costs.

The rule has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866.

Executive Orders 12866 and 13563

Under Executive Order 12866, OMB must determine whether this regulatory action is “significant,” and therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a significant regulatory action as an action likely to result in a rule that may, among other things, have an annual effect on the economy of \$100 million or more. This rule is likely to have an annual effect on the economy of \$100 million or more, and therefore, it is subject to review by OMB under section 3(f) of Executive Order 12866.

Treasury has also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency: (1) Propose or adopt regulations

only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices. Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” OMB’s Office of Information and Regulatory Affairs (OIRA) has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

Based on the analysis that follows and the reasons stated elsewhere in this document, Treasury believes that this final rule is consistent with the principles set forth in Executive Orders 12866 and 13563. This Regulatory Impact Analysis discusses the need for regulatory action, the potential benefits, and the potential costs. Treasury has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and is issuing this final rule only on a reasoned determination that the benefits exceed the costs. In choosing among alternative regulatory approaches, Treasury selected those approaches that would maximize net benefits.

Need for Regulatory Action

This final rule implements the \$350 billion SLFRF program of the ARPA, which Congress passed to help states, territories, Tribal governments, and localities respond to the ongoing COVID-19 public health emergency and its economic impacts. As the agency charged with execution of these programs, Treasury has concluded that this final rule is needed to ensure that recipients of SLFRF funds fully

³⁸⁸ Treasury may address potential violations based on information submitted from recipients, either through quarterly reports or self-reported information, and from other sources of information as Treasury deems necessary and appropriate (e.g., press, information submitted from the public).

³⁸⁹ Treasury intends to work with recipients to support the use of SLFRF funds consistent with the law.

understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress' mandate for targeted fiscal relief. This final rule governs the use of \$350 billion in grant funds from the federal government to states, territories, Tribal governments, and localities, generating a significant macroeconomic effect on the U.S. economy. Treasury has sought to implement the program in ways that maximize its potential benefits while minimizing its costs. It has done so by: aiming to target relief in key areas according to the congressional mandate; offering clarity to states, territories, Tribal governments, and localities while maintaining their flexibility to respond to local needs; and limiting administrative burdens.

Analysis of Benefits

Relative to a pre-statutory baseline, the SLFRF funds provide a combined \$350 billion to state, local, and Tribal governments for fiscal relief and support for costs incurred responding to the COVID-19 pandemic. Treasury believes that this transfer will generate substantial additional economic activity, although given the flexibility accorded to recipients in the use of funds, it is not possible to precisely estimate the extent to which this will occur and the timing with which it will occur. Economic research has demonstrated that state fiscal relief is an efficient and effective way to mitigate declines in jobs and output during an economic downturn.³⁹⁰ Absent such fiscal relief, fiscal austerity among state, local, and Tribal governments could exert a prolonged drag on the overall economic recovery, as occurred following the 2007–2009 recession.³⁹¹

This final rule provides benefits across several areas by implementing the four eligible use categories, as defined in statute: strengthening the response to the COVID-19 public health emergency and its negative economic impacts; replacing lost revenue to ease fiscal pressure on state, local, and Tribal governments that might otherwise lead to harmful cutbacks in employment or government services; providing premium pay to essential workers; and making necessary investments in water, sewer, and broadband infrastructure.

These benefits are achieved in the final rule through a broadly flexible

approach that sets clear guidelines on eligible uses of SLFRF funds and provides state, local, and Tribal government officials discretion within those eligible uses to direct SLFRF funds to areas of greatest need within their jurisdiction. While preserving recipients' overall flexibility, the final rule includes several provisions that implement statutory requirements and will help support use of SLFRF funds to achieve the intended benefits. Preserving flexibility for recipients not only serves an important public policy goal by allowing them to meet particularized and diverse needs of their local communities but also enhances the economic benefits of the final rule by allowing recipients to choose eligible uses of funds that provide the highest utility in their jurisdictions.

In implementing the ARPA, Treasury has also prioritized supporting underserved communities that have been disproportionately impacted by the pandemic. The SLFRF program as implemented by the final rule provides even greater flexibility to recipients for uses of funds in underserved communities, recognizing that pre-existing health and economic disparities in these communities amplified the impact of the pandemic there. In general, investments in improving health outcomes and economic opportunities provide high economic returns, so this approach is likely to achieve substantial near-term economic and public health benefits, in addition to the longer-term benefits arising from the allowable investments in water, sewer, and broadband infrastructure.

The remainder of this section clarifies how Treasury's approach to key provisions in the final rule will contribute to greater realization of benefits from the program.

Public Health and Negative Economic Impacts

The eligible use category for responding to the public health and negative economic impacts of the pandemic covers a wide range of eligible uses of funds. Treasury addresses several key uses of funds in this analysis, as well as ways that Treasury has structured this eligible use to minimize recipient administrative burden while also maintaining targeting of the funding to entities that experienced negative impacts from the pandemic.

Government Employment: In order to bolster the government's ability to effectively administer services, the final rule allows for a broader set of eligible uses to restore and support public sector employment relative to the interim final

rule. In particular, eligible uses include hiring up to a pre-pandemic baseline that is adjusted for historic underinvestment in the public sector by allowing funds to be used to pay for payroll and covered benefits associated with the recipient increasing its number of employees up to 7.5 percent above its pre-pandemic baseline. Eligible uses also include providing additional funds for employees who experienced pay cuts or were furloughed, avoiding layoffs, providing worker retention incentives, and paying for ancillary administrative costs related to hiring.

Treasury believes this expanded approach, relative to the interim final rule, provides useful flexibility to recipients, which may increase a state or local government's ability to effectively deliver services to its residents. While the interim final rule already explicitly permitted using funds to restore recipients' workforces up to pre-pandemic levels, the final rule's inclusion of an upward adjustment factor recognizes that, as the population or economy of a jurisdiction grows over time, more workers are generally needed to effectively meet responsibilities. It also provides recipients greater room to employ funds toward building back the public sector workforce after years of chronic underinvestment since the Great Recession. Treasury arrived at the 7.5 percent adjustment factor through an analysis of data from the Bureau of Labor Statistics on state and local government employment and data from the Census Bureau on population to estimate the extent of underinvestment in the public sector since the onset of the Great Recession. While Treasury considered a range of methodologies and point estimates to set the adjustment factor, a 7.5 percent factor errs on the side of recipient flexibility. Treasury believes this adjustment enhances recipients' ability to identify and meet the particularized needs of their communities. Treasury also believes that the additional enumerated eligible uses for supporting the workforce provide recipients several means to help retain current workers, decreasing turnover costs.

Identifying Eligible Populations

Treasury has provided several methods for recipients to identify households, populations, and communities eligible for services that respond to the public health and negative economic impacts of the pandemic. In general, these methods seek to provide recipients options to identify eligible populations with minimal administrative burden, while also maintaining targeting of the funds

³⁹⁰ See, e.g., Gabriel Chodorow-Reich et al., *Does state Fiscal Relief During Recessions Increase Employment? Evidence from the American Recovery and Reinvestment Act*, 4 *American Economic Journal* 118–145 (2012) <http://dx.doi.org/10.1257/pol.4.3.118>.

³⁹¹ See, e.g., Fitzpatrick, *supra* note 278.

to entities impacted by the pandemic. Recipients also retain flexibility to identify and serve other populations and entities that experienced pandemic impacts, ensuring that recipients can meet the particularized needs of their local communities.

Defining Low and Moderate Income:

To streamline the provision of funds relating to negative economic impacts resulting from the pandemic, Treasury has created an eligibility standard making it easier for recipients to provide assistance to low- and moderate-income populations without needing to identify and document a specific negative economic impact. Populations falling under the definition of low income are presumed to have been disproportionately impacted by the pandemic, while those falling under the definition of moderate income are presumed to have been impacted by the pandemic. In addition, the final rule recognizes categorical eligibility for certain enumerated programs and populations if a recipient chooses to implement categorical eligibility when identifying impacted and disproportionately impacted populations. Treasury considered several options for eligibility standards that would reduce administrative burdens for recipients when determining who qualifies as low and moderate income.

One option involved defining a household as low income or moderate income based only on FPG thresholds and could use levels lower than those selected. This option involved setting uniform thresholds throughout the country.

A second option took a broader approach, defining a household as low income if it has (i) income at or below 185 percent of the FPG for the size of its household or (ii) income at or below 40 percent of the AMI for its county and size of household. The option defined a household as moderate income if it has (i) income at or below 300 percent of the FPG for the size of its household or (ii) income at or below 65 percent of the AMI for its county and size of household. The combination of an FPG floor with AMI allows for a regional adjustment in areas with substantially higher costs and incomes. Finally, Treasury also considered a range of FPG and AMI thresholds above and below these levels.

Treasury chose the second option. Treasury believes that the higher FPG floor will ease administrative burdens by making more households presumptively eligible for funds meant to address negative economic impacts in a targeted manner. With respect to the

low-income cutoff, 185 percent of the FPG for a family of four is \$49,025, which is approximately the wage earnings for a two-earner household where both earners receive the median wage in occupations, such as waiters and waitresses and hotel clerks, that were heavily impacted by COVID-19. As such, this cutoff is likely to include more workers in industries heavily impacted by COVID-19, who may be most likely to face disproportionate impacts of the pandemic, than a lower threshold.³⁹² With respect to the moderate-income cutoff, many households with incomes between 200 percent and 300 percent of the FPG struggle with a lack of economic security, suggesting that 300 percent of the FPG was an appropriate cutoff for moderate income.

Treasury also considered relatively higher thresholds for both an FPG and AMI approach; however, increasing income thresholds for presumed eligibility increases the likelihood that higher-income workers, who generally experienced fewer economic impacts from the pandemic, would become presumed eligible for responsive services. Providing services to households that did not experience a negative economic impact, or experienced a relatively minimal impact, would provide much less benefit than serving households that experienced more severe impacts, diluting the benefits of the SLFRF funds.

In all, Treasury anticipates that these selected thresholds, combined with the regional adjustment, will allow resources to be targeted toward individuals and households with the greatest need while also reducing administrative burdens on recipients.

Disproportionately Impacted Populations: In the interim final rule, Treasury enumerated a broader set of eligible uses for disproportionately impacted communities, in recognition of the pre-existing health, economic, and social disparities that contributed to disproportionate pandemic impacts in certain communities and that addressing root causes of those disparities constitutes responding to the public health and negative economic impacts of the pandemic. To identify these communities and reduce administrative burden, Treasury allowed recipients to presume that certain populations—those in QCTs and those being served by Tribal

governments—were disproportionately impacted. In the final rule, to further decrease administrative burden and enhance recipient flexibility, Treasury is allowing recipients to also presume that low-income households were disproportionately impacted. Treasury anticipates that adding low-income households as a presumed eligible population will maintain targeting of funds to populations and communities most likely to have experienced severe pandemic impacts, while providing a more flexible approach for recipients.

Identifying Impacted Classes: In the final rule, Treasury reiterated its stance in the interim final rule allowing recipients to designate a class of households or other entities as impacted or disproportionately impacted and provide responsive services. After designating a class, recipients can serve a household or entity by simply identifying that the household or entity is a member of the class. Relative to restricting services to only presumed eligible populations identified by Treasury, this decision provides vital administrative flexibility for recipients that may identify particular impacted classes in the context of their jurisdiction. Treasury anticipates that SLFRF funds will be targeted to impacted or disproportionately impacted communities, as recipients must demonstrate that the designated class experienced negative economic impacts or meaningfully more severe negative economic impacts. This approach maintains the requirement that entities served have to have experienced a negative economic impact, while simultaneously minimizing any administrative costs associated with meeting this requirement.

Additional Enumerated Uses

The interim final rule enumerated eligible uses of SLFRF funds to serve both impacted and disproportionately impacted communities. For example, enumerated eligible uses to serve impacted communities included food assistance; rent, mortgage, or utility assistance; and counselling and legal aid to prevent eviction or homelessness. Examples of enumerated eligible uses to serve disproportionately impacted communities included remediation of lead paint or other lead hazards and housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity. In the final rule, Treasury had the option to retain, expand, or reduce enumerated eligible uses, or shift use eligibility between disproportionately impacted and impacted communities. Many

³⁹² See U.S. Bureau of Labor Statistics, Occupational Employment and Wage Estimates, https://www.bls.gov/oes/current/oes_nat.htm (last visited November 9, 2021).

public comments suggested potential expansions of uses, including shifting enumerated eligible uses for disproportionately impacted communities to serve a broader population of impacted communities. Taking these comments into account, Treasury generally took this approach, in anticipation that the benefits of the program will increase while recipient administrative costs in identifying and justifying non-enumerated uses of funds will decrease.

Specifically, Treasury added enumerated eligible uses for impacted populations including paid sick, medical, or family leave; health insurance subsidies; and services for the unbanked and underbanked, on the basis that impacts of the pandemic that were broadly experienced by many communities would be addressed by these uses. Treasury also shifted some eligible uses, formerly restricted only to disproportionately impacted communities, to impacted communities. These uses included community violence intervention, assistance accessing or applying to public benefits and services, affordable housing development, and services to promote healthy childhood environments like childcare and early learning. These uses were shifted on the basis that the associated impacts of the pandemic were experienced by a broader population, and responses are, accordingly, eligible to benefit a broader population.

Additionally, the final rule clarified that investments in parks and other public outdoor recreation spaces are enumerated eligible uses for disproportionately impacted communities. In including these uses, Treasury took into account evidence on the social determinants of health, or the ways that social context, like the neighborhood built environment, impacts health outcomes. By taking a more holistic approach to public health, the final rule allows recipients to respond more broadly to factors that contributed to the pandemic's health impacts and more fully mitigate those health impacts.

To balance administrative flexibility with a maintenance of focus on impacts of the pandemic, Treasury considered, but did not include, other proposed enumerated uses that did not respond to the impacts of the pandemic or responded to impacts that were not experienced generally across the country by many jurisdictions and populations. For example, Treasury did not include pollution remediation broadly, a proposed enumerated eligible use for disproportionately impacted

communities, on the basis that associated projects would only respond to disproportionate impacts of the pandemic depending on the specific issue addressed. In sum, Treasury expanded enumerated eligible uses while retaining a focus on broadly experienced impacts of the pandemic. Treasury anticipates that this will give recipients further flexibility to presume eligibility and respond to pandemic impacts without increasing administrative burden.

Capital Expenditures: In the interim final rule, Treasury permitted funds to be used for a limited number of capital expenditures mostly related to the COVID-19 public health response. This decision granted recipients some discretion to use SLFRF funds to address COVID-19 prevention and mitigation through certain investments in equipment, real property, and facilities, which Treasury recognized as critical components of the public health response. In the final rule, Treasury considered maintaining the provisions in the interim final rule or expanding allowable capital expenditures to provide recipients greater flexibility to pursue other capital investments that are responsive to the public health emergency and its negative economic impacts. While expanding allowable capital expenditures may increase the risk that recipients will undertake large expenditures that do not sufficiently address intended harms, or address harms in a less cost-efficient manner than an alternative investment (*e.g.*, a program or service), expanding allowable capital expenditures would likely help fill critical gaps in recipients' response to the pandemic and provide equipment and facilities that generate benefits beyond SLFRF's period of performance. To preserve flexibility while mitigating risks, the final rule allows recipients to undertake an expanded set of capital expenditures while requiring additional written justifications for projects with an expected total cost at or over \$1 million. Treasury believes this approach balances the implementation of appropriate risk-based compliance requirements and the provision of administrative convenience for smaller capital expenditures, while generally allowing recipients the flexibility to undertake a greater variety of responsive capital expenditures.

Revenue Loss

Revenue Loss Formula: In this final rule, Treasury's approach to revenue loss allows recipients to compute the extent of reduction in revenue by comparing actual revenue to a

counterfactual trend representing what could have plausibly been expected to occur in the absence of the pandemic. The counterfactual trend begins with the last full fiscal year prior to the public health emergency (as required by statute) and projects forward with an annualized growth adjustment. Treasury has made several adjustments in the final rule to decrease administrative burden, reducing costs for recipients, while still accurately capturing reductions in revenue due to the pandemic.

Under the interim final rule, Treasury specified that recipients calculate revenue loss on a calendar year basis. In this final rule, Treasury is providing recipients the option to calculate revenue loss on a calendar year or fiscal year basis, which will allow recipients the administrative flexibility to minimize administrative burdens based on the data available to them.

Treasury's decision to incorporate a growth adjustment into the calculation of revenue loss ensures that the formula more fully captures revenue shortfalls relative to recipients' pre-pandemic expectations. Recipients will have the opportunity to calculate revenue loss at several points throughout the program, recognizing that some recipients may experience revenue effects with a lag. This option to re-calculate revenue loss on an ongoing basis is intended to result in more support for recipients to avoid harmful cutbacks in future years. In calculating revenue loss, recipients will look at general revenue in the aggregate, rather than on a source-by-source basis, given that recipients may have experienced offsetting changes in revenues across sources. The final rule also provides for removing the impact of tax increasing or decreasing changes, which affect the amount of revenue collected but are not "due to" the pandemic, from the calculation of revenue loss due to the public health emergency. Both of these components of Treasury's approach provide a more accurate representation of the effect of the pandemic on overall revenues.

Revenue Loss Standard Allowance: In addition to largely preserving the formula to calculate revenue loss from the interim final rule, Treasury also added an alternative "standard allowance" option for the revenue loss calculation to this final rule. Treasury's decision to elect to allow a fixed amount of loss that can be used to fund "government services" allows recipients the flexibility to use minimal administrative capacity on the calculation if desired. The decision also benefits recipients by allowing them to avoid expending administrative

resources to determine how unique variations in revenue interact with the revenue loss formula.

Premium Pay

Per the ARPA statute, recipients have broad latitude to designate critical infrastructure sectors and make grants to third-party employers for the purpose of providing premium pay. While the final rule provides significant flexibility to implement the statutory requirement that premium pay respond to essential workers, it requires recipients give written justification in the case that premium pay would increase a worker's annual pay above a certain threshold or is awarded to an individual whose annual pay is already above that threshold. To set this threshold, Treasury analyzed data from the Bureau of Labor Statistics to determine a level that would not require further justification for premium pay to the vast majority of essential workers, while requiring higher scrutiny for provision of premium pay to higher earners who, even without premium pay, would likely have greater personal financial resources to cope with the effects of the pandemic. Alternatively, a recipient need not submit written justification to Treasury if the worker receiving premium pay is eligible for overtime under the FLSA. Treasury believes this alternative, which is an addition to the final rule, will give recipients more flexibility and will simplify application of the final rule as employers, public and private, are already legally required to determine whether an employee is eligible for overtime pay under the FLSA. Treasury believes the threshold and overtime eligibility provision in the final rule strike the appropriate balance between preserving flexibility and helping encourage use of these resources to help those in greatest need. The final rule also requires that workers eligible for premium pay have regular in-person interactions or regular physical handling of items that were also handled by others. This requirement will help encourage use of financial resources for those who have endured the heightened risk of performing essential work.

Water and Sewer Infrastructure

In the interim final rule, Treasury aligned eligible uses of funds for water and sewer infrastructure to those projects eligible to receive financial assistance through the DWSRF and CWSRF administered by the EPA.

The benefits of this approach included giving recipients an existing list that would provide them clarity as well as flexibility in identifying eligible

projects, particularly given the broad range of projects eligible under the CWSRF and DWSRF. The approach also ensured that projects would conform to vetted project types from a widely used program. Treasury received comments from recipients requesting additional project categories to be considered eligible, indicating a potential cost to maintaining alignment with the CWSRF and DWSRF.

For the final rule, Treasury has expanded eligibility to include several additional project types beyond those covered by the CWSRF and DWSRF.

Treasury believes that expanded eligibility will benefit recipients by allowing them additional flexibility to pursue beneficial projects, including project categories that support the provision of drinking water and the removal, management, and treatment of wastewater and stormwater: Additional stormwater management projects, private well infrastructure, additional projects that address lead in water, and certain dam and reservoir rehabilitation projects undertaken to address the provision of drinking water. A potential cost of this approach is that uses beyond the CWSRF and DWSRF may have less public guidance available to understand project eligibilities. However, Treasury anticipates that this eligibility expansion will provide a net benefit to recipients by allowing them to pursue projects relevant to their goals that were ineligible under the interim final rule.

The expansion to allow private well infrastructure may also affect the distributional impact of SLFRF. Private wells disproportionately serve rural Americans, including low-income households, and expanding eligibility to include this use may allow SLFRF funds to benefit such households. While distributional impacts are uncertain, Treasury believes that the potential for benefits to accrue to rural and low-income households makes it important to clarify that these types of projects are eligible.

Broadband Infrastructure

In the final rule, Treasury expands eligible areas for broadband investment by requiring that recipients invest in projects designed to provide service to households and businesses with an identified need for additional broadband investment, including increasing access to high-speed broadband, increasing the affordability of broadband services, and improving the reliability of broadband service.³⁹³

³⁹³ Further, the final rule encourages, but does not require, that recipients pursue broadband infrastructure projects in locations not currently

Treasury considered multiple alternatives when selecting this standard. The threshold for the interim final rule allowed benefits to accrue in a more targeted manner to the approximately 9 percent of the country with access to speeds under the 25/3 Mbps threshold.³⁹⁴ However, since SLFRF funds are distributed to tens of thousands of governments across the country with a variety of broadband needs, Treasury believes that allowing recipients greater flexibility to determine locations to serve in their jurisdictions—including considering affordability and competition barriers—will lead to greater long-term public benefit. Further, given that many federal broadband grant programs are focused solely on unserved and underserved areas, Treasury believes that the final rule's flexibility enables these funds to fill an important role in the overall federal broadband landscape.

In the final rule, Treasury also requires that broadband projects must meet a standard of reliably delivering at least 100 Mbps download speeds and upload speeds, or in cases where it is not practicable to do so, reliably delivering at least 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed while being scalable to 100 Mbps upload and download speeds. Treasury expects that this threshold will yield long-term benefits and allow networks to meet both pandemic-related and future needs. The Federal Communications Commission (FCC) estimates that currently a household with two to three remote learners using the internet simultaneously needs a connection supporting 100 Mbps download speeds.³⁹⁵ While a lower threshold may have resulted in lower near-term costs to build, it would have potentially constrained future utility from the infrastructure by producing infrastructure that would more quickly—potentially in the near-term—become obsolete and no longer meet household needs, potentially requiring sooner replacement and generally decreasing the return on investment. As

served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed.

³⁹⁴ Data from the Federal Communications Commission shows that as of June 2020, 9.07 percent of the U.S. population had no available cable or fiber broadband providers providing greater than 25 Mbps download speeds and 3 Mbps upload speeds. Federal Communications Commission, Fixed Broadband Deployment, <https://broadbandmap.fcc.gov/#/> (last visited May 9, 2021).

³⁹⁵ See Federal Communications Commission, Broadband Speed Guide, available at <https://www.fcc.gov/consumers/guides/broadband-speed-guide> (last visited October 28, 2021).

such, projects meeting a lower threshold could not be considered “necessary” investments in broadband infrastructure, so Treasury has retained the threshold from the interim final rule.

Further, the final rule adds a requirement that recipients address the affordability needs of low-income consumers in accessing broadband networks funded by SLFRF, either by requiring service providers that provide service to households to either participate in the FCC’s Affordable Connectivity Program (ACP), or a broad-based affordability program with commensurate benefits. Treasury believes that this requirement will increase the number of customers that are able to take advantage of broadband infrastructure funded by SLFRF, increasing the effectiveness of funds in connecting households and businesses to high-speed internet that is critical to work, health, and education. There is a potential that this requirement may marginally increase project costs for recipients and providers, but this impact is uncertain, given the varying business models and pricing structures of broadband projects and providers.

Labor Standards

In this Supplementary Information for the final rule, Treasury encourages recipients to ensure that capital expenditures to respond to the public health and negative economic impacts of the pandemic and water, sewer, and broadband projects use strong labor standards, including, for example, project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury believes that its encouragement of labor standards carries benefits because it will ensure that workers have access to strong employment opportunities associated with infrastructure projects, which will in turn aid the economic recovery. Treasury believes that infrastructure projects may also benefit from stronger labor standards due to the potential of these standards to ensure a stronger skilled labor supply and minimize labor disputes and workplace injuries, which can result in costly disruptions to projects. Treasury assesses that these benefits will increase the economy and efficiency of infrastructure projects undertaken through SLFRF and will outweigh the potential for a marginal increase in labor costs.

Splitting Payments to Recipients

Treasury is required by statute to deliver funds to local governments in

two payments separated by at least twelve months, and the interim final rule provided for split payments to a majority of states as well. As discussed above, splitting payments ensures that recipients can adapt spending plans to evolving economic conditions and that at least some of the economic benefits will be realized in 2022 or later. However, consistent with authorities granted to Treasury in the statute, Treasury recognizes that a subset of states with significant remaining elevation in the unemployment rate could face heightened additional near term needs to aid unemployed workers and stimulate the recovery. Therefore, for a subset of state governments, Treasury has provided funds in one payment. Treasury believes that this approach strikes an appropriate balance between the general reasons to provide funds in two payments and the heightened additional near-term needs in specific states. As discussed above, Treasury set a threshold based on historical analysis of unemployment rates in recessions.

Reaching Underserved Communities

Finally, the final rule aims to promote and streamline the provision of assistance to individuals and communities in greatest need, particularly communities that have been historically underserved and have experienced disproportionate impacts of the COVID-19 crisis. Targeting relief is in line with Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” which laid out an Administration-wide priority to support “equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.” To this end, the final rule enumerates a list of services that may be provided using SLFRF funds in disproportionately impacted communities, including low-income areas, to address the more severe impacts of the pandemic in these communities; establishes the characteristics of essential workers eligible for premium pay and encouragement to serve workers based on financial need; provides that recipients may use SLFRF funds to restore state and local workforces, where women and people of color are disproportionately represented; and requires that broadband infrastructure projects participate in programs to support affordability of broadband service. Collectively, these provisions will promote use of resources to facilitate the provision of assistance to

individuals and communities with the greatest need.

Analysis of Costs

This regulatory action will generate administrative costs relative to a pre-statutory baseline. This includes, chiefly, costs required to administer SLFRF funds, oversee subrecipients and beneficiaries, and file periodic reports with Treasury. It also requires states to allocate SLFRF funds to nonentitlement units, which are smaller units of local government that are statutorily required to receive their funds through states. Treasury expects that the administrative burden associated with this program will be moderate for a grant program of its size. Treasury expects that many recipients receive direct or indirect funding from federal government programs and that many have familiarity with how to administer and report on federal funds or grant funding provided by other entities. In particular, states, territories, and large localities will have received funds from the Coronavirus Relief Fund (CRF) and Treasury expects them to rely heavily on established processes developed through that program or other prior grant funding, mitigating burden on these governments. Treasury has enhanced the level of recipient reporting as compared to the CRF, incorporating feedback from the Government Accountability Office and others that additions would improve the oversight of recipients’ use of funds. To balance the oversight benefits with the costs of added reporting burdens, Treasury has incorporated other mechanisms to mitigate burden. For example, Treasury is “tiering” reporting requirements so that recipients that receive relatively lesser amounts of SLFRF funds are required to submit less frequent reports than recipients receiving greater amounts of funds. Treasury is noting administrative costs as a generally allowable use of SLFRF funds, which defrays administrative expenses to recipients that may be needed to comply with reporting requirements. Treasury has also provided options for recipients to use eligibility thresholds they are already familiar with during administration of SLFRF funds, which will enable recipients to avoid the costs of setting up new programs and reporting mechanisms to meet reporting and compliance requirements. For example, Treasury has permitted recipients to use “categorical eligibility” when delivering assistance to particular groups, such as impacted or disproportionately impacted households.

In making implementation choices, Treasury has hosted numerous consultations with a diverse range of direct recipients—states, cities, counties, and Tribal governments—along with various communities across the United States, including those that are underserved. Furthermore, Treasury has made clear in guidance that SLFRF funds may be used to cover certain expenses related to administering programs established using SLFRF funds.³⁹⁶

Executive Order 13132

Executive Order 13132 (entitled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state, local, and Tribal governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications within the meaning of the Executive Order and does not impose substantial, direct compliance costs on state, local, and Tribal governments or preempt state law within the meaning of the Executive Order. The compliance costs are imposed on state, local, and Tribal governments by sections 602 and 603 of the Social Security Act, as enacted by the ARPA. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected state, local, and Tribal government officials and

associations in the process of developing the interim final rule and this final rule. Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, Treasury certifies that it has complied with the requirements of Executive Order 13132.

Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, generally requires public notice and an opportunity for comment before a rule becomes effective. However, the APA provides that the requirements of 5 U.S.C. 553 do not apply “to the extent that there is involved . . . a matter relating to agency . . . grants.” The APA also provides an exception to ordinary notice-and-comment procedures “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(B). The interim final rule was issued without prior notice and comment procedures because it implemented statutory conditions on the eligible uses of SLFRF funds, and addressed the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses to help address the economic and public health emergency. See the **SUPPLEMENTARY INFORMATION** section of the May 17, 2021 interim final rule for the applicability of the requirements of

5 U.S.C. 553. In addition, under the exception discussed in that section for matters relating to agency grants, the requirements of 5 U.S.C. 553 also do not apply to this final rule. After careful consideration of the comments received, this final rule adopts the May 17, 2021 interim final rule with the revisions discussed in this **SUPPLEMENTARY INFORMATION**.

Congressional Review Act

The Administrator of OIRA has determined that this is a major rule for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA) (5 U.S.C. 804(2) *et seq.*). Under the CRA, a major rule generally may take effect no earlier than 60 days after the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3).

Paperwork Reduction Act

The information collections associated with the SLFRF program have been reviewed and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35) (PRA) and assigned control number 1505–0271. Under the PRA, an agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a valid OMB control number.

Estimates of hourly burden under this program are set forth in the table below.

Reporting	Number respondents	Number responses per respondent	Total responses	Hours per response	Total burden in hours	Cost to respondents (\$48.80 per hour*)
Recipient Payment Form	5,050	1	5,050	.25 (15 minutes)	1,262.5	\$61,610
Acceptance of Award Terms	5,050	1	5,050	.25 (15 minutes)	1,262.5	61,610
Title VI Assurances	5,050	1	5,050	.50 (30 minutes)	2,525	123,220
Tribal Employment Information Form	584	1	584	.75 (45 minutes)	438	21,374
Request for Extension Form	96	1	96	1	96	4,685
Annual Recovery Plan Performance Report	430	1	430	100	43,000	2,098,400
NEU Distribution Template	55	2	110	10	1,100	53,680
Non-UGLG Distribution Template	55	2	110	5	550	26,840
Transfer Forms	1,500	1	1,500	1	1,500	73,200
Project and Expenditure Report	37,000	1	37,000	5	185,000	9,028,000
Total	54,870		54,980		236,735	11,552,619

* Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Accountants and Auditors, on the internet at <https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm> (visited March 28, 2020). Base wage of \$33.89/hour increased by 44 percent to account for fully loaded employer cost of employee compensation (benefits, etc.) for a fully loaded wage rate of \$48.80.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the

Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and

publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment under the APA or any other law are also exempt from the RFA

³⁹⁶ See Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, 10.2,

as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRFFAQ.pdf>.

requirements, including the requirement to conduct a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Because this rule is exempt from the notice and comment requirements of the APA, Treasury is not required to conduct a regulatory flexibility analysis.

Rule Text

List of Subjects in 31 CFR Part 35

Executive compensation, State and Local Governments, Tribal Governments, Public health emergency.

For the reasons stated in the preamble, the United States Department of the Treasury amends 31 CFR part 35 as follows:

PART 35—PANDEMIC RELIEF PROGRAMS

■ 1. Revise Subpart A to read as follows:

Subpart A—Coronavirus State and Local Fiscal Recovery Funds

Sec.

- 35.1 Purpose.
- 35.2 Applicability.
- 35.3 Definitions.
- 35.4 Reservation of authority, reporting.
- 35.5 Use of funds.
- 35.6 Eligible uses.
- 35.7 Pensions.
- 35.8 Tax.
- 35.9. Compliance with applicable laws.
- 35.10. Recoupment.
- 35.11 Payments to States.
- 35.12. Distributions to nonentitlement units of local government and units of general local government.

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f).

§35.1 Purpose.

This part implements section 9901 of the American Rescue Plan Act (Subtitle M of Title IX of Pub. L. 117–2), which amends Title VI of the Social Security Act (42 U.S.C. 801 *et seq.*) by adding sections 602 and 603 to establish the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund.

§35.2 Applicability.

This part applies to states, territories, Tribal governments, metropolitan cities, nonentitlement units of local government, counties, and units of general local government that accept a payment or transfer of funds made under section 602 or 603 of the Social Security Act.

§35.3 Definitions.

Baseline means tax revenue of the recipient for its fiscal year ending in 2019, adjusted for inflation in each reporting year using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

Capital expenditures has the same meaning given in 2 CFR 200.1.

County means a county, parish, or other equivalent county division (as defined by the Census Bureau).

Covered benefits include, but are not limited to, the costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Covered change means a change in law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase. A change in law includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period.

Covered period means, with respect to a state or territory, the period that:

- (1) Begins on March 3, 2021; and
- (2) Ends on the last day of the fiscal year of such State or territory in which all funds received by the State or territory from a payment made under section 602 or 603 of the Social Security Act have been expended or returned to, or recovered by, the Secretary.

COVID-19 means the Coronavirus Disease 2019.

COVID-19 public health emergency means the period beginning on January 27, 2020 and lasting until the termination of the national emergency concerning the COVID-19 outbreak declared pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq.*).

Deposit means an extraordinary payment of an accrued, unfunded liability. The term deposit does not refer to routine contributions made by an employer to pension funds as part of the employer's obligations related to payroll, such as either a pension contribution consisting of a normal cost component related to current employees or a component addressing the amortization of unfunded liabilities

calculated by reference to the employer's payroll costs.

Eligible employer means an employer of an eligible worker who performs essential work.

Eligible workers means workers needed to maintain continuity of operations of essential critical infrastructure sectors, including health care; emergency response; sanitation, disinfection, and cleaning work; maintenance work; grocery stores, restaurants, food production, and food delivery; pharmacy; biomedical research; behavioral health work; medical testing and diagnostics; home- and community-based health care or assistance with activities of daily living; family or childcare; social services work; public health work; vital services to Tribes; any work performed by an employee of a State, local, or Tribal government; educational work, school nutrition work, and other work required to operate a school facility; laundry work; elections work; solid waste or hazardous materials management, response, and cleanup work; work requiring physical interaction with patients; dental care work; transportation and warehousing; work at hotel and commercial lodging facilities that are used for COVID-19 mitigation and containment; work in a mortuary; and work in critical clinical research, development, and testing necessary for COVID-19 response.

(1) With respect to a recipient that is a metropolitan city, nonentitlement unit of local government, or county, workers in any additional non-public sectors as each chief executive officer of such recipient may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county; or

(2) With respect to a State, territory, or Tribal government, workers in any additional non-public sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government.

Essential work means work that:

- (1) Is not performed while teleworking from a residence; and
- (2) Involves:

(i) Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or

(ii) Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work.

Funds means, with respect to a recipient, amounts provided to the recipient pursuant to a payment made under section 602(b) or 603(b) of the Social Security Act or transferred to the recipient pursuant to section 603(c)(4) of the Social Security Act.

General revenue means money that is received from tax revenue, current charges, and miscellaneous general revenue, excluding refunds and other correcting transactions and proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and intergovernmental transfers from the Federal Government, including transfers made pursuant to section 9901 of the American Rescue Plan Act. General revenue also includes revenue from liquor stores that are owned and operated by state and local governments. General revenue does not include revenues from utilities, except recipients may choose to include revenue from utilities that are part of their own government as general revenue provided the recipient does so consistently over the remainder of the period of performance. Revenue from Tribal business enterprises must be included in general revenue.

Intergovernmental transfers means money received from other governments, including grants and shared taxes.

Low-income household means a household with:

(1) Income at or below 185 percent of the Federal Poverty Guidelines for the size of its household based on the poverty guidelines published most recently by the Department of Health and Human Services; or

(2) Income at or below 40 percent of the Area Median Income for its county and size of household based on data published most recently by the Department of Housing and Urban Development.

Micro-business means a small business that has five or fewer employees, one or more of whom owns the small business.

Moderate-income household means a household with:

(1) Income at or below 300 percent of the Federal Poverty Guidelines for the size of its household based on poverty guidelines published most recently by the Department of Health and Human Services; or

(2) Income at or below 65 percent of the Area Median Income for its county and size of household based on data published most recently by the Department of Housing and Urban Development.

Metropolitan city has the meaning given that term in section 102(a)(4) of

the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) and includes cities that relinquish or defer their status as a metropolitan city for purposes of receiving allocations under section 106 of such Act (42 U.S.C. 5306) for fiscal year 2021.

Net reduction in total spending is measured as the State or territory's total spending for a given reporting year excluding its spending of funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States for that reporting year.

Nonentitlement unit of local government means a "city," as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(5)), that is not a metropolitan city.

Nonprofit means a nonprofit organization that is exempt from Federal income taxation and that is described in section 501(c)(3) or 501(c)(19) of the Internal Revenue Code.

Obligation means an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.

Pension fund means a defined benefit plan and does not include a defined contribution plan.

Period of performance means the time period described in § 35.5 during which a recipient may obligate and expend funds in accordance with sections 602(c)(1) and 603(c)(1) of the Social Security Act and this subpart.

Premium pay means an amount of up to \$13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID-19 public health emergency. Such amount may not exceed \$25,000 in total over the period of performance with respect to any single eligible worker. Premium pay may be awarded to non-hourly and part-time eligible workers performing essential work. Premium pay will be considered to be in addition to wages or remuneration the eligible worker otherwise receives if, as measured on an hourly rate, the premium pay is:

(1) With regard to work that the eligible worker previously performed, pay and remuneration equal to the sum of all wages and remuneration previously received plus up to \$13 per hour with no reduction, substitution, offset, or other diminishment of the eligible worker's previous, current, or prospective wages or remuneration; or

(2) With regard to work that the eligible worker continues to perform, pay of up to \$13 per hour that is in addition to the eligible worker's regular rate of wages or remuneration, with no reduction, substitution, offset, or other diminishment of the worker's current and prospective wages or remuneration.

Qualified census tract has the same meaning given in 26 U.S.C. 42(d)(5)(B)(ii)(I).

Recipient means a State, territory, Tribal government, metropolitan city, nonentitlement unit of local government, county, or unit of general local government that receives a payment made under section 602(b) or 603(b) of the Social Security Act or transfer pursuant to section 603(c)(4) of the Social Security Act.

Reporting year means a single year or partial year within the covered period, aligned to the current fiscal year of the State or territory during the covered period.

Secretary means the Secretary of the Treasury.

State means each of the 50 States and the District of Columbia.

Small business means a business concern or other organization that:

(1) Has no more than 500 employees or, if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates, and

(2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Tax revenue means revenue received from a compulsory contribution that is exacted by a government for public purposes excluding refunds and corrections and, for purposes of § 35.8, intergovernmental transfers. Tax revenue does not include payments for a special privilege granted or service rendered, employee or employer assessments and contributions to finance retirement and social insurance trust systems, or special assessments to pay for capital improvements.

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

Title I eligible schools means schools eligible to receive services under section 1113 of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6313), including schools served under section 1113(b)(1)(C) of that Act.

Tribal enterprise means a business concern:

(1) That is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or

(2) That is owned in part by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns, as these terms are used and consistent with the definitions in 15 U.S.C. 657a(b)(2)(D).

Tribal government means the recognized governing body of any Indian or Alaska Native Tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published on January 29, 2021, pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Unemployment rate means the U-3 unemployment rate provided by the Bureau of Labor Statistics as part of the Local Area Unemployment Statistics program, measured as total unemployment as a percentage of the civilian labor force.

Unemployment trust fund means an unemployment trust fund established under section 904 of the Social Security Act (42 U.S.C. 1104).

Unit of general local government has the meaning given to that term in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)).

§ 35.4 Reservation of authority, reporting.

(a) *Reservation of authority.* Nothing in this part shall limit the authority of the Secretary to take action to enforce conditions or violations of law, including actions necessary to prevent evasions of this subpart.

(b) *Extensions or accelerations of timing.* The Secretary may extend or accelerate any deadline or compliance date of this part, including reporting requirements that implement this subpart, if the Secretary determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Secretary will consider the period of time that would be extended or accelerated and how the modified timeline would facilitate compliance with this subpart.

(c) *Reporting and requests for other information.* During the period of performance, recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, modifications to a State or Territory's tax revenue sources, and such other information as the Secretary may

require for the administration of this section. In addition to regular reporting requirements, the Secretary may request other additional information as may be necessary or appropriate, including as may be necessary to prevent evasions of the requirements of this subpart. False statements or claims made to the Secretary may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in Federal awards or contracts, and/or any other remedy available by law.

§ 35.5 Use of funds.

(a) *In general.* A recipient may only use funds to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, for one or more of the purposes enumerated in sections 602(c)(1) and 603(c)(1) of the Social Security Act, as applicable, including those enumerated in § 35.6, subject to the restrictions set forth in sections 602(c)(2) and 603(c)(2) of the Social Security Act, as applicable.

(b) *Costs incurred.* A cost shall be considered to have been incurred for purposes of paragraph (a) of this section if the recipient has incurred an obligation with respect to such cost by December 31, 2024.

(c) *Return of funds.* A recipient must return any funds not obligated by December 31, 2024. A recipient must also return funds obligated by December 31, 2024 but not expended by December 31, 2026.

§ 35.6 Eligible uses.

(a) *In general.* Subject to §§ 35.7 and 35.8, a recipient may use funds for one or more of the purposes described in paragraphs (b) through (f) of this section.

(b) *Responding to the public health emergency or its negative economic impacts.* A recipient may use funds to respond to the public health emergency or its negative economic impacts if the use meets the criteria provided in paragraph (b)(1) of this section or is enumerated in paragraph (b)(3) of this section; provided that, in the case of a use of funds for a capital expenditure under paragraphs (b)(1) or (b)(3) of this section, the use of funds must also meet the criteria provided in paragraph (b)(4) of this section. Treasury may also articulate additional eligible programs, services, or capital expenditures from time to time that satisfy the eligibility criteria of this paragraph (b), which shall be eligible under this paragraph (b).

(1) *Identifying eligible responses to the public health emergency or its negative economic impacts.* (i) A

program, service, or capital expenditure is eligible under this paragraph (b)(1) if a recipient identifies a harm or impact to a beneficiary or class of beneficiaries caused or exacerbated by the public health emergency or its negative economic impacts and the program, service, or capital expenditure responds to such harm.

(ii) A program, service, or capital expenditure responds to a harm or impact experienced by an identified beneficiary or class of beneficiaries if it is reasonably designed to benefit the beneficiary or class of beneficiaries that experienced the harm or impact and is related and reasonably proportional to the extent and type of harm or impact experienced.

(2) *Identified harms: Presumptions of impacted and disproportionately impacted beneficiaries.* A recipient may rely on the following presumptions to identify beneficiaries presumptively impacted or disproportionately impacted by the public health emergency or its negative economic impacts for the purpose of providing a response under paragraph (b)(1) or (b)(3) of this section:

(i) Households or populations that experienced unemployment; experienced increased food or housing insecurity; qualify for the Children's Health Insurance Program (42 U.S.C. 1397aa *et seq.*), Childcare Subsidies through the Child Care and Development Fund Program (42 U.S.C. 9857 *et seq.* and 42 U.S.C. 618), or Medicaid (42 U.S.C. 1396 *et seq.*); if funds are to be used for affordable housing programs, qualify for the National Housing Trust Fund (12 U.S.C. 4568) or the Home Investment Partnerships Program (42 U.S.C. 12721 *et seq.*); if funds are to be used to address impacts of lost instructional time for students in kindergarten through twelfth grade, any student who did not have access to in-person instruction for a significant period of time; and low- and moderate-income households and populations are presumed to be impacted by the public health emergency or its negative economic impacts;

(ii) The general public is presumed to be impacted by the public health emergency for the purposes of providing the uses set forth in subparagraphs (b)(3)(i)(A) and (b)(3)(i)(C); and

(iii) The following households, communities, small businesses, and nonprofit organizations are presumed to be disproportionately impacted by the public health emergency or its negative economic impacts:

(A) Households and populations residing in a qualified census tract;

households and populations receiving services provided by Tribal governments; households and populations residing in the territories; households and populations receiving services provided by territorial governments; low-income households and populations that qualify for Temporary Assistance for Needy Families (42 U.S.C. 601 *et seq.*), the Supplemental Nutrition Assistance Program (7 U.S.C. 2011 *et seq.*), Free and Reduced Price School Lunch and/or Breakfast programs (42 U.S.C. 1751 *et seq.* and 42 U.S.C. 1773), Medicare Part D Low-income Subsidies (42 U.S.C. 1395w–114), Supplemental Security Income (42 U.S.C. 1381 *et seq.*), Head Start (42 U.S.C. 9831 *et seq.*), Early Head Start (42 U.S.C. 9831 *et seq.*), the Special Supplemental Nutrition Program for Women, Infants, and Children (42 U.S.C. 1786), Section 8 Vouchers (42 U.S.C. 1437f), the Low-Income Home Energy Assistance Program (42 U.S.C. 8621 *et seq.*), Pell Grants (20 U.S.C. 1070a), and, if SLFRF funds are to be used for services to address educational disparities, Title I eligible schools;

(B) Small businesses operating in a qualified census tract, operated by Tribal governments or on Tribal lands, or operating in the territories; and

(C) Nonprofit organizations operating in a qualified census tract, operated by Tribal governments or on Tribal lands, or operating in the territories.

(3) *Enumerated eligible uses: Responses presumed reasonably proportional.* A recipient may use funds to respond to the public health emergency or its negative economic impacts on a beneficiary or class of beneficiaries for one or more of the following purposes unless such use is grossly disproportionate to the harm caused or exacerbated by the public health emergency or its negative economic impacts:

(i) Responding to the public health impacts of the public health emergency for purposes including:

(A) COVID–19 mitigation and prevention in a manner that is consistent with recommendations and guidance from the Centers for Disease Control and Prevention, including vaccination programs and incentives; testing programs; contact tracing; isolation and quarantine; mitigation and prevention practices in congregate settings; acquisition and distribution of medical equipment for prevention and treatment of COVID–19, including personal protective equipment; COVID–19 prevention and treatment expenses for public hospitals or health care facilities, including temporary medical

facilities; establishing or enhancing public health data systems; installation and improvement of ventilation systems in congregate settings, health facilities, or other public facilities; and assistance to small businesses, nonprofits, or impacted industries to implement mitigation measures;

(B) Medical expenses related to testing and treating COVID–19 that are provided in a manner consistent with recommendations and guidance from the Centers for Disease Control and Prevention, including emergency medical response expenses, treatment of long-term symptoms or effects of COVID–19, and costs to medical providers or to individuals for testing or treating COVID–19;

(C) Behavioral health care, including prevention, treatment, emergency or first-responder programs, harm reduction, supports for long-term recovery, and behavioral health facilities and equipment; and

(D) Preventing and responding to increased violence resulting from the public health emergency, including community violence intervention programs, or responding to increased gun violence resulting from the public health emergency, including payroll and covered benefits associated with community policing strategies; enforcement efforts to reduce gun violence; and investing in technology and equipment;

(ii) Responding to the negative economic impacts of the public health emergency for purposes including:

(A) Assistance to households and individuals, including:

(1) Assistance for food; emergency housing needs; burials, home repairs, or weatherization; internet access or digital literacy; cash assistance; and assistance accessing public benefits;

(2) Paid sick, medical, or family leave programs, or assistance to expand access to health insurance;

(3) Childcare, early learning services, home visiting, or assistance for child welfare-involved families or foster youth;

(4) Programs to address the impacts of lost instructional time for students in kindergarten through twelfth grade;

(5) Development, repair, and operation of affordable housing and services or programs to increase long-term housing security;

(6) Financial services that facilitate the delivery of Federal, State, or local benefits for unbanked and underbanked individuals;

(7) Benefits for the surviving family members of individuals who have died from COVID–19, including cash assistance to surviving spouses or

dependents of individuals who died of COVID–19;

(8) Assistance for individuals who want and are available for work, including those who are unemployed, have looked for work sometime in the past 12 months, who are employed part time but who want and are available for full-time work, or who are employed but seeking a position with greater opportunities for economic advancement;

(9) Facilities and equipment related to the provision of services to households provided in subparagraphs (b)(3)(ii)(A)(1)–(8);

(10) The following expenses related to Unemployment Trust Funds:

(i) Contributions to a recipient Unemployment Trust Fund and repayment of principal amounts due on advances received under Title XII of the Social Security Act (42 U.S.C. 1321) up to an amount equal to the difference between the balance in the recipient's Unemployment Trust Fund as of January 27, 2020 and the balance of such account as of May 17, 2021 plus the principal amount outstanding as of May 17, 2021 on any advances received under Title XII of the Social Security Act between January 27, 2020 and May 17, 2021; provided that if a recipient repays principal on Title XII advances or makes a contribution to an Unemployment Trust Fund after April 1, 2022, such recipient shall not reduce average weekly benefit amounts or maximum benefit entitlements prior to December 31, 2024; and

(ii) Any interest due on such advances received under Title XII of the Social Security Act (42 U.S.C. 1321); and

(11) A program, service, capital expenditure, or other assistance that is provided to a disproportionately impacted household, population, or community, including:

(i) Services to address health disparities of the disproportionately impacted household, population, or community;

(ii) Housing vouchers and relocation assistance;

(iii) Investments in communities to promote improved health outcomes and public safety such as parks, recreation facilities, and programs that increase access to healthy foods;

(iv) Capital expenditures and other services to address vacant or abandoned properties;

(v) Services to address educational disparities; and

(vi) Facilities and equipment related to the provision of these services to the disproportionately impacted household, population, or community.

(B) Assistance to small businesses, including:

(1) Programs, services, or capital expenditures that respond to the negative economic impacts of the COVID-19 public health emergency, including loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, or providing technical assistance; and

(2) A program, service, capital expenditure, or other assistance that responds to disproportionately impacted small businesses, including rehabilitation of commercial properties; storefront and façade improvements; technical assistance, business incubators, and grants for start-ups or expansion costs for small businesses; and programs or services to support micro-businesses;

(C) Assistance to nonprofit organizations including programs, services, or capital expenditures, including loans or grants to mitigate financial hardship such as declines in revenues or increased costs, or technical assistance;

(D) Assistance to tourism, travel, hospitality, and other impacted industries for programs, services, or

capital expenditures, including support for payroll costs and covered benefits for employees, compensating returning employees, support for operations and maintenance of existing equipment and facilities, and technical assistance; and

(E) Expenses to support public sector capacity and workforce, including:

(1) Payroll and covered benefit expenses for public safety, public health, health care, human services, and similar employees to the extent that the employee's time is spent mitigating or responding to the COVID-19 public health emergency;

(2) Payroll, covered benefit, and other costs associated with programs or services to support the public sector workforce and with the recipient:

(i) Hiring or rehiring staff to fill budgeted full-time equivalent positions that existed on January 27, 2020 but that were unfilled or eliminated as of March 3, 2021; or

(ii) Increasing the number of its budgeted full-time equivalent employees by up to the difference between the number of its budgeted full-time equivalent employees on January 27, 2020, multiplied by 1.075, and the number of its budgeted full-time equivalent employees on March 3, 2021,

provided that funds shall only be used for additional budgeted full-time equivalent employees above the recipient's number of budgeted full-time equivalent employees as of March 3, 2021;

(3) Costs to improve the design and execution of programs responding to the COVID-19 pandemic and to administer or improve the efficacy of programs addressing the public health emergency or its negative economic impacts; and

(4) Costs associated with addressing administrative needs of recipient governments that were caused or exacerbated by the pandemic.

(4) *Capital expenditures.* A recipient, other than a Tribal government, must prepare a written justification for certain capital expenditures according to Table 1 to paragraph (b)(4) of this section. Such written justification must include the following elements:

(i) Describe the harm or need to be addressed;

(ii) Explain why a capital expenditure is appropriate; and

(iii) Compare the proposed capital expenditure to at least two alternative capital expenditures and demonstrate why the proposed capital expenditure is superior.

TABLE 1 TO PARAGRAPH (b)(4)

If a project has total expected capital expenditures of	and the use is enumerated in (b)(3), then	and the use is not enumerated in (b)(3), then
Less than \$1 million	No Written Justification required	No Written Justification required.
Greater than or equal to \$1 million, but less than \$10 million.	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury.	Written Justification required and recipients must submit as part of regular reporting to Treasury.
\$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury.	

(c) *Providing premium pay to eligible workers.* A recipient may use funds to provide premium pay to eligible workers of the recipient who perform essential work or to provide grants to eligible employers that have eligible workers who perform essential work, provided that any premium pay or grants provided under this paragraph (c) must respond to eligible workers performing essential work during the COVID-19 public health emergency. A recipient uses premium pay or grants provided under this paragraph (c) to respond to eligible workers performing essential work during the COVID-19 public health emergency if:

(1) The eligible worker's total wages and remuneration, including the premium pay, is less than or equal to 150 percent of the greater of such eligible worker's residing State's or county's average annual wage for all

occupations as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics;

(2) The eligible worker is not exempt from the Fair Labor Standards Act overtime provisions (29 U.S.C. 207); or

(3) The recipient has submitted to the Secretary a written justification that explains how providing premium pay to the eligible worker is responsive to the eligible worker performing essential work during the COVID-19 public health emergency (such as a description of the eligible workers' duties, health, or financial risks faced due to COVID-19, and why the recipient determined that the premium pay was responsive despite the worker's higher income).

(d) *Providing government services.* A recipient may use funds for the provision of government services to the extent of the reduction in the recipient's general revenue due to the public health

emergency, calculated according to this paragraph (d). A recipient must make a one-time election to calculate the amount of the reduction in the recipient's general revenue due to the public health emergency according to either paragraph (d)(1) or (d)(2) of this section:

(1) *Standard allowance.* The reduction in the recipient's general revenue due to the public health emergency over the period of performance will be deemed to be ten million dollars; or

(2) *Formula.* The reduction in the recipient's general revenue due to the public health emergency over the period of performance equals the sum of the reduction in revenue, calculated as of each date identified in paragraph (d)(2)(i) of this section and according to the formula in paragraph (d)(2)(ii) of this section:

(i) A recipient must make a one-time election to calculate the reduction in its general revenue using information as of either:

(A) December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023; or

(B) The last day of each of the recipient's fiscal years ending in 2020, 2021, 2022, and 2023.

(ii) A reduction in a recipient's general revenue for each date identified in paragraph (d)(2)(i) of this section equals:

$$\text{Max} \{ [\text{Base Year Revenue} * (1 + \text{Growth Adjustment})^n - \text{Actual General Revenue}; 0 \}$$

Where:

(A) Base Year Revenue is the recipient's general revenue for the most recent full fiscal year prior to the COVID-19 public health emergency;

(B) Growth Adjustment is equal to the greater of 5.2 percent (or 0.052) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency;

(C) n equals the number of months elapsed from the end of the base year to the calculation date;

(D) Subscript t denotes the specific calculation date; and

(E) Actual General Revenue is a recipient's actual general revenue collected during the 12-month period ending on each calculation date identified in paragraph (d)(2)(i) of this section, except:

(1) For purposes of all calculation dates on or after April 1, 2022, in the case of any change made after January 6, 2022 to any law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase and that the recipient assesses has had the effect of decreasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must add to actual general revenue the amount of such decrease in tax revenue;

(2) For purposes of any calculation date on or after April 1, 2022, in the case of any change made after January 6, 2022 to any law, regulation, or administrative interpretation that increases any tax (by providing for an increase in a rate, the reduction of a rebate, a deduction, or a credit, or otherwise) or accelerates the imposition of any tax or tax increase and that the

recipient assesses has had the effect of increasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must subtract from actual general revenue the amount of such increase in tax revenue;

(3) If the recipient makes a one-time election to adjust general revenue to reflect tax changes made during the period beginning on January 27, 2020 and ending on January 6, 2022, for purposes of each calculation date identified in paragraph (d)(2)(i) of this section:

(i) In the case of any change made during such prior period to any law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase and that the recipient assesses has had the effect of decreasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must add to actual general revenue the amount of such decrease in tax revenue; and

(ii) In the case of any change made during such prior period to any law, regulation, or administrative interpretation that increases any tax (by providing for an increase in a rate, the reduction of a rebate, a deduction, or a credit, or otherwise) or accelerates the imposition of any tax or tax increase and that the recipient assesses has had the effect of increasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must subtract from actual general revenue the amount of such increase in tax revenue; and

(4) With respect to any calculation date during the period beginning on January 6, 2022 and ending on March 31, 2022, if the recipient makes the election in paragraph (d)(3) of this section, the recipient must also make the adjustments referenced in paragraph (d)(3) of this section with respect to any such changes in law, regulation, or administrative interpretation during the period beginning on January 6, 2022 and ending on such calculation date.

(e) *Making necessary investments in water, sewer, and broadband infrastructure.* A recipient may use funds to make the following

investments in water, sewer, and broadband infrastructure.

(1) *Water and sewer investments—(i) Clean Water State Revolving Fund projects.* Projects or activities of the type that meet the eligibility requirements of section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c));

(ii) *Additional stormwater projects.* Projects to manage, reduce, treat, or recapture stormwater or subsurface drainage water regardless of whether such projects would improve water quality if such projects would otherwise meet the eligibility requirements of section 603(c)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)(5));

(iii) *Drinking Water State Revolving Fund projects.* Projects or activities of the type that meet the eligibility requirements of section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) as implemented by the regulations adopted by the Environmental Protection Agency (EPA) under 40 CFR 35.3520, provided that:

(A) The recipient is not required to comply with the limitation under 40 CFR 35.3520(c)(2) to acquisitions of land from willing sellers or the prohibition under 40 CFR 35.3520(e)(6) on uses of funds for certain Tribal projects; and

(B) In the case of lead service line replacement projects, the recipient must replace the full length of the service line and may not replace only a partial portion of the service line.

(iv) *Additional lead remediation and household water quality testing.* Projects or activities to address lead in drinking water or provide household water quality testing that are within the scope of the programs the EPA is authorized to establish under sections 1459A(b)(2), 1459B(b)(1), 1464(d)(2), and 1465 of the Safe Drinking Water Act (42 U.S.C. 300j-19a(b)(2), 300j-19b(b)(1), 300j-24(d)(2), and 300j-25), provided that:

(A) In the case of lead service line replacement projects, the recipient must replace the full length of the service line and may not replace only a partial portion of the service line; and

(B) In the case of projects within the scope of the program the EPA is authorized to establish under section 1459B(b)(1) of the Safe Drinking Water Act, the recipient may determine the income eligibility of homeowners served by lead service line replacement projects in its discretion.

(v) *Drinking water projects to support increased population.* Projects of the type that meet the eligibility requirements of 40 CFR 35.3520 other than the requirement of subparagraph

(b)(1) of such regulation to address present or prevent future violations of health-based drinking water standards, if the following conditions are met:

(A) The project is needed to support increased population, with need assessed as of the time the project is undertaken;

(B) The project is designed to support no more than a reasonable level of projected increased need, whether due to population growth or otherwise;

(C) The project is a cost-effective means for achieving the desired level of service; and

(D) The project is projected to continue to provide an adequate level of drinking water over its estimated useful life.

(vi) *Dams and reservoirs.*

Rehabilitation of dams and reservoirs if the following conditions are met:

(A) The project meets the requirements of 40 CFR 35.3520 other than the following requirements:

(1) The prohibition on the rehabilitation of dams and reservoirs in 40 CFR 35.3520(e)(1) and (3); and

(2) The requirement in 40 CFR 35.3520(b)(1) that the project is needed to address present or prevent future violations of health-based drinking water standards, provided that if the dam or reservoir project does not meet this requirement, the project must be needed to support increased population, with need assessed as of the time the project is undertaken, and the project must be projected to continue to provide an adequate level of drinking water over its estimated useful life;

(B) The primary purpose of the dam or reservoir is for drinking water supply;

(C) The project is needed for the provision of drinking water supply, with need assessed as of the time the project is initiated;

(D) The project is designed to support no more than a reasonable level of projected increased need, whether due to population growth or otherwise; and

(E) The project is a cost-effective means for achieving the desired level of service.

(vii) *Private wells.* Rehabilitation of private wells, testing initiatives to identify contaminants in private wells, and treatment activities and remediation projects that address contamination in private wells, if the project meets the requirements of 40 CFR 35.3520 other than the limitation to certain eligible systems under 40 CFR 35.3520(a).

(2) *Broadband investments—(i) General.* Broadband infrastructure if the following conditions are met:

(A) The broadband infrastructure is designed to provide service to households and businesses with an

identified need, as determined by the recipient, for such infrastructure;

(B) The broadband infrastructure is designed to, upon completion:

(1) Reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or

(2) In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, to provide service reliably meeting or exceeding symmetrical 100 Mbps download speed and upload speeds:

(i) Reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and

(ii) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed; and

(C) The service provider for a completed broadband infrastructure investment project that provides service to households is required, for as long as the SLFRF-funded broadband infrastructure is in use, by the recipient to:

(1) Participate in the Federal Communications Commission's Affordable Connectivity Program (ACP) through the lifetime of the ACP; or

(2) Otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP through the lifetime of the ACP.

(ii) *Cybersecurity infrastructure investments.* Cybersecurity infrastructure investments that are designed to improve the reliability and resiliency of new and existing broadband infrastructure. Such investments may include the addition or modernization of network security hardware and software tools designed to strengthen cybersecurity for the end-users of these networks.

(f) *Meeting the non-federal matching requirements for Bureau of Reclamation projects.* A recipient may use funds to meet the non-federal matching requirements of any authorized Bureau of Reclamation project.

§ 35.7 Pensions.

A recipient (other than a Tribal government) may not use funds for deposit into any pension fund.

§ 35.8 Tax.

(a) *Restriction.* A State or Territory shall not use funds to either directly or indirectly offset a reduction in the net tax revenue of the State or Territory resulting from a covered change during the covered period.

(b) *Violation.* Treasury will consider a State or Territory to have used funds to offset a reduction in net tax revenue if, during a reporting year:

(1) *Covered change.* The State or Territory has made a covered change that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of reducing tax revenue relative to current law;

(2) *Exceeds the de minimis threshold.* The aggregate amount of the measured or predicted reductions in tax revenue caused by covered changes identified under paragraph (b)(1) of this section, in the aggregate, exceeds 1 percent of the State's or Territory's baseline;

(3) *Reduction in net tax revenue.* The State or Territory reports a reduction in net tax revenue, measured as the difference between actual tax revenue and the State's or Territory's baseline, each measured as of the end of the reporting year; and

(4) *Consideration of other changes.* The aggregate amount of measured or predicted reductions in tax revenue caused by covered changes is greater than the sum of the following, in each case, as calculated for the reporting year:

(i) The aggregate amount of the expected increases in tax revenue caused by one or more covered changes that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of increasing tax revenue; and

(ii) Reductions in spending, up to the amount of the State's or Territory's net reduction in total spending, that are in:

(A) Departments, agencies, or authorities in which the State or Territory is not using funds; and

(B) Departments, agencies, or authorities in which the State or Territory is using funds, in an amount equal to the value of the spending cuts in those departments, agencies, or authorities, minus funds used.

(c) *Amount and revenue reduction cap.* If a State or Territory is considered to be in violation pursuant to paragraph (b) of this section, the amount used in

violation of paragraph (a) of this section is equal to the lesser of:

(1) The reduction in net tax revenue of the State or Territory for the reporting year, measured as the difference between the State's or Territory's baseline and its actual tax revenue, each measured as of the end of the reporting year; and,

(2) The aggregate amount of the reductions in tax revenues caused by covered changes identified in paragraph (b)(1) of this section, minus the sum of the amounts in identified in paragraphs (b)(4)(i) and (ii) of this section.

§ 35.9 Compliance with applicable laws.

A recipient must comply with all other applicable Federal statutes, regulations, and executive orders, and a recipient shall provide for compliance with the American Rescue Plan Act, this subpart, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds.

§ 35.10 Recoupment.

(a) *Identification of violations*—(1) *In general.* Any amount used in violation of § 35.5, 35.6, or 35.7 may be identified at any time prior to December 31, 2026.

(2) *Annual reporting of amounts of violations.* On an annual basis, a recipient that is a State or territory must calculate and report any amounts used in violation of § 35.8.

(b) *Calculation of amounts subject to recoupment*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, the Secretary will calculate any amounts subject to recoupment resulting from a violation of § 35.5, 35.6 or 35.7 as the amounts used in violation of such restrictions.

(2) *Violations of § 35.8.* The Secretary will calculate any amounts subject to recoupment resulting from a violation of § 35.8, equal to the lesser of:

(i) The amount set forth in § 35.8(c); and,

(ii) The amount of funds received by such recipient.

(c) *Initial notice.* If the Secretary calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient an initial written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for reconsideration.*

Unless the Secretary extends or accelerates the time period, within 60 calendar days of receipt of an initial notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to the Secretary requesting reconsideration of any amounts subject to recoupment

under paragraph (b) of this section. To request reconsideration of any amounts subject to recoupment, a recipient must submit to the Secretary a written request that includes:

(1) An explanation of why the recipient believes all or some of the amount should not be subject to recoupment; and

(2) A discussion of supporting reasons, along with any additional information.

(e) *Final amount subject to recoupment.* Unless the Secretary extends or accelerates the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section or the expiration of the period for requesting reconsideration provided under paragraph (d), the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided. A recipient must invoke and exhaust the procedures available under this subpart prior to seeking judicial review of a decision under § 35.10.

(f) *Repayment of funds.* Unless the Secretary extends or accelerates the time period, a recipient shall repay to the Secretary any amounts subject to recoupment in accordance with instructions provided by the Secretary:

(1) Within 120 calendar days of receipt of the notice of recoupment provided under paragraph (c) of this section, in the case of a recipient that does not submit a request for reconsideration in accordance with the requirements of paragraph (d) of this section; or

(2) Within 120 calendar days of receipt of the Secretary's decision under paragraph (e) of this section, in the case of a recipient that submits a request for reconsideration in accordance with the requirements of paragraph (d) of this section.

(g) *Other remedial actions.* Prior to seeking recoupment or taking other appropriate action pursuant to paragraph (c), (d), (e), or (f) of this section, the Secretary may notify the recipient of potential violations and provide the recipient an opportunity for informal consultation and remediation.

§ 35.11 Payments to States.

(a) *In general.* With respect to any State or Territory that has an unemployment rate as of the date that it submits an initial certification for payment of funds pursuant to section

602(d)(1) of the Social Security Act that is less than two percentage points above its unemployment rate in February 2020, the Secretary will withhold 50 percent of the amount of funds allocated under section 602(b) of the Social Security Act to such State or territory until at least May 10, 2022 and not more than twelve months from the date such initial certification is provided to the Secretary.

(b) *Payment of withheld amount.* In order to receive the amount withheld under paragraph (a) of this section, the State or Territory must submit to the Secretary the following information:

(1) A certification, in the form provided by the Secretary, that such State or Territory requires the payment to carry out the activities specified in section 602(c) of the Social Security Act and will use the payment in compliance with section 602(c) of the Social Security Act; and

(2) Any reports required to be filed by that date pursuant to this part that have not yet been filed.

§ 35.12 Distributions to nonentitlement units of local government and units of general local government.

(a) *Nonentitlement units of local government.* Each State or Territory that receives a payment from the Secretary pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of local government in such State or Territory in accordance with the requirements set forth in section 603(b)(2)(C) of the Social Security Act and without offsetting any debt owed by such nonentitlement units of local governments against such payments.

(b) *Budget cap.* A State or Territory may not make a payment to a nonentitlement unit of local government pursuant to section 603(b)(2)(C) of the Social Security Act and paragraph (a) of this section in excess of the amount equal to 75 percent of the most recent budget for the nonentitlement unit of local government as of January 27, 2020. For purposes of this section 35.12, a nonentitlement unit of local government's most recent budget shall mean the nonentitlement unit of local government's total annual budget, including both operating and capital expenditure budgets, in effect as of January 27, 2020. A State or Territory shall permit a nonentitlement unit of local government without a formal budget as of January 27, 2020, to provide a certification from an authorized officer of the nonentitlement unit of local government of its most recent annual expenditures as of

January 27, 2020, and a State or Territory may rely on such certification for purposes of complying with this section 35.12.

(c) *Units of general local government.* Each State or Territory that receives a payment from the Secretary pursuant to section 603(b)(3)(B)(ii) of the Social Security Act, in the case of an amount to be paid to a county that is not a unit of general local government, shall

distribute the amount of the payment to units of general local government within such county in accordance with the requirements set forth in section 603(b)(3)(B)(ii) of the Social Security Act and without offsetting any debt owed by such units of general local government against such payments.

(d) *Additional conditions.* A State or Territory may not place additional conditions or requirements on

distributions to nonentitlement units of local government or units of general local government beyond those required by section 603 of the Social Security Act or this subpart.

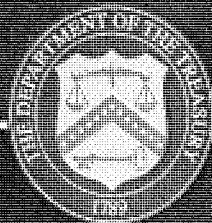
Jacob Leibenluft,
Chief Recovery Officer.

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Compliance and Reporting Guidance

State and Local Fiscal Recovery Funds



September 20, 2022
Version: 5.0



Coronavirus State and Local Fiscal Recovery Funds Guidance on Recipient Compliance and Reporting Responsibilities

On March 11, 2021, the American Rescue Plan Act was signed into law, and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund, which together make up the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") program. This program is intended to provide support to State, territorial, local, and Tribal governments in responding to the economic and public health impacts of COVID-19 and in their efforts to contain impacts on their communities, residents, and businesses.

In May 2021, Treasury published the interim final rule ("IFR") describing eligible and ineligible uses of SLFRF, as well as other program requirements. The initial versions of this Compliance and Reporting guidance reflected the IFR and its eligible use categories. On January 6, 2022, the U.S. Department of the Treasury ("Treasury") adopted the final rule implementing the SLFRF program. The final rule became effective on April 1, 2022. Prior to the final rule effective date, the IFR remained in effect; funds used consistently with the IFR while it was in effect were in compliance with the SLFRF program. However, recipients could choose to take advantage of the final rule's flexibilities and simplifications ahead of the effective date. Recipients may consult the [*Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule*](#) for more information on compliance with the IFR and the final rule.

To support recipients in complying with the final rule, this reporting guidance reflects the final rule and provides additional detail and clarification for each recipient's compliance and reporting responsibilities under the SLFRF program, and should be read in concert with the Award Terms and Conditions, the authorizing statute, the [final rule](#), other program guidance including the [Final Rule FAQs](#), and other regulatory and statutory requirements, including regulatory requirements under the [Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#) ("Uniform Guidance" or 2 CFR Part 200), and [2021 SLFRF Compliance Supplement – Technical Update and 2022 SLFRF Compliance Supplement](#). Please see the [Assistance Listing in SAM.gov](#) under assistance listing number (formerly known as CFDA number) 21.027 for more information.

Please Note: This guidance document applies to the SLFRF program only and does not change or impact reporting and compliance requirements for the Coronavirus Relief Fund ("CRF") established by the CARES Act.

This guidance includes two parts:

Part 1: General Guidance

This section provides an orientation to recipients' compliance responsibilities and Treasury's expectations and recommends best practices where appropriate under the SLFRF program.

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B. Statutory Eligible Uses.....	P. 4
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Part 2: Reporting Requirements

This section provides information on the reporting requirements for the SLFRF program.

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B. Project and Expenditure Report.....	P. 17
C. Recovery Plan Performance Report.....	P. 34
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OMB Control Number: 1505-0271

OMB Expiration Date: 04/30/2025

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden for the collections of information included in this guidance is as follows: 30 minutes for Title VI Assurances, 2 hours per response for the Interim Report, 6 hours per response for the Project and Expenditure Report and 100 hours per response for the Recovery Plan Performance Report (if applicable). Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.



Part 1: General Guidance

This section provides an orientation on recipients' compliance responsibilities and Treasury's expectations and recommended best practices where appropriate under the SLFRF program.

Recipients under the SLFRF program are the eligible entities identified in sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021 (the "SLFRF statute") that receive an SLFRF award. Subrecipients under the SLFRF program are entities that receive a subaward from a recipient to carry out the purposes (program or project) of the SLFRF award on behalf of the recipient.

Recipients are accountable to Treasury for oversight of their subrecipients in accordance with 2 CFR 200.332, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's interim final rule and final rule, applicable federal statutes, regulations, and reporting requirements.

A. Key Principles

There are several guiding principles for developing your own effective compliance regimes:

- Recipients and subrecipients are the first line of defense and responsible for ensuring the SLFRF award funds are not used for ineligible purposes, and there is no fraud, waste, or abuse associated with their SLFRF award;
- Many SLFRF-funded projects respond to the COVID-19 public health emergency and meet urgent community needs. Swift and effective implementation is vital, and recipients must balance facilitating simple and rapid program access widely across the community and maintaining a robust documentation and compliance regime;
- Treasury encourages recipients to use SLFRF-funded projects to advance shared interests and promote equitable delivery of government benefits and opportunities to underserved communities, as outlined in [Executive Order 13985, On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#); and
- Transparency and public accountability for SLFRF award funds and use of such funds are critical to upholding program integrity and trust in all levels of government, and SLFRF award funds should be managed consistent with Administration guidance per [Memorandum M-21-20](#) and [Memorandum M-20-21](#).

B. Statutory Eligible Uses

As a recipient of an SLFRF award, your organization has substantial discretion to use the award funds in the ways that best suit the needs of your constituents – as long as such use fits into one of the following four statutory categories:

1. To respond to the COVID-19 public health emergency or its negative economic impacts;
2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the recipient that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
3. For the provision of government services, to the extent of the reduction in revenue of such recipient due to the COVID-19 public health emergency, relative to revenues collected in the most recent full fiscal year of the recipient prior to the emergency; or
4. To make necessary investments in water, sewer, or broadband infrastructure.

Treasury adopted an interim final rule in May 2021 and the [final rule](#) on January 6, 2022 to implement these eligible use categories and other restrictions on the use of funds under the SLFRF



program. The final rule took effect on April 1, 2022, and the interim final rule remained in effect until that time, although recipients could choose to take advantage of the final rule's flexibilities and simplifications prior to April 1, 2022. Recipients may consult the [Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule](#) for more information on compliance with the interim final rule and the final rule.

It is the recipient's responsibility to ensure all SLFRF award funds are used in compliance with the program's requirements. In addition, recipients should be mindful of any additional compliance obligations that may apply – for example, additional restrictions imposed upon other sources of funds used in conjunction with SLFRF award funds, or statutes and regulations that may independently apply to water, broadband, and sewer infrastructure projects. Recipients should ensure they maintain proper documentation supporting determinations of costs and applicable compliance requirements, and how they have been satisfied as part of their award management, internal controls, and subrecipient oversight and management.

C. Treasury's Final Rule

Treasury's [final rule](#) details recipients' compliance responsibilities and provides additional information on eligible and restricted uses of SLFRF award funds and reporting requirements.

- 1. Eligible and Restricted Uses of SLFRF Funds.** As described in the SLFRF statute and summarized above, there are four enumerated eligible uses of SLFRF award funds. As a recipient of an award under the SLFRF program, your organization is responsible for complying with requirements for the use of funds. In addition to determining a given project's eligibility, recipients are also responsible for determining subrecipient's or beneficiaries' eligibility, and must monitor subrecipients' use of SLFRF award funds.

To help recipients build a greater understanding of eligible uses, Treasury's [final rule](#) establishes a framework for determining whether a specific project would be eligible under the SLFRF program, including some helpful definitions. For example, Treasury's [final rule](#) establishes:

- A framework for determining whether a project responds to the COVID-19 public health emergency or its negative economic impacts;
- Definitions of "eligible employers," "essential work," "eligible workers," and "premium pay" for cases where premium pay is an eligible use;
- The option to select between a standard amount of revenue loss or complete a full revenue loss calculation of revenue lost due to the COVID-19 public health emergency;
- A framework for necessary water and sewer infrastructure projects that aligns eligible uses with projects that are eligible under the Environmental Protection Agency's Drinking Water and Clean Water State Revolving Funds along with certain additional projects, including a wider set of lead remediation and stormwater infrastructure projects and aid for residential wells; and
- A framework for necessary broadband projects that allows for projects that are designed to provide service of sufficient speeds to eligible areas, as well as an affordability requirement for providers that provide service to households.

Treasury's [final rule](#) also provides more information on important restrictions on use of SLFRF award funds, including that recipients other than Tribal governments may not deposit SLFRF funds into a pension fund; and recipients that are States or territories may not use SLFRF funds to offset a reduction in net tax revenue resulting from the recipient's change in law, regulation, or administrative interpretation. In addition, recipients may not use SLFRF funds directly to service debt, satisfy a judgment or settlement, or contribute to a "rainy day" fund. Recipients should refer to Treasury's final rule for more information on these restrictions.



Treasury's final rule outlines that funds available under the "revenue loss" eligible use category (sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act) generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. However, the final rule notes that SLFRF funds may not be used as the non-federal share for purposes of a state's Medicaid and CHIP programs because the Office of Management and Budget ("OMB") has approved a waiver as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations. If a recipient seeks to use SLFRF funds to satisfy match or cost-share requirements for a federal grant program, it should first confirm with the relevant awarding agency that no waiver has been granted for that program, that no other circumstances enumerated under 2 CFR 200.306(b) would limit the use of SLFRF funds to meet the match or cost-share requirement, and that there is no other statutory or regulatory impediment to using the SLFRF funds for the match or cost-share requirement. SLFRF funds beyond those that are available under the revenue loss eligible use category may not be used to meet the non-federal match or cost-share requirements of other federal programs, other than as specifically provided for by statute. For example, the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-federal match requirements of authorized Bureau of Reclamation projects and certain broadband deployment projects.

2. **Eligible Costs Timeframe.** Your organization, as a recipient of an SLFRF award, may use SLFRF funds to cover eligible costs that your organization incurred during the period that begins on March 3, 2021 and ends on December 31, 2024, as long as the award funds for the obligations incurred by December 31, 2024 are expended by December 31, 2026. Costs for projects incurred by the recipient State, territorial, local, or Tribal government prior to March 3, 2021 are not eligible, as provided for in Treasury's final rule.

Recipients may, in certain circumstances, use SLFRF award funds for the eligible use categories described in Treasury's final rule for costs incurred prior to March 3, 2021. Specifically,

- a. **Public Health/Negative Economic Impacts:** Recipients may use SLFRF award funds to provide assistance to households, small businesses, and nonprofits to respond to the public health emergency or negative economic impacts of the pandemic – such as rent, mortgage, or utility assistance – for costs incurred by the beneficiary (e.g., a household) prior to March 3, 2021, provided that the recipient State, territorial, local or Tribal government did not incur the cost of providing such assistance prior to March 3, 2021.
- b. **Premium Pay:** Recipients may provide premium pay retrospectively for work performed at any time since the start of the COVID-19 public health emergency. Such premium pay must be "in addition to" wages and remuneration already received and the obligation to provide such premium pay must not have been incurred by the recipient prior to March 3, 2021.
- c. **Revenue Loss:** Recipients have broad discretion to use funds for the provision of government services to the extent of reduction in revenue. While calculation of lost revenue is based on the recipient's revenue in the last full fiscal year prior to the COVID-19 public health emergency, use of funds for government services must be forward looking for costs incurred by the recipient after March 3, 2021.
- d. **Investments in Water, Sewer, and Broadband:** Recipients may use SLFRF award funds to make necessary investments in water, sewer, and broadband infrastructure. Recipients may use SLFRF award funds to cover costs incurred for eligible projects planned or started prior to March 3, 2021, provided that the project costs covered by the SLFRF award funds were incurred by the recipient after March 3, 2021.

Any funds not obligated or expended for eligible uses by the timelines above must be returned to Treasury, including any unobligated or unexpended funds that have been provided to subrecipients and contractors as part of the award closeout process pursuant to 2 C.F.R. 200.344(d). For the purposes of determining expenditure eligibility, Treasury's final rule provides



that “incurred” means the recipient has incurred an obligation, which has the same meaning given to “financial obligation” in 2 CFR 200.1.

3. **Reporting.** Generally, recipients must submit one initial Interim Report, quarterly or annual Project and Expenditure reports which include subaward reporting, and in some cases annual Recovery Plan reports. Treasury’s final rule and Part 2 of this guidance provide more detail around SLFRF reporting requirements.
4. **Expenditure Categories.** Treasury’s final rule provides greater flexibility and simplicity for recipients to fight the pandemic and support families and businesses struggling with its impacts, maintain vital services amid revenue shortfalls, and build a strong, resilient, and equitable recovery. As such, recipients report on a broader set of eligible uses and associated Expenditure Categories (“EC”), which began with the April 2022 Project and Expenditure Report. Appendix 1 includes the new ECs, as well as a reference to previous ECs used for reporting under the interim final rule.

Assistance Listing

The Assistance Listing for the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) was published May 28, 2021 on SAM.gov under Assistance Listing Number (“ALN”), formerly known as CFDA Number, **21.027**.

The assistance listing includes helpful information including program purpose, statutory authority, eligibility requirements, and compliance requirements for recipients. The ALN is the unique 5-digit number assigned to identify a federal assistance listing, and can be used to search for federal assistance program information, including funding opportunities, spending on USASpending.gov, or audit results through the Federal Audit Clearinghouse.

To expedite payments and meet statutory timelines Treasury issued initial payments under an existing ALN, 21.019, assigned to the CRF. If you have already received funds or captured the initial number in your records, please update your systems and reporting to reflect the new ALN 21.027 for the SLFRF program. **Recipients must use ALN 21.027 for all financial accounting, subawards, and associated program reporting requirements for the SLFRF awards.**

D. Uniform Administrative Requirements

The SLFRF awards are generally subject to the requirements set forth in the Uniform Guidance. In all instances, your organization should review the Uniform Guidance requirements applicable to your organization’s use of SLFRF funds, and SLFRF-funded projects. Additional details about applicability of certain provisions of the Uniform Guidance may be found in:

- SLFRF final rule;
- SLFRF Assistance Listing; and
- SLFRF Final Rule FAQs, including FAQ 4.9, 10.1, and Section 13.

The following sections provide a general summary of your organization’s compliance responsibilities under applicable statutes and regulations, including the Uniform Guidance, as described in the most recent compliance supplement issued by OMB. Note that the descriptions below are only general summaries and all recipients and subrecipients are advised to carefully review the Uniform Guidance requirements and any additional regulatory and statutory requirements applicable to the program.

1. **Allowable Activities.** Each recipient should review program requirements, including Treasury’s final rule and the recipient’s Award Terms and Conditions, to determine and record eligible uses



of SLFRF funds. Per 2 CFR Part 200.303, your organization must develop and implement effective internal controls to ensure that funding decisions under the SLFRF award constitute eligible uses of funds, and document determinations.

- 2. Allowable Costs/Cost Principles.** As outlined in the Uniform Guidance at 2 CFR Part 200, Subpart E regarding Cost Principles, allowable costs are based on the premise that a recipient is responsible for the effective administration of Federal awards, application of sound management practices, and administration of Federal funds in a manner consistent with the program objectives and terms and conditions of the award. Recipients must implement robust internal controls and effective monitoring to ensure compliance with the Cost Principles, which are important for building trust and accountability. Please note that as outlined in Final Rule [FAQ 13.15](#), only a subset of the Uniform Guidance requirements at 2 CFR Part 200 Subpart E (Cost Principles) applies to recipients' use of funds in the revenue loss eligible use category.

SLFRF funds may be, but are not required to be, used along with other funding sources for a given project. Recipients should note that SLFRF funds available under the "revenue loss" eligible use category generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. If a recipient seeks to use SLFRF funds to satisfy match or cost-share requirements for a federal grant program, the recipient should first confirm with the relevant awarding agency that no waiver has been granted for that program, that no other circumstances enumerated under 2 CFR 200.306(b) would limit the use of SLFRF funds to meet the match or cost-share requirement, and that there is no other statutory or regulatory impediment to using the SLFRF funds for the match or cost-share requirement. For instance, recipients should note that SLFRF funds may not be used as the non-federal share for purposes of a state's Medicaid and CHIP programs because the OMB has approved a waiver from this provision as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations.

SLFRF funds beyond those that are available under the revenue loss eligible use category may not be used to meet the non-federal match or cost-share requirements of other federal programs, other than as specifically provided for by statute. As an example, the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-federal match requirements of authorized Bureau of Reclamation projects and certain broadband deployment projects. Recipients should consult the final rule for further details if they seek to utilize SLFRF funds as a match for these projects.

Treasury's final rule, program guidance, and the Uniform Guidance outline the types of costs that are allowable, including certain audit costs. For example, per 2 CFR 200.425, a reasonably proportionate share of the costs of audits required by the Single Audit Act Amendments of 1996 are allowable; however, costs for audits that were not performed in accordance with 2 CFR Part 200, Subpart F and the Compliance Supplement are not allowable. Please see 2 CFR Part 200, Subpart E regarding the Cost Principles for more information.

- a. Administrative costs:** Recipients may use funds for administering the SLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements.¹ Further, costs must be reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405. Pursuant to the SLFRF Award Terms and Conditions, recipients are permitted to charge both direct and indirect costs to their SLFRF award as administrative costs as long as they are accorded consistent treatment per 2 CFR 200.403. Direct costs are those that are identified specifically as costs of implementing the SLFRF program objectives, such as

¹ Recipients also may use SLFRF funds directly for administrative costs to improve the design and execution of programs responding to the COVID-19 pandemic and to administer or improve the efficacy of programs addressing the public health emergency or its negative economic impacts. 31 CFR 35.6(b)(3)(ii)(E)(3).



contract support, materials, and supplies for a project. Indirect costs are general overhead costs of an organization where a portion of such costs are allocable to the SLFRF award such as the cost of facilities or administrative functions like a director's office.²³ Each category of cost should be treated consistently in like circumstances as direct or indirect, and recipients may not charge the same administrative costs to both direct and indirect cost categories, or to other programs. If a recipient has a current Negotiated Indirect Costs Rate Agreement ("NICRA") established with a Federal cognizant agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, then the recipient may use its current NICRA. Alternatively, if the recipient does not have a NICRA, the recipient may elect to use the de minimis rate of 10 percent of the modified total direct costs pursuant to 2 CFR 200.414(f).

- b. **Salaries and Expenses:** In general, certain employees' wages, salaries, and covered benefits are an eligible use of SLFRF award funds. Please see Treasury's final rule for details.

3. **Cash Management.** SLFRF payments made to recipients are not subject to the requirements of the Cash Management Improvement Act and Treasury's implementing regulations at 31 CFR Part 205 or 2 CFR 200.305(b)(8)-(9).

As such, recipients can place funds in interest-bearing accounts, do not need to remit interest to Treasury, and are not limited to using that interest for eligible uses under the SLFRF award.

4. **Eligibility.** Under this program, recipients are responsible for ensuring funds are used for eligible purposes. Generally, recipients must develop and implement policies and procedures, and retain records, to determine and monitor implementation of criteria for determining the eligibility of beneficiaries and/or subrecipients. Your organization, and if applicable, the subrecipient(s) administering a program on behalf of your organization, will need to maintain procedures for obtaining information evidencing a given beneficiary, subrecipient, or contractor's eligibility, including a valid SAM.gov registration (except with respect to individuals or households for which a SAM.gov registration is not required). Implementing risk-based due diligence for eligibility determinations is a best practice to augment your organization's existing controls.
5. **Property Management.** Any purchase of real or personal property with SLFRF funds must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D, unless stated otherwise by Treasury. For example, as outlined in Final Rule [FAQ 13.15](#), only a subset of the Uniform Guidance requirements at 2 CFR Part 200 Subpart D (Post Federal Award Requirements) applies to recipients' use of funds in the revenue loss eligible use category. Furthermore, as outlined in Final Rule [FAQ 13.16](#), Treasury has clarified the use and disposition requirements for real and personal property, supplies, and equipment purchased with SLFRF funds.
6. **Matching, Level of Effort, Earmarking.** There are no matching, level of effort, or earmarking compliance responsibilities associated with the SLFRF award. See Section C.1 (Eligible and Restricted Uses of SLFRF Funds) for a discussion of restrictions on use of SLFRF funds. Please see 2. Allowable Costs/Cost Principles above for information on the use of SLFRF funds for non-Federal match or cost-sharing requirements in other Federal programs.
7. **Period of Performance.** Your organization should also develop and implement internal controls related to activities occurring outside the period of performance. All funds remain subject to statutory and regulatory requirements that they must be used for costs incurred by the recipient during the period that begins on March 3, 2021, and ends on December 31, 2024, and that award funds for the financial obligations incurred by December 31, 2024 must be expended by December

² 2 CFR 200.413 Direct Costs.

³ 2 CFR 200.414 Indirect Costs.



31, 2026. Any funds not used must be returned to Treasury as part of the award closeout process pursuant to 2 C.F.R. 200.344(d).

- 8. Procurement, Suspension & Debarment.** Recipients are responsible for ensuring that any procurement using SLFRF funds, or payments under procurement contracts using such funds, are consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327, unless stated otherwise by Treasury. As outlined in Final Rule [FAQ 13.15](#), only a subset of the Uniform Guidance requirements at 2 CFR Part 200 Subpart D (Post Federal Award Requirements) applies to recipients' use of funds in the revenue loss eligible use category. The procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327 are not included in Final Rule [FAQ 13.15](#)'s list of applicable Subpart D requirements that apply to recipients' use of funds in the revenue loss eligible use category.

The Uniform Guidance establishes in 2 CFR 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in 2 CFR 200.320, which allows for non-competitive procurements only in certain circumstances. Recipients must have and use documented procurement procedures that are consistent with the standards outlined in 2 CFR 200.317 through 2 CFR 200.320. The Uniform Guidance, pursuant to 2 CFR 180, requires an infrastructure for competitive bidding and contractor oversight, including maintaining written standards of conduct and prohibitions on dealing with suspended or debarred parties. Your organization must ensure adherence to all applicable local, State, and federal procurement laws and regulations.

- 9. Program Income.** Generally, program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, and principal and interest on loans made with Federal award funds. Program income does not include interest earned on advances of Federal funds, rebates, credits, discounts, or interest on rebates, credits, or discounts. Recipients of SLFRF funds should calculate, document, and record the organization's program income. Additional controls that your organization should implement include written policies that explicitly identify appropriate allocation methods, accounting standards and principles, compliance monitoring checks for program income calculations, and records.

The Uniform Guidance outlines the requirements that pertain to program income at 2 CFR 200.307. Treasury has clarified in its Final Rule FAQs that recipients may add program income to the Federal award. Any program income generated from SLFRF funds must be used for the purposes and under the conditions of the Federal award. Further, Final Rule [FAQ 4.9](#) provides additional information about program income requirements applicable to certain eligible uses, and Final Rule [FAQ 13.15](#) clarifies that only a subset of the Uniform Guidance requirements at 2 CFR 200 Subpart D (Post Federal Award Requirements) applies to recipients' use of funds in the revenue loss eligible use category. The list of applicable Subpart D requirements in Final Rule [FAQ 13.15](#) does not include the program income requirements in 2 CFR 200.307.

- 10. Reporting.** 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.

11. Subrecipient Monitoring. SLFRF recipients that are pass-through entities as described under 2 CFR 200.1 are required to manage and monitor their subrecipients to ensure compliance with requirements of the SLFRF award pursuant to 2 CFR 200.332 regarding requirements for pass-through entities.

First, your organization must clearly identify to the subrecipient: (1) that the award is a subaward of SLFRF funds; (2) any and all compliance requirements for use of SLFRF funds; and (3) any and all reporting requirements for expenditures of SLFRF funds.

Next, your organization will need to evaluate each subrecipient’s risk of noncompliance based on a set of common factors. These risk assessments may include factors such as prior experience in managing Federal funds, previous audits, personnel, and policies or procedures for award execution and oversight. Ongoing monitoring of any given subrecipient should reflect its assessed risk and include monitoring, identification of deficiencies, and follow-up to ensure appropriate remediation.

Accordingly, your organization should develop written policies and procedures for subrecipient monitoring and risk assessment and maintain records of all award agreements identifying or otherwise documenting subrecipients’ compliance obligations.

Recipients should note that NEUs are not subrecipients under the SLFRF program. They are SLFRF recipients that report directly to Treasury.

Recipients should also note that subrecipients do not include individuals and organizations that received SLFRF funds as end users. Such individuals and organizations are beneficiaries and not subject to audit pursuant to the Single Audit Act and 2 C.F.R. Part 200, Subpart F.

Many recipients may choose to provide a subaward or contract to other entities to provide services to other end users. For example, a recipient may provide a subaward to a nonprofit to provide homeless services to individuals experiencing homelessness. In this case, the subaward to a nonprofit is based on the services that the recipient intends to provide (assistance to households experiencing homelessness), and the nonprofit is serving as the subrecipient, providing services on behalf of the recipient. Subrecipients are subject to an audit pursuant to the Single Audit Act and 2 CFR part 200, subpart F regarding audit requirements, whereas contractors are not subject to an audit pursuant to the Single Audit Act and 2 CFR part 200, subpart F regarding audit requirements.

Please note that as outlined in Final Rule FAQ 13.14, recipients’ use of funds in the revenue loss eligible use category does not give rise to subrecipient relationships. As a result, subaward reporting is not required for projects in the revenue loss eligible use category.

12. Special Tests and Provisions. From time-to-time, Treasury may issue subregulatory guidance as well as frequently asked questions.

Across each of the compliance requirements above, Treasury has described some best practices for development of internal controls in **Table 1** below, with an example of each best practice.

**Table 1: Internal controls best practices**

Best Practice	Description	Example
Written policies and procedures	Formal documentation of recipient policies and procedures	Documented procedure for determining worker eligibility for premium pay
Written standards of conduct	Formal statement of mission, values, principles, and professional standards	Documented code of conduct / ethics for subcontractors
Risk-based due diligence	Pre-payment validations conducted according to an assessed level of risk	Enhanced eligibility review of subrecipient with imperfect performance history
Risk-based compliance monitoring	Ongoing validations conducted according to an assessed level of risk	Higher degree of monitoring for projects that have a higher risk of fraud, given program characteristics
Record maintenance and retention	Creation and storage of financial and non-financial records.	Storage of all subrecipient payment information.

E. Award Terms and Conditions

The Award Terms and Conditions of the SLFRF financial assistance agreement sets forth the compliance obligations for recipients pursuant to the SLFRF statute, the Uniform Guidance, Treasury's final rule, and applicable federal laws and regulations. Recipients should ensure they remain in compliance with all Award Terms and Conditions. These obligations include the following items in addition to those described above:

- 1. SAM.gov Requirements.** All eligible recipients are required to have an active registration with the System for Award Management ("SAM") (<https://www.sam.gov>) pursuant to 2 CFR Part 25. To ensure timely receipt of funding, Treasury has stated that NEUs who have not previously registered with SAM.gov may do so after receipt of the award, but before the submission of mandatory reporting.⁴
- 2. Recordkeeping Requirements.** Generally, your organization must maintain records and financial documents for five years after all funds have been expended or returned to Treasury, as outlined in paragraph 4.c. of the Award Terms and Conditions. Treasury may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.

Your organization must agree to provide or make available such records to Treasury upon request, and to the Government Accountability Office ("GAO"), Treasury's Office of Inspector General ("OIG"), and their authorized representative in order to conduct audits or other investigations.

- 3. Single Audit Requirements.** Recipients and subrecipients that expend more than \$750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements.⁵ Note that the Compliance Supplement provides information on the existing, important compliance requirements that the federal government expects to be considered as a part of such audit. For example, the SLFRF Compliance Supplement describes an alternative to the Single Audit for

⁴ See flexibility provided in https://www.whitehouse.gov/wp-content/uploads/2021/03/M_21_20.pdf.

⁵ For-profit entities that receive SLFRF subawards are not subject to Single Audit requirements. However, they are subject to other audits as deemed necessary by authorized governmental entities, including Treasury and Treasury's OIG.



eligible recipients. Recipients should consult the Compliance Supplement for more information about the alternative compliance examination engagement. The Compliance Supplement is routinely updated, and is made available in the Federal Register and on OMB's website: <https://www.whitehouse.gov/omb/office-federal-financial-management/> Recipients and subrecipients should consult the [Federal Audit Clearinghouse](#) to see examples of Single Audit submissions.

- 4. Civil Rights Compliance.** Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, Treasury will collect and review information from recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, [Coordination of Non-discrimination in Federally Assisted Programs](#), 28 CFR part 42, provide for the collection of data and information from recipients (see 28 CFR 42.406). Treasury may request that non-tribal recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status. As explained in Treasury FAQ 12.1, the award terms and conditions for Treasury's pandemic recovery programs, including the SLFRF program, do not impose antidiscrimination requirements on Tribal governments beyond what would otherwise apply under federal law.



Part 2: Reporting Guidance

There are three types of reporting requirements for the SLFRF program. The report requirements are approved and documented under OMB PRA number - OMB # 1505-0271.

- **Interim Report:** Provide initial overview of status and uses of funding. This is a one-time report. See Section A, page 16.
- **Project and Expenditure Report:** Report on projects funded, expenditures, and contracts and subawards equal to or greater than \$50,000, and other information. See Section B, page 17.
- **Recovery Plan Performance Report:** The Recovery Plan Performance Report (the "Recovery Plan") will provide information on the projects that large recipients are undertaking with program funding and how they plan to ensure program outcomes are achieved in an effective, efficient, and equitable manner. It will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury. The Recovery Plan will be posted on the website of the recipient as well as provided to Treasury. See Section C, page 28.

The reporting threshold is based on the total award amount allocated by Treasury under the SLFRF program, not the funds received by the recipient as of the time of reporting.

States and territories are also required to submit information on their distributions to NEUs. Please refer to Section D for additional details.

**Table 2: Reporting requirements by recipient type**

Tier	Recipient	Interim Report	Project and Expenditure Report	Recovery Plan Performance Report
1	States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents	By August 31, 2021 or 60 days after receiving funding if funding was received by October 15, with expenditures by category.	By January 31, 2022, and then the last day of the month after the end of each quarter thereafter	By August 31, 2021 or 60 days after receiving funding, and annually thereafter by July 31
2	Metropolitan cities and counties with a population below 250,000 residents that are allocated more than \$10 million in SLFRF funding, and NEUs that are allocated more than \$10 million in SLFRF funding	Note: NEUs were not required to submit an Interim Report	Note: NEUs were not required to submit a Project and Expenditure Report on January 31, 2022. The first reporting date for NEUs was April 30, 2022.	
3	Tribal Governments that are allocated more than \$30 million in SLFRF funding			
4	Tribal Governments that are allocated less than \$30 million in SLFRF funding		By April 30, 2022, and then annually thereafter	
5	Metropolitan cities and counties with a population below 250,000 residents that are allocated less than \$10 million in SLFRF funding, and NEUs that are allocated less than \$10 million in SLFRF funding			

Note: Based on the period of performance, reports will be collected through April 30, 2027. See the specific due dates listed in Sections B and C.

As mentioned above, the total SLFRF allocations across all sources for a given jurisdiction will be used to identify that jurisdiction's Reporting Tier, beginning in April of 2022. Treasury may reach out to jurisdictions to update Reporting Tiers.

The remainder of this document describes these reporting requirements. User guides describing how and where to submit required reports are posted at www.treasury.gov/SLFRPReporting and updated on a regular basis.



Comparison to reporting for the CRF

This guidance does not change the reporting or compliance requirements pertaining to the CRF. Reporting and compliance requirements for the SLFRF are separate from CRF reporting requirements. Differences between CRF and SLFRF include:

- **Project, Expenditure, and Subaward Reporting:** The SLFRF reporting requirements leverage the existing reporting regime used for CRF to foster continuity and provide many recipients with a familiar reporting mechanism. The data elements for the Project and Expenditure Report will largely mirror those used for CRF, with some minor exceptions noted in this guidance. The users' guide will describe how reporting for CRF funds will relate to reporting for the SLFRF.
- **Timing of Reports:** CRF reports were due within 10 days of each calendar quarter end. For quarterly reporters, SLFRF reporting will be due the last day of the month following the end of the period covered. For annual reporters, SLFRF reporting will be due on an annual schedule (see table in Section B below).
- **Program and Performance Reporting:** The CRF reporting did not include any program or performance reporting. To build public awareness and accountability and allow Treasury to monitor compliance with eligible uses, some program and performance reporting is required for SLFRF.

A. Interim Report

Note: The Interim Reports were submitted under the interim final rule.

States, U.S. territories, metropolitan cities, counties, and Tribal governments were required to submit a one-time interim report with expenditures⁶ by Expenditure Category covering the period from March 3rd to July 31, 2021, by August 31, 2021 or sixty (60) days after first receiving funding if the recipient's date of award was between July 15, 2021 and October 15, 2021. The recipient was required to enter obligations⁷ and expenditures and, for each, select the specific expenditure category from the available options. See Appendix 3 for Expenditure Categories applicable for the Interim Report.

1. Required Programmatic Data

Recipients were also required to provide the following information if they had or planned to have expenditures in the following Expenditure Categories.

- a. **Revenue replacement (EC 6.1⁸):** Key inputs into the revenue replacement formula in the Interim Final Rule and estimated revenue loss due to the Covid-19 public health emergency calculated using the formula in the Interim Final Rule as of December 31, 2020.
 - Base year general revenue (e.g., revenue in the last full fiscal year prior to the public health emergency)
 - Fiscal year end date
 - Growth adjustment used (either 4.1 percent or average annual general revenue growth over 3 years prior to pandemic)
 - Actual general revenue as of the twelve months ended December 31, 2020

⁶ For purposes of reporting in the SLFRF portal, an expenditure is the amount that has been incurred as a liability of the entity (the service has been rendered or the good has been delivered to the entity).

⁷ For purposes of reporting in the SLFRF portal, an obligation is an order placed for property and services, contracts and subawards made, and similar transactions that require payment.

⁸ See Appendix 3 for the full Expenditure Category (EC) list. Please note that Appendix 3 includes the expenditure categories under the interim final rule, applicable to the Interim Report.



- Estimated revenue loss due to the Covid-19 public health emergency as of December 31, 2020
- An explanation of how revenue replacement funds were allocated to government services (Note: additional instructions was provided in the user guide)

In calculating general revenue and the other items discussed above, recipients should have used audited data if it was available. When audited data was not available, recipients were not required to obtain audited data if substantially accurate figures could be produced on an unaudited basis. Recipients should have used their own data sources to calculate general revenue and did not need to rely on revenue data published by the Census Bureau. Treasury acknowledges that due to differences in timing, data sources, and definitions, recipients' self-reported general revenue figures may differ from those published by the Census Bureau. Recipients were permitted to provide data on a cash, accrual, or modified accrual basis, provided that recipients are consistent in their choice of methodology throughout the covered period and until reporting is no longer required. Recipients' reporting should align with their own financial reporting.

In calculating general revenue, recipients should have excluded all intergovernmental transfers from the federal government. This includes, but is not limited to, federal transfers made via a State to a locality pursuant to the CRF or SLFRF. To the extent federal funds are passed through States or other entities or intermingled with other funds, recipients should have attempted to identify and exclude the federal portion of those funds from the calculation of general revenue on a best-efforts basis.

Consistent with the broad latitude provided to recipients to use funds for government services to the extent of reduction in revenue, recipients were required to submit a description of services provided. This description may be in narrative or in another form, and recipients were encouraged to report based on their existing budget processes and to minimize administrative burden. For example, a recipient with \$100 in revenue replacement funds available could indicate that \$50 were used for law enforcement operating expenses and \$50 were used for pay-go building of sidewalk infrastructure. As discussed in the interim final rule, these services can include a broad range of services but may not be used directly for pension deposits or debt service.

Reporting requirements did not require tracking the indirect effects of Fiscal Recovery Funds, apart from the restrictions on use of Fiscal Recovery Funds to offset a reduction in net tax revenue. In addition, recipients were required to indicate that Fiscal Recovery Funds were not used to make a deposit in a pension fund.

B. Project and Expenditure Report

All recipients are required to submit Project and Expenditure Reports.

Note on NEUs: To facilitate reporting, each NEU will need an NEU Recipient Number. This is a unique identification code for each NEU assigned by the State or territory to the NEU as part of its request for funding.

1. Quarterly Reporting

The following recipients are required to submit quarterly Project and Expenditure Reports:

- States and U.S. territories
- Tribal governments that are allocated more than \$30 million in SLFRF funding
- Metropolitan cities and counties with a population that exceeds 250,000 residents



- Metropolitan cities and counties with a population below 250,000 residents that are allocated more than \$10 million in SLFRF funding and NEUs that are allocated more than \$10 million in SLFRF funding.

For these recipients, the initial quarterly Project and Expenditure Report covers three calendar quarters from March 3, 2021 to December 31, 2021 and was required to be submitted to Treasury by January 31, 2022. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury by the last day of the month following the end of the period covered. Quarterly reports are not due concurrently with applicable annual reports. **Table 3** summarizes the quarterly report timelines:

Table 3: Quarterly Project and Expenditure Report Timeline

Report	Year	Quarter	Period Covered	Due Date
1	2021	2 – 4	March 3 – December 31	January 31, 2022
2	2022	1	January 1 – March 31	April 30, 2022
3	2022	2	April 1 – June 30	July 31, 2022
4	2022	3	July 1 – September 30	October 31, 2022
5	2022	4	October 1 – December 31	January 31, 2023
6	2023	1	January 1 – March 31	April 30, 2023
7	2023	2	April 1 – June 30	July 31, 2023
8	2023	3	July 1 – September 30	October 31, 2023
9	2023	4	October 1 – December 31	January 31, 2024
10	2024	1	January 1 – March 31	April 30, 2024
11	2024	2	April 1 – June 30	July 31, 2024
12	2024	3	July 1 – September 30	October 31, 2024
13	2024	4	October 1 – December 31	January 31, 2025
14	2025	1	January 1 – March 31	April 30, 2025
15	2025	2	April 1 – June 30	July 31, 2025
16	2025	3	July 1 – September 30	October 31, 2025
17	2025	4	October 1 – December 31	January 31, 2026
18	2026	1	January 1 – March 31	April 30, 2026
19	2026	2	April 1 – June 30	July 31, 2026
20	2026	3	July 1 – September 30	October 31, 2026
21	2026	4	October 1 – December 31	April 30, 2027

2. Annual Reporting

The following recipients are required to submit annual Project and Expenditure Reports:

- Tribal governments that are allocated less than \$30 million in SLFRF funding
- Metropolitan cities and counties with a population below 250,000 residents that are allocated less than \$10 million in SLFRF funding and NEUs that are allocated less than \$10 million in SLFRF funding.

For these recipients, the initial Project and Expenditure Report covered from March 3, 2021 to March 31, 2022 and was required to be submitted to Treasury by April 30, 2022. The subsequent annual reports will cover one calendar year and must be submitted to Treasury by April 30. **Table 4** summarizes the annual report timelines:

**Table 4: Annual Project and Expenditure Report timeline**

Report	Period Covered	Due Date
1	March 3, 2021 – March 31, 2022	April 30, 2022
2	April 1, 2022 – March 31, 2023	April 30, 2023
3	April 1, 2023 – March 31, 2024	April 30, 2024
4	April 1, 2024 – March 31, 2025	April 30, 2025
5	April 1, 2025 – March 31, 2026	April 30, 2026
6	April 1, 2026 – December 31, 2026	April 30, 2027

3. Required Information

The following information is required in Project and Expenditure Reports for both quarterly and annual reporting:

- a. **Projects:** Provide information on all SLFRF funded projects. Projects are defined as a grouping of closely related activities that together are intended to achieve a specific goal or are directed toward a common purpose. These activities can include new or existing eligible government services or investments funded in whole or in part by SLFRF funding. For each project, the recipient is required to enter the project name, identification number (created by the recipient), project expenditure category (see Appendix 1), description, and status of completion. Project descriptions must describe the project in sufficient detail to provide an understanding of the major activities that will occur, and must be between 50 and 250 words. Projects should be defined to include only closely related activities directed toward a common purpose. Recipients should review the Required Programmatic Data described in 3.g. below and define their projects at a sufficient level of granularity.

Note: For each project, the recipient is asked to select the appropriate Expenditure Category based on the scope of the project (see Appendix 1). Projects should be scoped to align to a single Expenditure Category. For select Expenditure Categories, the recipient also is asked to provide additional programmatic data (described further below).

- b. **Obligations and Expenditures:** Once a project is entered the recipient will be able to report on the project's obligations and expenditures. Recipients will be asked to report:
- Current period obligation
 - Cumulative obligation
 - Current period expenditure
 - Cumulative expenditure
- c. **Project Status:** Once a project is entered the recipient will be asked to report on project status each reporting period, in four categories:
- Not Started
 - Completed less than 50 percent
 - Completed 50 percent or more
 - Completed
- d. **Program Income:** Recipients should report the program income earned and expended to cover eligible project costs, if applicable.
- e. **Adopted Budget (States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents only):** Each state, territory and metropolitan city and county with a population that exceeds 250,000 residents will provide the budget adopted for each project by its jurisdiction associated with SLFRF funds. Treasury will use this information to better understand the intended impact, identify opportunities for outreach, and understand the recipient's progress in program implementation. Treasury is not approving or pre-approving projects or budgets.



- Recipients will enter the Adopted Budget based on information that exists currently in the recipient's financial systems and the recipient's established budget process. Treasury understands that recipients may use different budget processes. For example, a recipient may consider a project budgeted once a legislature has appropriated funds; whereas another recipient may consider a project budgeted at the moment when the funds have been obligated.
 - Additional information is provided on the differences between Adopted Budget, Obligations, and Expenditures as part of the user guide posted at www.treasury.gov/SLFRPReporting.
- f. Project Demographic Distribution (applicable to Public Health and Negative Economic Impact ECs: EC 1.1-2.37)– Collection began April 2022

Recognizing the disproportionate public health and negative economic impacts of the pandemic on many households, communities, and other entities, recipients must report whether certain types of projects are targeted to impacted and disproportionately impacted communities. Recipients will be asked to respond to the following:

- a. What Impacted and/or Disproportionately Impacted population does this project primarily serve? Please select the population primarily served.
- b. If this project primarily serves more than one Impacted and/or Disproportionately Impacted population, please select up to two additional populations served.

Recipients will select from the following options:

	Impacted	Disproportionately Impacted
Public Health	• General Public	
Assistance to Households	• Low- or-moderate income households or populations⁹ • Households that experienced unemployment • Households that experienced increased food or housing insecurity • Households that qualify for certain federal programs¹⁰ • For services to address lost instructional time in K-12 schools: any students that lost access to in-person instruction for a significant period of time	• Low-income households and populations¹¹ • Households and populations residing in Qualified Census Tracts • Households that qualify for certain federal programs¹² • Households receiving services provided by Tribal governments • Households residing in the U.S. territories or receiving services from these governments

⁹ Low or moderate-income households and communities are those with (i) income at or below 300 percent of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines by the Department of Health and Human Services (HHS) or (ii) income at or below 65 percent of the Area Median Income for the county and size of household based on the most recently published data by the Department of Housing and Urban Development (HUD).

¹⁰ For Impacted households, these programs are Children's Health Insurance Program ("CHIP"); Childcare Subsidies through the Child Care and Development Fund ("CCDF") Program; Medicaid; National Housing Trust Fund ("HTF"), for affordable housing programs only; Home Investment Partnerships Program ("HOME"), for affordable housing programs only.

¹¹ Low-income households and communities are those with (i) income at or below 185 percent of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines by HHS or (ii) income at or below 40 percent of Area Median Income for its county and size of household based on the most recently published data by HUD.

¹² For Disproportionately Impacted households, these programs are Temporary Assistance for Needy Families ("TANF"), Supplemental Nutrition Assistance Program ("SNAP"), Free- and Reduced-Price Lunch ("NSLP") and/or School Breakfast ("SBP") programs, Medicare Part D Low-Income Subsidies, Supplemental Security Income ("SSI"), Head Start, Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC"), Section 8 Vouchers, Low-Income Home Energy Assistance Program ("LIHEAP"), and Pell Grants.



	Impacted	Disproportionately Impacted
	Other households or populations that experienced a negative economic impact of the pandemic other than those listed above (please specify)	- For services to address educational disparities, Title I eligible schools¹³ - Other households or populations that experienced a disproportionate negative economic impact of the pandemic other than those listed above (please specify)
Assistance to Small Businesses	- Small businesses that experienced a negative economic impact of the pandemic - Classes of small businesses designated as negatively economically impacted by the pandemic (please specify)	- Small businesses operating in Qualified Census Tracts - Small businesses operated by Tribal governments or on Tribal lands - Small businesses operating in the U.S. territories - Other small businesses disproportionately impacted by the pandemic (please specify)
Assistance to Non-Profits	- Non-profits that experienced a negative economic impact of the pandemic (please specify) - Classes of non-profits designated as negatively economically impacted by the pandemic (please specify)	- Non-profits operating in Qualified Census Tracts - Non-profits operated by Tribal governments or on Tribal lands - Non-profits operating in the U.S. territories - Other non-profits disproportionately impacted by the pandemic (please specify)
Aid to Impacted Industries	- Travel, tourism, or hospitality sectors (including Tribal development districts) - Industry outside the travel, tourism, or hospitality sectors that experienced a negative economic impact of the pandemic (please specify)	N/A

- g. Subawards, Contracts, Grants, Loans, Transfers, and Direct Payments: Each recipient shall also provide detailed obligation and expenditure information for any contracts and grants awarded, loans issued, transfers made to other government entities, and direct payments made by the recipient that are equal to or greater than \$50,000. As noted in Treasury's Project & Expenditure User Guides, subaward reporting for funds spent under the revenue loss eligible use category has not been required in past reporting periods. Please note that as outlined in Final Rule FAQ 13.14, Treasury is not collecting subaward data for projects categorized under the revenue loss eligible use category.

Recipients do not need to submit separate monthly subaward reports to FSRs.gov as required pursuant to the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, which is included in the SLFRF Award Terms and Conditions. Treasury

¹³ For educational services and other efforts to address educational disparities, Treasury will recognize Title I eligible schools as disproportionately impacted and responsive services that support the school generally or support the whole school service as eligible. "Title I eligible schools" means schools eligible to receive services under section 1113 of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6313), including schools served under section 1113(b)(1)(C) of that Act.



will submit this reporting on behalf of recipients using the \$50,000 reporting threshold, timing, and data elements discussed in this guidance. If recipients choose to continue reporting to FSRs.gov in addition to reporting directly to Treasury on these funds, they may do so and will be asked to notify Treasury as part of their quarterly submission.

In general, recipients will be asked to provide the following information for each Contract, Grant, Loan, Transfer, or Direct Payment equal to or greater than \$50,000:

- Subrecipient identifying and demographic information (e.g., UEI/TIN number and location)
- Award number (e.g., Award number, Contract number, Loan number)
- Award date, type, amount, and description
- Award payment method (reimbursable or lump sum payment(s))
- For loans, expiration date (date when loan expected to be paid in full)
- Primary place of performance
- Related project name(s)
- Related project identification number(s) (created by the recipient)
- Period of performance start date
- Period of performance end date
- Quarterly obligation amount
- Quarterly expenditure amount
- Project(s)
- Additional programmatic performance indicators for select Expenditure Categories (see below)

Aggregate reporting is required for contracts, grants, transfers made to other government entities, loans, and direct payments that are below \$50,000. This information will be accounted for by Expenditure Category at the project level. Note that all obligations and expenditures made directly to individuals, regardless of dollar amount, should be included in aggregate reporting.

As required by the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, recipients must also report the names and total compensation of their five most highly compensated executives and their subrecipients' executives for the preceding completed fiscal year if (1) the recipient received 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as provided by 2 CFR 170.320 (and subawards), and received \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act (and subawards), and (2) if the information is not otherwise public. In general, most SLFRF recipients are governmental entities with executive salaries that are already disclosed, so no additional information would be required to be reported for them. The recipient is responsible for the subrecipients' compliance with registering and maintaining an updated profile on SAM.gov.

- h. Civil Rights Compliance: Treasury will request information on recipients' compliance with Title VI of the Civil Rights Act of 1964, as applicable, on an annual basis. This information may include a narrative describing the recipient's compliance with Title VI, along with other questions and assurances. This collection does not apply to Tribal governments¹⁴
- i. Ineligible Activities: Tax Offset Provision (States and territories only): Section 602(c)(2)(A) of the Social Security Act prohibits a State or territory from using SLFRF funds to directly or indirectly offset a reduction in the net tax revenue of the State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period (the "Tax Offset Provision"). The Final Rule implements the Tax Offset Provision at 31 CFR § 35.8. Violations of the Tax

¹⁴ Please note, as explained in Treasury [FAQ 12.1](#), that the award terms and conditions for Treasury's pandemic recovery programs, including the SLFRF, do not impose antidiscrimination requirements on Tribal governments beyond what would otherwise apply under federal law.



Offset Provision may be subject to recoupment. The following information is required for Treasury to ensure SLFRF funding is not used for ineligible activities related to the Tax Offset Provision.

For each reporting year, in the quarterly reporting cycle occurring 90 days after the end of the recipient's fiscal year, States and territories will report certain items related to the Tax Offset Provision, as detailed below. For example, if a recipient's fiscal year ends June 30, 2022, reporting on the Tax Offset Provision for fiscal year 2022 will be due in October 2022. All States and territories reported on the Tax Offset Provision for fiscal year 2021 in July 2022.

As indicated in the final rule, Treasury is implementing a tiered approach to reporting on the Tax Offset Provision, which is described below. Although Treasury is implementing a tiered approach to reporting, recipients should maintain records to support their compliance with the Tax Offset Provision.

The terms "reporting year," "baseline," "covered change," "covered period," "net reduction in total spending," and "tax revenue" are defined in the Final Rule, 31 CFR § 35.3. For purposes of calculating a net reduction in total spending, total spending for the fiscal year ending 2019 should be reported on an inflation-adjusted basis, consistent with the Final Rule. Similarly, for purposes of calculating baseline tax revenue, tax revenue for the fiscal year 2019 should be reported on an inflation-adjusted basis, consistent with the Final Rule.

For purposes of reporting actual tax revenue for the requested fiscal year and baseline tax revenue for the fiscal year ending 2019,¹⁵ (a) if available, recipients should report information using audited financials and (b) recipients may provide data on a cash, accrual, or modified accrual basis, but must be consistent in their approach across all reporting periods. Similarly, for purposes of calculating a net reduction in total spending, recipients should report data using audited financials where available.

Recipients will first answer a series of summary questions to determine the tiering of their tax offset reporting:

Summary Questions

- Do you have revenue-reducing covered change(s) to report for the requested fiscal year and for future fiscal years? Yes/No
 - If no, recipients have no further reporting requirements in the tax offset section. (Remaining summary questions will be greyed out).
 - If yes, recipients will complete part 1 and additional fields.
- Is the aggregate value of your revenue-reducing covered change(s) for the requested fiscal year less than the de minimis? Yes/No.
 - If yes, recipients will complete parts 1 and 2, and no further reporting is required in the tax offset section. (Remaining summary questions will be greyed out).
 - If no, recipients will complete parts 1, 2 and additional fields.
- Do you have a reduction in net tax revenue for the requested fiscal year, meaning that actual tax revenue for the requested fiscal year is less than baseline tax revenue? Yes/No.
 - If yes, recipients will complete parts 1, 2, and 3 and additional fields.
 - If no, recipients will complete parts 1, 2, and 3, and no further reporting is required in the tax offset section. (Remaining summary questions will be greyed out).
- Do you have revenue-increasing covered change(s) and/or covered spending cuts to report for the requested fiscal year? Yes/No
 - If yes, recipients will complete parts 1, 2, 3, and 4.
 - If no, recipients will complete the revenue reduction cap.

Reporting Part 1: Revenue-reducing Covered Changes

¹⁵ Tax revenue for fiscal year ending 2019 is relevant for calculating the recipient's baseline.



- Do you have revenue-reducing covered change(s) to report for the requested fiscal year and for future fiscal years? Yes/No
 - If yes, complete grid or upload spreadsheet with the name of each revenue-reducing covered change and the value of the revenue-reducing covered change for the requested fiscal year and for future fiscal years.
 - If no, a recipient has no revenue-reducing covered changes to report, no additional reporting is required.
- Enter in the aggregate value of all revenue-reducing covered change(s) for the requested fiscal year.¹⁶

Revenue-reducing Covered Changes: Guidance

For each reporting year, a recipient must report the value of covered changes that the recipient predicts will have the effect of reducing tax revenue in a given reporting year (revenue-reducing covered changes), similar to the way it would in the ordinary course of its budgeting process. The value of these revenue-reducing covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The revenue-reducing covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Estimation approaches should not use dynamic methodologies that incorporate the projected effects of the policies on macroeconomic growth. In general and where possible, reported values should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Recipients must maintain records regarding the identification and predicted effects of revenue-reducing covered changes.

Reporting Part 2: Baseline Revenue and De Minimis Threshold

- Enter Baseline Revenue:
- Enter in the aggregate value of the revenue-reducing covered change(s) for the requested fiscal year as a percentage of baseline revenue:
- Is the aggregate value of the revenue-reducing covered change(s) for the requested fiscal year less than one percent of baseline revenue? Y/N
 - If yes, a recipient's aggregate value of the revenue-reducing covered changes in the reporting year is less than the *de minimis threshold*, and no additional reporting is required.

Baseline Revenue: Guidance

Baseline has the meaning defined in the Final Rule, 31 CFR 35.3.

Recipients must determine whether the aggregate value of the revenue-reducing covered changes in the reporting year is less than one percent of baseline revenue (the *de minimis threshold*).

Reporting Part 3: Actual Tax Revenue and Reduction in Net Tax Revenue

- Enter Actual Tax Revenue for the requested fiscal year:
- Enter Reduction in Net Tax Revenue: baseline revenue minus actual tax revenue

¹⁶ The final rule defines covered change. "Covered change means a change in law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase. A change in law includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period."



- If the value of the reduction in net tax revenue is zero or negative (meaning that actual tax revenue is equal to or greater than baseline revenue), no additional reporting is required.

Actual Tax Revenue: Guidance

Actual tax revenue means the tax revenue received by the recipient government in the reporting year. Tax revenue has the meaning defined in the Final Rule, 31 CFR 35.3.

Reduction in Net Tax Revenue: Guidance

The reduction in net tax revenue is equal to baseline revenue minus actual tax revenue in each reporting year. If this value is zero or negative, there is no reduction in net tax revenue.

Reporting Part 4: Revenue-increasing Covered Changes and Covered Spending Cuts

- Do you have revenue-increasing covered change(s) and/or covered spending cuts to report for the requested fiscal year? Yes/No.
- If yes, complete grid or upload spreadsheet with the name of each revenue-increasing covered change and the value.
- Enter in the aggregate value of revenue-increasing covered change(s):
- Enter net reduction in total spending for the requested fiscal year:
- Complete grid or upload spreadsheet of specific spending cuts and the corresponding "reporting unit", including the name of the reporting unit, description of the spending cut, the amount of the reduction in spending in the reporting unit for the reporting year relative to its inflation-adjusted FY 2019 level, the amount of any Fiscal Recovery Funds spent in the reporting unit in the reporting year, and the amount by which the reduction in spending in the reporting unit in the reporting year exceeds the Fiscal Recovery Funds spent in the reporting unit in the reporting year, if at all.
- Enter the aggregate value of covered spending cuts.
- Enter the aggregate value of revenue-increasing covered changes + the aggregate value of covered spending cuts.
- Enter the total value of revenue-reducing covered changes minus the total of (aggregate value of revenue-increasing covered changes + aggregate value of covered spending cuts).
- Is the aggregate value of revenue-reducing covered changes minus the total of (aggregate value of revenue-increasing changes + aggregate value of covered spending cuts) negative or equal to zero? (Yes/No)
 - If yes, recipients have no further reporting requirements related to the Tax Offset Provision.
 - If no, recipients must move on to the calculation of the revenue reduction cap.

Revenue-increasing covered changes: Guidance

If a recipient has revenue-reducing covered changes, the aggregate value of which exceed the de minimis threshold, and its actual tax revenue does not exceed baseline tax revenue, a recipient must report the value of covered changes that have had or that the recipient predicts will have the effect of increasing tax revenue in a given reporting year (revenue-increasing covered changes), similar to the way it would in the ordinary course of its budgeting process. The value of these revenue-increasing covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The revenue-increasing covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the revenue-increasing covered change(s), relative to the current law baseline prior to the change(s). Estimation approaches should not use dynamic methodologies that incorporate the projected effects of the policies on macroeconomic growth.



In general and where possible, reporting should be produced by the agency of the recipient responsible for estimating the costs and effects of fiscal policy changes. Recipients should maintain records regarding revenue-increasing covered changes and estimates of such changes.

Net reduction in total spending, and tables of specific spending cuts: Guidance
Recipients may cut spending in certain areas to pay for revenue-reducing covered changes, up to the amount of the recipient's net reduction in total spending. To calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient must first consider whether there has been a reduction in total net spending, excluding Fiscal Recovery Funds (net reduction in total spending). As defined in the Final Rule, 35 CFR 35.3, net reduction in total spending is measured as the recipient government's total spending for a given reporting year excluding Fiscal Recovery Funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States for that reporting year. If that calculation yields a positive value, there has been a net reduction in total spending; if it yields zero or a negative value, there has not been a net reduction in total spending. If there has been no net reduction in total spending, a recipient will have no spending cuts to offset a reduction in net tax revenue.

Next, a recipient must determine and aggregate the value of spending cuts in each "reporting unit." "Reporting units" are departments, agencies, or authorities of the recipient's government. For each reporting unit, the recipient must report (1) the amount of the reduction in spending in the reporting unit for the reporting year relative to its inflation-adjusted FY 2019 level, (2) the amount of any Fiscal Recovery Funds spent in the reporting unit in the reporting year, and (3) the amount by which the reduction in spending in the reporting year exceeds the Fiscal Recovery funds spent in the reporting unit in the reporting year. If a recipient has not spent amounts received from the Fiscal Recovery Funds in a reporting unit, the full amount of the reduction in spending counts as a covered spending cut and may be included in the aggregate value of spending cuts. If the recipient has spent amounts received from the Fiscal Recovery Funds, such amounts generally would be deemed to have replaced the amount of spending cut, and only reductions in spending above the amount of Fiscal Recovery Funds spent on the reporting unit would be eligible to offset a reduction in net tax revenue. Only such amounts above the amount of Fiscal Recovery Funds spent on the reporting unit should be included in the aggregate value of spending cuts.

To align with existing reporting and accounting, the Final Rule considers the department, agency, or authority from which spending has been cut and whether the recipient government has spent amounts received from the Fiscal Recovery Funds on that same department, agency, or authority. Some commenters on the interim final rule argued that the methodology for identifying offsetting spending cuts at the department, agency, or authority level was too restrictive, but as discussed in the final rule, Treasury maintained the approach of requiring this reporting at the department, agency, or authority level. Recipients are encouraged to define reporting units in a manner consistent with their existing budget process and should, to the extent possible, report using the same reporting unit in each reporting year. Spending cuts must be reported relative to FY 2019 spending levels, adjusted for inflation, and excluding Fiscal Recovery Funds from reporting year spending levels.

Recipients should maintain records regarding spending cuts.

Reporting Part 5: Revenue Reduction Cap

The "revenue reduction cap," together with Part 3, ensures that recipient governments can use organic revenue growth to offset the cost of revenue-reducing covered changes. If, based on the calculations completed so far, a recipient has not yet demonstrated how its revenue-reducing



covered changes were offset by non-SLFRF sources, the reporting portal will auto-calculate the revenue reduction cap, which will be the lesser of the following two amounts:

- Reduction in Net Tax Revenue (baseline tax revenue minus actual tax revenue) [pre-populated from Part 3] and
- Aggregate Value of revenue-reducing covered changes minus (total of (aggregate value of revenue-increasing changes + aggregate value of covered spending cuts) [pre-populated from Part 4].

- j. Required Programmatic Data (other than infrastructure projects): For all projects listed under the following Expenditure Categories (see Appendix 1), the information listed must be provided in each report.

1. Public Health and Negative Economic Impact (EC 1.1-3.5) - Collection began in April 2022

- Brief description of structure and objectives of assistance program(s), including public health or negative economic impact experienced
- Brief description of how a recipient's response is related and reasonably proportional to a public health or negative economic impact of COVID-19.¹⁷

Note: The final rule presumes that all enumerated eligible uses for programs and services, including COVID-19 mitigation and prevention programs and services, are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. Many of the Eligibility Categories encompass multiple specific enumerated eligible uses and may be provided to a variety of populations. For example, EC 2.13 *Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System* includes a wide array of financial, educational, child development, or health supports, or other supports necessary, including supports for kinship care, and may be provided to foster youth and/or families involved in the child welfare system. Between these two fields above, recipients should provide enough information to identify the type of enumerated eligible use being provided within the EC (e.g., kinship care support services), the public health or economic impact experienced, who the program and/or service is being provided to, and what services are being provided (e.g., respite resources). For enumerated eligible uses, recipients are not required to provide substantive documentation that the response is related and reasonably proportional in the Project and Expenditure Report.

2. Capital Expenditures (EC 1.1-3.5) - Collection began in January 2022, with additional fields required starting in July 2022

- Does this project include a capital expenditure? (*Collection began in January 2022*)
- Total expected capital expenditure, including pre-development costs, if applicable (*Collection began in January 2022*)
- Type of capital expenditure, based on the following enumerated uses (*Collection began in July 2022*):
 - COVID-19 testing sites and laboratories, and acquisition of related equipment
 - COVID-19 vaccination sites
 - Medical facilities generally dedicated to COVID-19 treatment and mitigation (e.g., emergency rooms, intensive care units, telemedicine capabilities for COVID-19 related treatment)
 - Temporary medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs
 - Acquisition of equipment for COVID-19 prevention and treatment, including ventilators, ambulances, and other medical or emergency services equipment

¹⁷ Please note that capital expenditures are not considered "programs and services" and are not presumed to be reasonably proportional responses to an identified harm except as provided in the final rule.



- Emergency operations centers and acquisition of emergency response equipment (e.g., emergency response radio systems)
 - Installation and improvement of ventilation systems in congregate settings, health facilities, or other public facilities
 - Public health data systems, including technology infrastructure
 - Adaptations to congregate living facilities, including skilled nursing facilities, other long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities, as well as public facilities and schools (excluding construction of new facilities for the purpose of mitigating spread of COVID-19 in the facility)
 - Mitigation measures in small businesses, nonprofits, and impacted industries (e.g., developing outdoor spaces)
 - Behavioral health facilities and equipment (e.g., inpatient or outpatient mental health or substance use treatment facilities, crisis centers, diversion centers)
 - Technology and equipment to allow law enforcement to efficiently and effectively respond to the rise in gun violence resulting from the pandemic
 - Affordable housing, supportive housing, or recovery housing development
 - Food banks and other facilities primarily dedicated to addressing food insecurity
 - Transitional shelters (e.g., temporary residences for people experiencing homelessness)
 - Devices and equipment that assist households in accessing the internet (e.g., tablets, computers, or routers)
 - Childcare, daycare, and early learning facilities
 - Job and workforce training centers
 - Improvements to existing facilities to remediate lead contaminants (e.g., removal of lead paint)
 - Medical equipment and facilities designed to address disparities in public health outcomes (includes primary care clinics, hospitals, or integrations of health services into other settings)
 - Parks, green spaces, recreational facilities, sidewalks, pedestrian safety features like crosswalks, streetlights, neighborhood cleanup, and other projects to revitalize public spaces
 - Rehabilitations, renovation, remediation, cleanup, or conversions of vacant or abandoned properties
 - Schools and other educational facilities or equipment to address educational disparities
 - Technology and tools to effectively develop, execute, and evaluate government programs
 - Technology infrastructure to adapt government operations to the pandemic (e.g., video-conferencing software, improvements to case management systems or data sharing resources), reduce government backlogs, or meet increased maintenance needs
 - Other (please specify)
- For recipients (other than Tribal governments) investing in projects with total expected capital expenditures for an enumerated eligible use of \$10 million or more, as well as projects with total expected capital expenditures for an “other” use of \$1 million or more, provide a written justification (*Collection began in July 2022*)
 - For projects with total expected capital expenditures of over \$10 million, provide labor reporting as outlined for infrastructure projects on pages 26 and 27 (*Collection began July 2022*)



3. Household Assistance (EC 2.1-2.8) – *Collection began January 2022:*
 - Number of households served (by program if recipient establishes multiple separate household assistance programs)
4. Small Business Economic Assistance (EC 1.8, 2.29-2.33) – *Collection began April 2022*
 - Number of small businesses served (by program if recipient establishes multiple separate small business assistance programs)
5. Assistance to Non-Profits (EC 1.9, 2.34)– *Collection began April 2022*
 - Number of Non-Profits served (by program if recipient establishes multiple separate non-profit assistance programs)
6. Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (EC 1.10, 2.35-2.36) – *Collection began April 2022:*
 - If aid is provided to industries other than travel, tourism, and hospitality (EC 2.36), describe if the industry experienced at least 8 percent employment loss from pre-pandemic levels, or the industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries as of the date of the final rule, and rationale for providing aid to the industry
 - For each subaward:
 - Sector of employer (Note: additional detail, including list of sectors, to be provided in the user guide posted to www.treasury.gov/SLFRP)
 - Purpose of funds (e.g., payroll support, safety measure implementation)
7. Education Assistance (EC 2.14, 2.24-2.27) – *Collection began in January 2022:*
 - The National Center for Education Statistics (“NCES”) School ID or NCES District ID. List the School District if all schools within the school district received some funds. If not all schools within the school district received funds, list the School ID of the schools that received funds. These can allow evaluators to link data from the NCES to look at school-level demographics and, eventually, student performance.¹⁸
8. Payroll for Public Health and Safety Employees (EC 3.1) – *Collection began in January 2022:*
 - Number of government FTEs responding to COVID-19 supported under this authority
9. Rehiring Public Sector Staff (EC 3.2) – *Collection began in January 2022:*
 - Number of FTEs rehired by governments under this authority
10. Premium Pay (both Public Sector EC 4.1 and Private Sector EC 4.2) – *Collection began in January 2022; additional field began in April 2022*
 - List of sectors designated as critical to protecting the health and well-being of residents by the chief executive of the jurisdiction, if beyond those included in the final rule (*Collection began January 2022*)
 - Number of workers to be served (*Collection began January 2022*)
 - Employer sector for all subawards to third-party employers (i.e., employers other than the State, local, or Tribal government) (*Collection began January 2022*)
 - For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county’s average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employment and Wage Statistics, whichever is

¹⁸ For more information on NCES identification numbers see <https://nces.ed.gov/ccd/districtsearch/> (districts) and <https://nces.ed.gov/ccd/schoolsearch/> (schools).



higher, on an annual basis; OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions:

- A brief written narrative justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19, and why the recipient government determined that the premium pay was responsive to workers performing essential work during the pandemic. This description should not include personally identifiable information; when addressing individual workers, recipients should be careful not to include this information. Recipients may consider describing the workers' occupations and duties in a general manner as necessary to protect privacy (*Collection began January 2022*)
- Number of workers to be served with premium pay in K-12 schools (*Collection began April 2022*)

11. Revenue replacement (EC 6.1) – *Collection began in August 2021:*

As outlined in the final rule, recipients have the option to make a one-time decision to calculate revenue loss according to the formula outlined in the final rule or elect a "Standard Allowance" of up to \$10 million, not to exceed the award allocation, to spend on government services throughout the period of performance. The option to make this one-time decision was provided during the April 30, 2022 reporting deadline.

For recipients electing the "Standard Allowance," Treasury will presume that up to \$10 million, not to exceed the award allocation, in revenue has been lost due to the public health emergency. Recipients are permitted to use that amount to fund "government services." Please note that electing the standard allowance does not change a recipient's total allocation. Recipients that elect to use this standard allowance will make this election instead of calculating lost revenue using the formula.

For recipients calculating revenue loss according to the formula, the final rule permits recipients to choose whether to use calendar or fiscal year calculation dates. Recipients must use the same calculation time frame (calendar or fiscal year) throughout the award period.

Recipients calculating lost revenue using the formula should report the following:

- Choice of fiscal or calendar year revenue loss (choice must remain consistent throughout award period)
- General revenue collected over the past 12 months as of the most recent calculation date, as outlined in the final rule.
- Calculated revenue loss due to the Covid-19 public health emergency; and
- An explanation of how the revenue replacement funds were allocated to government services (note: additional instructions and/or template provided in the user guide posted at www.treasury.gov/SLFRPReporting).

For information on treatment of future tax changes, please see the [Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule](#).

- k. Required Programmatic Data for Infrastructure Projects (EC 5): For all projects listed under the Water, Sewer, and Broadband Expenditure Categories (see Appendix 1), more detailed project-level information is required. Each project will be required to report expenditure data as described above, but will also report the following information:

1. All infrastructure projects (EC 5) – *Collection began in January 2022:*



- Projected/actual construction start date (month/year)
- Projected/actual initiation of operations date (month/year)
- Location
- For projects over \$10 million (based on expected total cost):
 - a. A recipient may provide a certification that, for the relevant project, all laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as “baby Davis-Bacon Acts”). If such certification is not provided, a recipient must provide a project employment and local impact report detailing:
 - The number of employees of contractors and sub-contractors working on the project;
 - The number of employees on the project hired directly and hired through a third party;
 - The wages and benefits of workers on the project by classification; and
 - Whether those wages are at rates less than those prevailing.¹⁹
 Recipients must maintain sufficient records to substantiate this information upon request.
 - b. A recipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing:
 - How the recipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project, including a description of any required professional certifications and/or in-house training;
 - How the recipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project;
 - How the recipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (e.g., OSHA 10, OSHA 30);
 - Whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and
 - Whether the project has completed a project labor agreement.
 - c. Whether the project prioritizes local hires.
 - d. Whether the project has a Community Benefit Agreement, with a description of any such agreement.

2. Water and sewer projects (EC 5.1-5.18) Required once the project starts:

- National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund) (*Collection began in January 2022*)

¹⁹ As determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed.



- Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund) (*Collection began January 2022*)
 - Median Household Income of service area (*Collection began in April 2022*)
 - Lowest Quintile Income of the service area (*Collection began in April 2022*)
3. Broadband projects (EC 5.19-5.21) *Collection includes new fields that began in July 2022. Additional fields will be phased in through future reporting periods, as noted below.*

Overall Project Information

- Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
 - If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
 - Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
- Confirm that the service provider for the project has, or will upon completion of the project, either participated in the Federal Communications Commission (FCC)'s Affordable Connectivity Program (ACP) or otherwise provided access to a broad-based affordability program that provides benefits to households commensurate with those provided under the ACP to low-income consumers in the proposed service area of the broadband infrastructure (*applicable only to projects that provide service to households*).

Detailed Project Information

- Project technology type(s) (Planned/Actual)
 - Fiber
 - Coaxial Cable
 - Terrestrial Fixed Wireless
 - Other (specify)
- Total miles of fiber deployed (Planned/Actual)
- Total number of funded locations served (Planned/Actual)
 - Total number of funded locations served, broken out by speeds:
 - Pre-SLFRF Investment:
 - Number receiving 25/3 Mbps or below
 - Number receiving between 25/3 Mbps and 100/20 Mbps
 - Post-SLFRF Investment (Planned/Actual):
 - Number receiving minimum 100/100 Mbps
 - Number receiving minimum 100/20 Mbps and scalable to minimum 100/100 Mbps
 - Total number of funded locations served, broken out by type (Planned/Actual):
 - Residential
 - Total Housing Units
 - Business
 - Community anchor institution
- Speed tiers offered, corresponding non-promotional prices, including associated fees, and data allowance for each speed tier of broadband service (*collection to be phased in a future reporting period*)

Location-by-Location Project Information

For each location served by a Project, the recipient must collect from the subrecipient or contractor and submit the following information to Treasury using a predetermined file format that will be provided by Treasury (*collection of certain fields will begin in October 2022, as specified below*):



- Latitude/longitude at the structure where service will be installed (*required starting October 2022*)
 - Technology used to offer service at the location (*required starting October 2022*)
 - Location type (*required starting October 2022*)
 - Residential
 - If Residential, Number of Housing Units
 - Business
 - Community anchor institution
 - Speed tier at the location pre-SLFRF investment (*collection to be phased in*)
 - 25/3 Mbps or below
 - Between 25/3 Mbps and 100/20 Mbps
 - Speed and latency at the location post-SLFRF investment (*collection to be phased in*)
 - Maximum download speed offered
 - Maximum download speed delivered
 - Maximum upload speed offered
 - Maximum upload speed delivered
 - Latency
- I. Additional Required Programmatic Data for States, U.S. territories, and metropolitan cities and counties with a population that exceeds 250,000 residents only: As noted in the Recovery Plan section of this guidance, states, U.S. territories, and metropolitan cities and counties with a population over 250,000 are required to provide additional data in the Project and Expenditure report for projects in the following expenditure categories:
1. Use of Evidence (for relevant ECs noted in Appendix 1)—*Collection began April 2022*
 - The dollar amount of the total project spending that is allocated towards evidence-based interventions
 - Whether a program evaluation of the project is being conducted
 2. Household Assistance (EC 2.2, Long-Term Housing Security (EC 2.15-2.16) and Housing Support (EC 2.17-2.18):
 - Number of households receiving eviction prevention services (including legal representation)
 - Number of affordable housing units preserved or developed
 3. Assistance to Unemployed or Underemployed Workers (EC 2.10) and Community Violence Interventions (EC 1.11):
 - Number of workers enrolled in sectoral job training programs
 - Number of workers completing sectoral job training programs
 - Number of people participating in summer youth employment programs
 4. Addressing Educational Disparities (EC 2.24-2.26) and Addressing Impacts of Lost Instructional Time (EC 2.27):
 - Number of students participating in evidence-based tutoring programs²⁰
 5. Healthy Childhood Environments (EC 2.11-2.14):
 - Number of children served by childcare and early learning services (pre-school/pre-K/ages 3-5)
 - Number of families served by home visiting

²⁰ For more information on evidence-based tutoring programs, refer to the U.S. Department of Education's 2021 ED COVID-19 Handbook (Volume 2), which summarizes research on evidence-based tutoring programs (see the bottom of page 20).



m. **NEU Documentation (NEUs only):** Each NEU is also required to provide the following information once its accounts are established in Treasury's Reporting Portal and prior to the due date for their first Project and Expenditure Report (due April 30, 2022):

- Copy of the signed award terms and conditions agreement (which was signed and submitted to the State as part of the request for funding)
- Copy of the signed assurances of compliance with Title VI of the Civil Rights Act of 1964 (which was signed and submitted to the State as part of the request for funding)
- Copy of actual budget documents validating the top-line budget total provided to the State as part of the request for funding

NEU accounts are established in Treasury's Portal based on information provided by the States or territories, as further described in Section Part 2 D below.

C. Recovery Plan Performance Report

States, territories, and metropolitan cities and counties with a population that exceeds 250,000 residents (i.e., Tier 1 recipients) will also be required to publish and submit to Treasury a Recovery Plan performance report ("Recovery Plan"). Each Recovery Plan must be posted on an easily discoverable webpage on the public-facing website of the recipient by the same date the recipient submits the report to Treasury. Treasury recommends that Recovery Plans be accessible within three clicks or fewer from the homepage of the recipient's website. Within Treasury's reporting portal, recipients must upload a link to the publicly available Recovery Plan and provide required data.

The Recovery Plan provides the public and Treasury both retrospective and prospective information on the projects recipients are undertaking or planning to undertake with program funding and how they are planning to ensure program outcomes are achieved in an effective, efficient, and equitable manner. While this guidance outlines some minimum requirements for the Recovery Plan, each recipient is encouraged to add information to the plan that they feel is appropriate to provide information to their constituents on efforts they are taking to respond to the pandemic and promote economic recovery. Each jurisdiction may determine the general form and content of the Recovery Plan, as long as it includes the minimum information required by Treasury. Treasury provided a template (located at www.treasury.gov/SLFRP) but recipients may modify this template as appropriate for their jurisdiction, provided the modified template meets Treasury's requirements, outlined below. Through the Recovery Plan, recipients may link to public documents, including, but not limited to, legislation, dashboards, survey results, community engagement reports, and equity frameworks to support the Recovery Plan narrative. The Recovery Plan should include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury, as noted below.

The initial Recovery Plan covered the period from the date of award to July 31, 2021 and was required to be submitted to Treasury by August 31, 2021, or 60 days after receiving funding. Thereafter, the Recovery Plan will cover a 12-month period and recipients are required to submit the report to Treasury after the end of the 12-month period by July 31. The Recovery Plan should include both retrospective information covering the time period of the Recovery Plan along with prospective information on future work to be undertaken with SLFRF funds or on the planning that has been undertaken during the covered period. **Table 5** summarizes the report timelines:

Table 5 Recovery Plan Timeline

Annual Report	Period Covered	Due Date
1	Award Date – July 31, 2021	August 31, 2021 or 60 days after receiving funding
2	July 1, 2021 – June 30, 2022	July 31, 2022



Annual Report	Period Covered	Due Date
3	July 1, 2022 – June 30, 2023	July 31, 2023
4	July 1, 2023 – June 30, 2024	July 31, 2024
5	July 1, 2024 – June 30, 2025	July 31, 2025
6	July 1, 2025 – June 30, 2026	July 31, 2026
7	July 1, 2026 – December 31, 2026	April 30, 2027

Recovery Plans submitted as part of reporting are used by Treasury, third party organizations, the public, and other stakeholders to obtain a comprehensive understanding of SLFRF's largest recipients' planned and actual usage of SLFRF funding, including the jurisdiction's policy goals, its strategy for achieving them, and specific projects or initiatives underway. Alignment of data reported in Project and Expenditure reports and Recovery Plans is expected by both Treasury and SLFRF's many stakeholders. Finally, Recovery Plans will be posted publicly by Treasury to provide transparency about how program funds are being used by recipient governments.

The Recovery Plan must include, at a minimum, the following information:

1. Executive Summary

In this section, recipients should provide a high-level overview of the jurisdiction's intended and actual uses of funding including, but not limited to: the jurisdiction's strategy, goals, and plan for using Fiscal Recovery Funds to respond to the pandemic and promote economic recovery, key outcome goals, progress to date on those outcomes, and any noteworthy challenges or opportunities identified during the reporting period.

2. Uses of Funds

In this section, recipients should describe in further detail the strategy and goals of their jurisdiction's SLFRF program, such as how their jurisdiction's approach would help support a strong and equitable recovery from the COVID-19 pandemic and economic downturn. Recipients should describe how their intended and actual uses of funds will achieve their goals. Given the broad eligible uses of funds established by the final rule and the specific needs of different jurisdictions, recipients should also explain how the funds would support the communities, populations, or individuals in their jurisdiction. Recipients should describe how their use of funds supports their overall strategy and goals in the following areas:

- a. Public Health (EC 1): As relevant, describe how funds are being used to respond to COVID-19, the broader health impacts of COVID-19, and the COVID-19 public health emergency, including community violence interventions and behavioral health.
- b. Negative Economic Impacts (EC 2): As relevant, describe how funds are being used to respond to negative economic impacts of the COVID-19 public health emergency, including services to households (such as affordable housing, job training, and childcare), small businesses, non-profits, and impacted industries.
- c. Public Health-Negative Economic Impact: Public Sector Capacity (EC 3): As relevant, describe how funds are being used to support public sector workforce and capacity, including public sector payroll, rehiring of public sector workers, and building of public sector capacity.
- d. Premium Pay (EC 4): As relevant, describe the approach, goals, and sectors or occupations served in any premium pay program. Describe how the approach prioritizes low-income workers and/or any particular group of eligible workers.
- e. Water, sewer, and broadband infrastructure (EC 5): As relevant, describe the approach, goals, and types of projects being pursued. Where relevant, recipients should note how projects contribute to addressing climate change and/or how projects benefit disadvantaged communities in line with the Justice40 Initiative.²¹

²¹ See Executive Order 14008, On Tackling the Climate Crisis at Home and Abroad and the Interim Implementation Guidance for the Justice40 Initiative, OMB M-21-28.



- f. **Revenue Replacement (EC 6):** Describe the loss in revenue, including if electing the standard allowance, due to the COVID-19 public health emergency, and how funds have been used to provide government services, including any funds used under revenue loss for non-federal cost-share or matching requirements of other federal programs.

If appropriate, recipients may also include information on their jurisdiction's use (or planned use) of other federal recovery funds, including other programs under the American Rescue Plan such as Emergency Rental Assistance, the Homeowner Assistance Fund, the Capital Projects Fund, the State Small Business Credit Initiative, and so forth, to provide broader context on the overall approach for pandemic recovery. Jurisdictions may also address use of SLFRF funds in coordination with, or in preparation for, funding available through the Infrastructure Investment and Jobs Act.

3. Promoting equitable outcomes

Treasury encourages uses of funds that advance strong, equitable growth, including economic and racial equity. For the purposes of the SLFRF, equity is described in the [Executive Order 13985 On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#), as issued on January 20, 2021.

In this section, recipients should describe, as applicable, their efforts to promote equitable outcomes, including economic and racial equity, and their efforts to design, implement, and measure their SLFRF program and projects with equity in mind.

In describing their efforts to **design** their SLFRF program and projects with equity in mind, recipients may consider the following:

- a. **Goals:** Are there particular historically underserved, marginalized, or adversely affected groups that recipients intend to serve within their jurisdiction?
- b. **Awareness:** How equitable and practical is the ability for residents or businesses to become aware of the services funded by SLFRF?
- c. **Access and Distribution:** Are there differences in levels of access to benefits and services across groups? Are there administrative requirements that result in disparities in ability to complete applications or meet eligibility criteria?
- d. **Outcomes:** How are intended outcomes focused on closing gaps and/or reaching universal levels of service? How is the considering disaggregating outcomes by race, ethnicity, and other equity dimensions where relevant for the policy objective?

In describing their efforts to **implement** their SLFRF program and projects with equity in mind, recipients may consider the following:

- a. **Goals and Targets:** Please describe how planned or current uses of funds prioritize economic and racial equity as a goal, name specific targets intended to produce meaningful equity results at scale, and include initiatives to achieve those targets.
- b. **Project Implementation:** In addition, please explain how the jurisdiction's overall equity strategy translates into focus areas for SLFRF projects and the specific services or programs offered by the jurisdiction in the following Expenditure Category, as indicated in the final rule.

Negative Economic Impacts (EC 2): assistance to households, small businesses, and non-profits to address impacts of the pandemic, which have been most severe among low-income populations. This includes assistance with food, housing, and other needs; employment programs for people with barriers to employment who faced negative economic impacts from the pandemic (such as residents of low-income neighborhoods, minorities, disconnected youth, the unemployed, formerly incarcerated people, veterans, and people with disabilities); services to provide long-term housing security and housing supports, address educational disparities, or provide child care and early learning services; and other strategies that provide



impacted and disproportionately impacted communities with services to address the negative economic impacts of the pandemic

The first annual Recovery Plan, due in 2021, was required to describe initial efforts and intended outcomes to promote equity, as applicable. Beginning in 2022, each annual Recovery Plan must provide an update, using qualitative and quantitative data, on how the recipients' approach achieved or promoted equitable outcomes or progressed against equity goals during the performance period, as applicable. Each jurisdiction should describe any constraints or challenges that impacted project success in terms of increasing equity. In particular, this section should describe the geographic and demographic distribution of funding, including whether it is targeted toward traditionally marginalized communities (recipients may reference the demographic data information in their Project and Expenditure Reports as relevant).

4. Community Engagement

In this section, recipients should describe how their jurisdiction's planned or current use of funds incorporates community engagement strategies including written feedback through surveys, project proposals, and related documents; oral feedback through community meetings, issue-specific listening sessions, stakeholder interviews, focus groups, and additional public engagement; as well as other forms of input, such as steering committees, taskforces, and digital campaigns that capture diverse feedback from the community. Recipients may describe completed or planned community engagement strategies specifically focused on their SLFRF program and projects or community engagement strategies that included SLFRF among other government programs. Recipients should also describe how community engagement strategies support their equity goals, including engagement with communities that have historically faced significant barriers to services, such as people of color, people with low incomes, limited English proficient populations, and other traditionally underserved groups.

5. Labor Practices

In this section, recipients should describe workforce practices on any infrastructure projects or capital expenditures being pursued. How are projects using strong labor standards to promote effective and efficient delivery of high-quality infrastructure projects while also supporting the economic recovery through strong employment opportunities for workers? For example, report whether any of the following practices are being utilized: project labor agreements, community benefits agreements, prevailing wage requirements, and local hiring.

6. Use of Evidence

In this section of the Recovery Plan, recipients should describe whether and how evidence-based interventions and/or program evaluation are incorporated into their SLFRF program. Recipients may include links to evidence standards, evidence dashboards, evaluation policies, and other public facing tools that are used to track and communicate the use of evidence and evaluation for Fiscal Recovery Funds. Recipients are encouraged to consider how a learning agenda, either narrowly focused on SLFRF or broadly focused on the recipient's broader policy agenda, could support their overarching evaluation efforts in order to create an evidence-building strategy for their jurisdiction.²²

In the Project Inventory section of the Recovery Plan (see Section 8 below), recipients should identify whether SLFRF funds are being used for evidence-based interventions²³ and/or if projects are being evaluated through rigorous program evaluations that are designed to build evidence. In the Project Inventory, recipients must briefly describe the goals of the project and the evidence base for the interventions funded by the project. As part of the Project Inventory section, recipients must also specifically identify the dollar amount of the total project spending that is allocated towards evidence-based interventions for each project in the Expenditure Categories noted with an asterisk in Appendix 1. Please note that to increase consistency, the Project and Expenditure report now also includes

²² For more information on learning agendas, please see [OMB M-19-23](#)

²³ As noted in Appendix 2, evidence-based refers to interventions with strong or moderate levels of evidence.



fields for recipients to identify the dollar amount of the total project spending that is allocated to evidence-based interventions and to indicate if a program evaluation of the project is being conducted.

Recipients are encouraged to reference relevant evidence clearinghouses, among other sources, to assess the level of evidence for their interventions and identify evidence-based models that could be applied in their jurisdiction; such evidence clearinghouses include the U.S. Department of Education's What Works Clearinghouse, the U.S. Department of Labor's CLEAR, and the Childcare & Early Education Research Connections and the Home Visiting Evidence of Effectiveness clearinghouses from Administration for Children and Families, as well as other clearinghouses relevant to particular projects conducted by the recipient.

Recipients are exempt from reporting on evidence-based interventions in cases where a program evaluation is being conducted. In such cases where a recipient is conducting a program evaluation, recipients must describe the evaluation design, including whether it is a randomized or quasi-experimental design; the key research questions being evaluated; whether the study has sufficient statistical power to disaggregate outcomes by demographics; and the timeframe for the completion of the evaluation (including a link to the completed evaluation if relevant).²⁴ Once the evaluation has been completed, recipients must post the evaluation publicly and link to the completed evaluation in the Recovery Plan. Once an evaluation has been completed (or has sufficient interim findings to determine the efficacy of the intervention), recipients should determine whether the spending for the evaluated interventions should be counted towards the dollar amount categorized as evidence-based for the relevant project.

For all projects, recipients may be selected to participate in a national evaluation, which might, for example, study their project along with similar projects in other jurisdictions that are focused on the same set of outcomes. In such cases, recipients may be asked to share information and data that is needed for the national evaluation.

Appendix 2 contains additional information on evidence-based interventions for the purposes of the Recovery Plan.

7. Performance Report

In this section, recipients should describe how performance management is incorporated into their SLFRF program, including how they are tracking their overarching jurisdictional goals for these funds as well as measuring results for individual projects. The recipient has flexibility in terms of how this information is presented in the Recovery Plan, and may report key performance indicators for each project, or may group projects with substantially similar goals and the same outcome measures. In some cases, the recipient may choose to include some indicators for each individual project as well as crosscutting indicators. Recipients may include links to performance management dashboards, performance management policies, and other public facing tools that are used to track and communicate the performance of Fiscal Recovery Funds. In addition to outlining in this section their high-level approach to performance management, recipients must also include key performance indicators for each SLFRF project in the Project Inventory section (described below in #8).

Performance indicators should include both output and outcome measures. Output measures, such as the number of students enrolled in an early learning program, provide valuable information about the early implementation stages of a project. Outcome measures, such as the percent of students reading on grade level, provide information about whether a project is achieving its overall goals. Recipients are encouraged to use logic models²⁵ to identify their output and outcome measures.

²⁴ For more information on the required standards for program evaluation, see [OMB M-20-12](#).

²⁵ A logic model is a tool that depicts the intended links between program investments and outcomes, specifically the relationships among the resources, activities, outputs, outcomes, and impact of a program.



While the initial Recovery Plan focused heavily on early output goals, recipients should include the related outcome goal for each project and provide updated information on achieving these outcome goals in subsequent annual reports. In cases where recipients are conducting a program evaluation for a project (as described above), the outcome measures in the performance report should be aligned with those being evaluated in the program. As described in the final rule, to support their performance measurement and program improvement efforts, recipients are permitted to use funds to make improvements to data or technology infrastructure and data analytics, as well as perform program evaluations.

While recipients have discretion on the full suite of performance indicators to include, a number of mandatory performance indicators and programmatic data must be included. These are necessary to allow Treasury to conduct oversight as well as understand and aggregate program outcomes across recipients. This section provides an overview of the mandatory performance indicators and programmatic data. This information should be included in the Project Inventory, but this data will also need to be entered directly into the Treasury reporting portal as part of the Project and Expenditure report, as Treasury has added these fields (for Tier 1 recipients only) to the Project and Expenditure report. Below is a list of required data for each Expenditure Category, where relevant.

- a. Household Assistance (EC 2.2), Long-Term Housing Security (EC 2.15-2.16) and Housing Support (EC 2.17-2.18):
 - Number of households receiving eviction prevention services (including legal representation)
 - Number of affordable housing units preserved or developed
- b. Assistance to Unemployed or Underemployed Workers (EC 2.10) and Community Violence Interventions (EC 1.11):
 - Number of workers enrolled in sectoral job training programs
 - Number of workers completing sectoral job training programs
 - Number of people participating in summer youth employment programs
- c. Addressing Educational Disparities (EC 2.24-2.26) and Addressing Impacts of Lost Instructional Time (EC 2.27):
 - Number of students participating in evidence-based tutoring programs²⁶
- d. Healthy Childhood Environments (EC 2.11-2.14):
 - Number of children served by childcare and early learning services (pre-school/pre-K/ages 3-5)
 - Number of families served by home visiting

The initial report should have included the key indicators above. Each annual report thereafter should include updated data for the performance period as well as prior period data, and a brief narrative adding any additional context to help the reader interpret the results and understand any changes in performance indicators over time. To the extent possible, Treasury also encourages recipients to provide data disaggregated by race, ethnicity, gender, income, and other relevant factors.

8. Project Inventory

In this section, recipients should list the name and provide a brief description of each SLFRF funded project. Projects are defined as a grouping of closely related activities that together are intended to achieve a specific goal or are directed toward a common purpose. These activities can include new or existing eligible government services or investments funded in whole or in part by SLFRF funding.

²⁶ For more information on evidence-based tutoring programs, refer to the U.S. Department of Education's 2021 ED COVID-19 Handbook (Volume 2), which summarizes research on evidence-based tutoring programs (see the bottom of page 20.).



For each project, recipients should include the project name, funding amount, identification number (the same identification number created by the recipient that matches the identification number used in the quarterly Project and Expenditure Report), project Expenditure Category (see Appendix 1), and a description of the project that includes an overview of the main activities of the project, approximate timeline, primary delivery mechanisms and partners, and intended outcomes. Each jurisdiction should also include a link to the website of the project if available. This information will provide context and additional detail for the information reported quarterly in the Project and Expenditure Report.

For infrastructure projects, where relevant, recipients should describe how the project contributes to addressing climate change and/or advances the Justice40 initiative²⁷, which sets a target of providing 40 percent of the benefits of certain federal investments, including climate and clean energy investments to disadvantaged communities.

As noted above in section 6, the Project Inventory must also include information about the dollar amount of the total project spending that is allocated towards evidence-based interventions (or describe how projects are being evaluated as noted above). As described above in section 7, the Project Inventory must also contain information about the performance indicators for each project, including both those measures that recipients have defined for each project as well as the mandatory performance indicators defined by Treasury.

Recipients have flexibility in the presentation and format of their Project Inventory, provided it includes the minimum required information. Recipients have the option of downloading a spreadsheet of the information entered into their Project and Expenditure Report to assist them in creating the Project Inventory in their Recovery Plan. However, recipients must ensure that their Project Inventory contains the additional information required by this guidance, including but not limited to information about performance measures and evidence/evaluation for each project. In all cases, recipients must post publicly (and submit to Treasury) a single PDF file of their Recovery Plan, which includes the Project Inventory.

D. Distributions to NEUs

Each state and territory is required to provide regular updates on their NEU distributions as well as their distributions to units of general local government within counties that are not units of general local government. The distribution template generally requests information on whether the local government has (1) received funding; (2) declined funding and requested a transfer to the state under Section 603(c)(4) of the Act; or (3) not taken action on its funding or declined funding.

For NEUs, states and territories should be prepared to report on their information, including the following:

- NEU name
- NEU UEI number
- NEU Taxpayer Identification Number (TIN)
- NEU Recipient Number (a unique identification code for each NEU assigned by the State or territory to the NEU as part of the request for funding)
- NEU contact information (e.g., address, point of contact name, point of contact email address, and point of contact phone number)
- NEU authorized representative name and email address
- Initial allocation and, if applicable, subsequent allocation to the NEU (before application of the 75 percent cap)

²⁷ See [Executive Order 14008](#), On Tackling the Climate Crisis at Home and Abroad and the Interim Implementation Guidance for the Justice40 Initiative, [OMB M-21-28](#).



- Total NEU reference budget (as submitted by the NEU to the State or territory as part of the request for funding)
- Amount of the initial and, if applicable, subsequent allocation above 75 percent of the NEU's reference budget which will be returned to Treasury
- Payment amount(s)
- Payment date(s)

States with "weak" minor civil divisions (i.e., Illinois, Indiana, Kansas, Missouri, Nebraska, North Dakota, Ohio, and South Dakota) should also list any minor civil divisions that the state deemed ineligible.

For each eligible NEU that declined funding and requested a transfer to the state under Section 603(c)(4) of the Social Security Act, the state or territory must also attach a form signed by the NEU, as detailed in the Guidance on Distributions of Funds to Non-Entitlement Units of Local Government.



Appendix 1: Expenditure Categories

Treasury's final rule provides greater flexibility and simplicity for recipients to fight the pandemic and support families and businesses struggling with its impacts, maintain vital services amid revenue shortfalls, and build a strong, resilient, and equitable recovery. As such, recipients began reporting on a broader set of eligible uses and associated Expenditure Categories ("EC"), starting with the April 2022 Project and Expenditure Report than they did in their interim reports, initial Recovery Plans, and January Project and Expenditure Report. The table below includes the new Expenditure Categories, as well as a reference to previous Expenditure Categories aligned with the interim final rule and used for reporting before this date.

The Expenditure Categories (EC) listed below must be used to categorize each project as noted in Part 2 above. The term "Expenditure Category" refers to the detailed level (e.g., 1.1 COVID-19 Vaccination). When referred to as a category (e.g., EC 1) it includes all Expenditure Categories within that level.

*Denotes areas where recipients must identify the amount of the total funds that are allocated to evidence-based interventions (see Use of Evidence section above for details)

^Denotes areas where recipients must report on whether projects are primarily serving disproportionately impacted communities (see Project Demographic Distribution section above for details)

Expenditure Category	EC ²⁸	Previous EC ²⁹
1: Public Health		
COVID-19 Mitigation & Prevention		
COVID-19 Vaccination [^]	1.1	1.1
COVID-19 Testing [^]	1.2	1.2
COVID-19 Contact Tracing [^]	1.3	1.3
Prevention in Congregate Settings (Nursing Homes, Prisons/Jails, Dense Work Sites, Schools, Child care facilities, etc.) ^{*,^}	1.4	1.4
Personal Protective Equipment [^]	1.5	1.5
Medical Expenses (including Alternative Care Facilities) [^]	1.6	1.6
Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine) [^]	1.7	1.8
COVID-19 Assistance to Small Businesses [^]	1.8	-
COVID 19 Assistance to Non-Profits [^]	1.9	-
COVID-19 Aid to Impacted Industries [^]	1.10	-
Community Violence Interventions		
Community Violence Interventions ^{*,^}	1.11	3.16
Behavioral Health		
Mental Health Services ^{*,^}	1.12	1.10
Substance Use Services ^{*,^}	1.13	1.11
Other		
Other Public Health Services [^]	1.14	1.12
Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency	-	1.7
2: Negative Economic Impacts		
Assistance to Households		
Household Assistance: Food Programs ^{*,^}	2.1	2.1

²⁸ Under the final rule to be used starting with April 2022 reports

²⁹ Under the interim final rule to be used in Interim Report and January 2022 Project and Expenditure Report



Expenditure Category	EC²⁸	Previous EC²⁹
Household Assistance: Rent, Mortgage, and Utility Aid**^	2.2	2.2
Household Assistance: Cash Transfers**^	2.3	2.3
Household Assistance: Internet Access Programs**^	2.4	2.4
Household Assistance: Paid Sick and Medical Leave^	2.5	-
Household Assistance: Health Insurance**^	2.6	-
Household Assistance: Services for Un/Unbanked**^	2.7	-
Household Assistance: Survivor's Benefits^	2.8	-
Unemployment Benefits or Cash Assistance to Unemployed Workers**^	2.9	2.6
Assistance to Unemployed or Underemployed Workers (e.g. job training, subsidized employment, employment supports or incentives)**^	2.10	2.7
Healthy Childhood Environments: Child Care**^	2.11	3.6
Healthy Childhood Environments: Home Visiting**^	2.12	3.7
Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System**^	2.13	3.8
Healthy Childhood Environments: Early Learning**^	2.14	3.1
Long-term Housing Security: Affordable Housing**^	2.15	3.10
Long-term Housing Security: Services for Unhoused Persons**^	2.16	3.11
Housing Support: Housing Vouchers and Relocation Assistance for Disproportionately Impacted Communities**^	2.17	-
Housing Support: Other Housing Assistance**^	2.18	3.12
Social Determinants of Health: Community Health Workers or Benefits Navigators**^	2.19	3.14
Social Determinants of Health: Lead Remediation**^	2.20	3.15
Medical Facilities for Disproportionately Impacted Communities^	2.21	-
Strong Healthy Communities: Neighborhood Features that Promote Health and Safety^	2.22	-
Strong Healthy Communities: Demolition and Rehabilitation of Properties^	2.23	-
Addressing Educational Disparities: Aid to High-Poverty Districts^	2.24	3.2
Addressing Educational Disparities: Academic, Social, and Emotional Services**^	2.25	3.3
Addressing Educational Disparities: Mental Health Services**^	2.26	3.4
Addressing Impacts of Lost Instructional Time^	2.27	-
Contributions to UI Trust Funds^	2.28	2.8
Assistance to Small Businesses		
Loans or Grants to Mitigate Financial Hardship^	2.29	2.9
Technical Assistance, Counseling, or Business Planning**^	2.30	
Rehabilitation of Commercial Properties or Other Improvements^	2.31	-
Business Incubators and Start-Up or Expansion Assistance**^	2.32	
Enhanced Support to Microbusinesses**^	2.33	
Assistance to Non-Profits		
Assistance to Impacted Nonprofit Organizations (Impacted or Disproportionately Impacted)^	2.34	2.10
Aid to Impacted Industries		
Aid to Tourism, Travel, or Hospitality^	2.35	2.11
Aid to Other Impacted Industries^	2.36	2.12
Other		
Economic Impact Assistance: Other**^	2.37	2.13
Household Assistance: Eviction Prevention**^	-	2.5
Education Assistance: Other**^	-	3.5



Expenditure Category	EC ²⁸	Previous EC ²⁹
Healthy Childhood Environments: Other*^	-	3.9
Social Determinants of Health: Other*^	-	3.13
3: Public Health-Negative Economic Impact: Public Sector Capacity		
General Provisions		
Public Sector Workforce: Payroll and Benefits for Public Health, Public Safety, or Human Services Workers	3.1	1.9
Public Sector Workforce: Rehiring Public Sector Staff	3.2	2.14
Public Sector Workforce: Other	3.3	-
Public Sector Capacity: Effective Service Delivery	3.4	7.2
Public Sector Capacity: Administrative Needs	3.5	-
4: Premium Pay		
Public Sector Employees	4.1	4.1
Private Sector: Grants to Other Employers	4.2	4.2
5: Infrastructure		
Water and Sewer		
Clean Water: Centralized Wastewater Treatment	5.1	5.1
Clean Water: Centralized Wastewater Collection and Conveyance	5.2	5.2
Clean Water: Decentralized Wastewater	5.3	5.3
Clean Water: Combined Sewer Overflows	5.4	5.4
Clean Water: Other Sewer Infrastructure	5.5	5.5
Clean Water: Stormwater	5.6	5.6
Clean Water: Energy Conservation	5.7	5.7
Clean Water: Water Conservation	5.8	5.8
Clean Water: Nonpoint Source	5.9	5.9
Drinking water: Treatment	5.10	5.10
Drinking water: Transmission & Distribution	5.11	5.11
Drinking water: Lead Remediation, including in Schools and Daycares	5.12	5.12
Drinking water: Source	5.13	5.13
Drinking water: Storage	5.14	5.14
Drinking water: Other water infrastructure	5.15	5.15
Water and Sewer: Private Wells	5.16	-
Water and Sewer: IIJA Bureau of Reclamation Match	5.17	-
Water and Sewer: Other	5.18	-
Broadband		
Broadband: "Last Mile" projects	5.19	5.16
Broadband: IIJA Match	5.20	-
Broadband: Other projects	5.21	5.17
6: Revenue Replacement		
Provision of Government Services	6.1	6.1
Non-federal Match for Other Federal Programs	6.2	-
7: Administrative		
Administrative Expenses	7.1	7.1
Transfers to Other Units of Government	7.2	7.3
Transfers to Non-entitlement Units (States and territories only)	-	7.4



Treasury has prepared the additional guidance below to support recipients in implementing the new expenditure categories. This table includes only those previous expenditure categories that are changing under the new structure, aligned with the final rule.

January 2022 Expenditure Categories		April 2022 Guidance
1: Public Health		
1.7	Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency	EC removed, capital expenditures can be designated in any relevant PH-NEI EC (e.g., new hospital wing would be tracked under EC 1.4)
1.8	Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)	EC is 1.7
1.9	Payroll Costs for Public Health, Safety, and Other Public Sector Staff Responding to COVID-19	EC is 3.1
1.10	Mental Health Services*	EC is 1.12
1.11	Substance Use Services*	EC is 1.13
1.12	Other Public Health Services	EC is 1.14
2: Negative Economic Impacts		
2.5	Household Assistance: Eviction Prevention	EC is now included as part of 2.2
2.6	Unemployment Benefits or Cash Assistance to Unemployed Workers*	EC is 2.9
2.7	Job Training Assistance (e.g., Sectoral job-training, Subsidized Employment, Employment Supports or Incentives)*^	EC is 2.10
2.8	Contributions to UI Trust Funds	EC is 2.28
2.9	Small Business Economic Assistance (General)*^	If public-health related (e.g., providing rapid tests for small businesses), EC is 1.8; if related to negative economic impact eligible use (e.g., grants, technical assistance, rehabilitation, incubators, or microbusinesses), EC is 2.29-2.33
2.10	Aid to Nonprofit Organizations*	If public-health related (e.g., providing rapid tests for non-profits), EC is 1.9; if related to negative economic impact (e.g., grants to stabilize non-profit budget), EC is 2.34
2.11	Aid to Tourism, Travel, or Hospitality	EC is 2.35
2.12	Aid to Other Impacted Industries	EC is 2.36
2.13	Other Economic Support*^	EC is 2.37, re-named Other Economic Impact
2.14	Rehiring Public Sector Staff	EC is 3.2
3: Services to Disproportionately Impacted Communities		
3.1	Education Assistance: Early Learning*^	EC is 2.14
3.2	Education Assistance: Aid to High-Poverty Districts ^	EC is 2.24
3.3	Education Assistance: Academic Services*^	EC is 2.25, social and emotional services will now be tracked under this EC
3.4	Education Assistance: Social, Emotional, and Mental Health Services*^	EC is 2.26, if social and emotional services, EC is 2.25;



January 2022 Expenditure Categories		April 2022 Guidance
3.5	Education Assistance: Other**^	EC is 2.37, collected under Other Economic Impact
3.6	Healthy Childhood Environments: Child Care**^	EC is 2.11
3.7	Healthy Childhood Environments: Home Visiting**^	EC is 2.12
3.8	Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System**^	EC is 2.13
3.9	Healthy Childhood Environments: Other**^	EC is 2.37, collected under Other Economic Impact
3.10	Housing Support: Affordable Housing**^	EC is 2.15
3.11	Housing Support: Services for Unhoused Persons**^	EC is 2.16
3.12	Housing Support: Other Housing Assistance**^	EC is 2.18
3.13	Social Determinants of Health: Other**^	EC is 2.37, collected under Other Economic Impact
3.14	Social Determinants of Health: Community Health Workers or Benefits Navigators**^	EC is 2.19
3.15	Social Determinants of Health: Lead Remediation^	EC is 2.20
3.16	Social Determinants of Health: Community Violence Interventions**^	EC is 1.11
5: Infrastructure		
5.16	Broadband: "Last Mile" projects	EC is 5.19
5.17	Broadband: Other projects	EC is 5.20
7: Administrative		
7.2	Evaluation and Data Analysis	EC is 3.4 and has been renamed Effective Service Delivery
7.3	Transfers to Other Units of Government	EC is 7.2
7.4	Transfers to Non-entitlement Units (States and territories only)	To be separately reported as part of NEU/Non-UGLG module. Refer to Part 2 Section D.



Appendix 2: Evidenced-Based Intervention Additional Information

What is evidence-based?

For the purposes of the SLFRF, with the exception of investments in educational services (see additional information below), evidence-based refers to interventions with strong or moderate evidence as defined below:

Strong evidence means that the evidence base can support causal conclusions for the specific program proposed by the applicant with the highest level of confidence. This consists of one or more well-designed and well-implemented experimental studies conducted on the proposed program with positive findings on one or more intended outcomes.

Moderate evidence means that there is a reasonably developed evidence base that can support causal conclusions. The evidence base consists of one or more quasi-experimental studies with positive findings on one or more intended outcomes OR two or more non-experimental studies with positive findings on one or more intended outcomes. Examples of research that meet the standards include: well-designed and well-implemented quasi-experimental studies that compare outcomes between the group receiving the intervention and a matched comparison group (i.e., a similar population that does not receive the intervention).

Preliminary evidence means that the evidence base can support conclusions about the program's contribution to observed outcomes. The evidence base consists of at least one non-experimental study. A study that demonstrates improvement in program beneficiaries over time on one or more intended outcomes OR an implementation (process evaluation) study used to learn about and improve program operations would constitute preliminary evidence. Examples of research that meet the standards include: (1) outcome studies that track program beneficiaries through a service pipeline and measure beneficiaries' responses at the end of the program; and (2) pre- and post-test research that determines whether beneficiaries have improved on an intended outcome.

For investments in educational services, "evidence-based", consistent with the American Rescue Plan Act, has the meaning in section 8101(21) of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6301 *et seq.*). Please see page 16 of this [Frequently Asked Questions resource](#) on the Department of Education's Elementary and Secondary School Emergency Relief Programs and Governor's Emergency Education Relief Programs for more information.

**Appendix 3: Expenditure Categories aligned with the Interim Final Rule**

1: Public Health	
1.1	COVID-19 Vaccination ^
1.2	COVID-19 Testing ^
1.3	COVID-19 Contact Tracing
1.4	Prevention in Congregate Settings (Nursing Homes, Prisons/Jails, Dense Work Sites, Schools, etc.)*
1.5	Personal Protective Equipment
1.6	Medical Expenses (including Alternative Care Facilities)
1.7	Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency
1.8	Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)
1.9	Payroll Costs for Public Health, Safety, and Other Public Sector Staff Responding to COVID-19
1.10	Mental Health Services*
1.11	Substance Use Services*
1.12	Other Public Health Services
2: Negative Economic Impacts	
2.1	Household Assistance: Food Programs* ^
2.2	Household Assistance: Rent, Mortgage, and Utility Aid* ^
2.3	Household Assistance: Cash Transfers* ^
2.4	Household Assistance: Internet Access Programs* ^
2.5	Household Assistance: Eviction Prevention* ^
2.6	Unemployment Benefits or Cash Assistance to Unemployed Workers*
2.7	Job Training Assistance (e.g., Sectoral job-training, Subsidized Employment, Employment Supports or Incentives)* ^
2.8	Contributions to UI Trust Funds
2.9	Small Business Economic Assistance (General)* ^
2.10	Aid to Nonprofit Organizations*
2.11	Aid to Tourism, Travel, or Hospitality
2.12	Aid to Other Impacted Industries
2.13	Other Economic Support* ^
2.14	Rehiring Public Sector Staff
3: Services to Disproportionately Impacted Communities	
3.1	Education Assistance: Early Learning* ^
3.2	Education Assistance: Aid to High-Poverty Districts ^
3.3	Education Assistance: Academic Services* ^
3.4	Education Assistance: Social, Emotional, and Mental Health Services* ^
3.5	Education Assistance: Other* ^
3.6	Healthy Childhood Environments: Child Care* ^
3.7	Healthy Childhood Environments: Home Visiting* ^
3.8	Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System* ^
3.9	Healthy Childhood Environments: Other* ^
3.10	Housing Support: Affordable Housing* ^
3.11	Housing Support: Services for Unhoused Persons* ^



3.12	Housing Support: Other Housing Assistance* ^
3.13	Social Determinants of Health: Other* ^
3.14	Social Determinants of Health: Community Health Workers or Benefits Navigators* ^
3.15	Social Determinants of Health: Lead Remediation ^
3.16	Social Determinants of Health: Community Violence Interventions* ^
4: Premium Pay	
4.1	Public Sector Employees
4.2	Private Sector: Grants to Other Employers
5: Infrastructure	
5.1	Clean Water: Centralized Wastewater Treatment
5.2	Clean Water: Centralized Wastewater Collection and Conveyance
5.3	Clean Water: Decentralized Wastewater
5.4	Clean Water: Combined Sewer Overflows
5.5	Clean Water: Other Sewer Infrastructure
5.6	Clean Water: Stormwater
5.7	Clean Water: Energy Conservation
5.8	Clean Water: Water Conservation
5.9	Clean Water: Nonpoint Source
5.10	Drinking water: Treatment
5.11	Drinking water: Transmission & Distribution
5.12	Drinking water: Transmission & Distribution: Lead Remediation
5.13	Drinking water: Source
5.14	Drinking water: Storage
5.15	Drinking water: Other water infrastructure
5.16	Broadband: "Last Mile" projects
5.17	Broadband: Other projects
6: Revenue Replacement	
6.1	Provision of Government Services
7: Administrative	
7.1	Administrative Expenses
7.2	Evaluation and Data Analysis
7.3	Transfers to Other Units of Government
7.4	Transfers to Non-entitlement Units (States and territories only)



Revision Log

Version	Date Published	Summary of changes
1.0	June 17, 2021	Initial publication
1.1	June 24, 2021	- Pg. 12, removed references to “summary” level with respect to reporting by Expenditure Categories in the Interim Report to avoid confusion. - Pg. 13, revised the coverage period end date for the Interim Report from June 30, 2021 to July 31, 2021 to align with the IFR. - Pg. 13, removed references to “summary” level with respect to reporting by Expenditure Categories in the Interim Report to avoid confusion. - Pg. 31, removed references to “summary level” with respect to Expenditure Categories in Appendix 1 to avoid confusion.
1.1	September 30, 2021	Announced the extension in the Project and Expenditure Report submission date, originally due on October 31, 2021.
2.0	November 5, 2021	- Updated Subrecipient Monitoring section to clarify beneficiaries and recipients. - Updated references to Interim Final Rule comment period as comment period is closed. - Updated reporting tiers, thresholds and timelines in Part 2 Table 2, Reporting Requirements by recipient type, as well as Part 2 A and Part 2 B. - Updated reporting periods for Interim Report and Project and Expenditure reports. - Added concept of Adopted Budget to Project and Expenditure Report data fields. - Noted phase in of Required Programmatic Data in the Project and Expenditure Report. - Removed certain data fields from the Ineligible Activities: Tax Offset Provision under the Recovery Plan. - Separated reporting of NEU Distributions (for States and territories) from the Interim Report and Project and Expenditure Reports as information will be provided on an ongoing basis.
2.1	November 15, 2021	Updated pages 9 and 11 to note that civil rights certification is not applicable to Tribal Governments.
3.0	February 28, 2022	Updated to incorporate reporting updates under the final rule
4.0	June 10, 2022	- Updated Recovery Plan guidance to incorporate minor revisions - Updated language around certain data fields that were required for April 2022 reporting - Updated data fields for Ineligible Activities: Tax Offset Provision for the Project and Expenditure report - Updated Broadband data fields
4.1	June 17, 2022	Updated clerical errors in Ineligible Activities: Tax Offset Provision
4.2	August 15, 2022	Updated to clarify resources for Uniform Guidance applicability and add a reference to an alternative to the Single Audit available for eligible recipients
5.0	September 20, 2022	Updated to note phase in of broadband location by location data fields

Applicant	Qualifying amount of reimbursement
Mount Sequoyah Center Inc.	\$60,580.93
Rockin Baker Academy	\$49,120.12
Sheep Dog Impact Assistance	\$100,000.00
Northwest Arkansas Community Creative Center	\$100,000.00
Theatre Squared Inc	\$100,000.00
Symphony of Northwest Arkansas	\$76,455.56
Botanical Garden Society of the Ozarks	\$100,000.00
Northwest Arkansas Jazz Society	\$18,690.00
Fayetteville Art Alliance dba Art Ventures	\$100,000.00
Apple Seeds	\$24,430.00
7Hills Homeless Center	\$85,608.76
Cobblestone Farms	\$46,968.85
Washington County Historical Society	\$20,885.38
Arts Live Theatre Inc	\$18,748.99
OMNI Center for Peace, Justice, and Ecology	\$20,566.05
Credit Counseling of Arkansas, Inc	\$58,269.63
Habitat for Humanity of Washington County, Arkansas	\$19,675.73
	\$1,000,000.00



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Mount Sequoyah Center Inc.
Requested Amt: \$77,802.20

COVID-19 claimed impacts for Nonprofit organizations can include:

Decreased Revenue (e.g. Donations and Fees)

Financial Insecurity

Increased Costs (e.g., uncompensated increases in service need)

Capacity to weather financial hardship

Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the Mount Sequoyah Center Inc., application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and increased costs (uncompensated increase in service need) during 2020-2021 as a result of the pandemic, and additional costs related to sanitizing their facility against COVID-19.

Supported amount of reimbursement per applicant documentation: \$60,580.93



AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 02/25/2022

Year of Nonprofit Incorporation 1922

Organization Name Mount Sequoyah Center, Inc.

Organization Email emily.gentry@mountsequoyah.org; haley@mountsequoyah.org

Mailing Address 150 N Skyline Dr, Fayetteville, AR 72701

Physical Address (if different) _____

Organization Phone Number 479-443-4531

Website www.mountsequoyah.org

EIN 71-0268583

SAM Unique Entity ID Number FBHBPXLRW5V7
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Emily Gentry

Phone 479-443-4531

Email emily.gentry@mountsequoyah.org

Primary Contact Name Emily Gentry

Title Executive Director

Phone 479-443-4531

Email emily.gentry@mountsequoyah.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

The mission statement of the organization is, "Mount Sequoyah is a welcoming space to celebrate and connect with people, land, and spirit."

List and describe the services the organization provides to Fayetteville residents:

Mount Sequoyah provides a wide range of services to Fayetteville residents. Childcare for kids ages five to twelve years old is provided in the form of summer and off-season day camps while children are out of school through Camp Sequoyah. Family swim memberships, children's swim lessons, and recreational swim team instruction for youth and adults are all offered at the Mount Sequoyah pool.

The Creative Spaces program provides low-cost studio space to artists and creatives as well as a variety of programs and events that support the creative economy in Fayetteville. Additionally, the Creative Spaces program maintains a gallery space and a ceramics studio on Mount Sequoyah's campus, and sculptures and murals are available to see throughout the grounds.

Fayetteville residents can reserve meeting and event space at Mount Sequoyah or rent overnight lodging rooms. The organization's property is listed on the state and federal register of historic spaces as a historic district.

There are almost 30 acres of green space with walking paths, recreation facilities, and more. Area residents can play on the tennis courts, get a membership to Clubhaus Fitness, or just come walk their dogs. Mount Sequoyah also maintains the historic cross with the beautiful view of downtown Fayetteville and the University of Arkansas.

Additionally, the organization creates and hosts its own events and programs throughout the year like the FYRE after-school arts program for LGBTQ youth, the CAFE Novice program for Veterans, the Chamber Music on the Mountain festival, and so much more.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

Mount Sequoyah truly offers something for everyone, so our target beneficiaries include seniors, youth, families, veterans, etc. There are scholarship programs for both the camp and swim programs, and all studio space offered through the Creative Spaces program is being rented at a rate that is significantly lower than the market rate. The organization recently received funding to create an after-school arts program for LGBTQ students, and the CAFE Novice program targeted veterans teaching them new creative writing and culinary skills. The grounds are available for area residents to walk pets or to engage with art installations. There really is something for every demographic and socioeconomic status.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

The COVID-19 public health emergency resulted in a significant decrease in meeting, event, and overnight lodging reservations because people were being encouraged to stay home and not to gather together. This meant that events like family reunions and weddings were not happening and vital income that supports other programs was not coming in.

The camp program was also severely limited in 2020. Camp capacity decreased from 100 campers to only 40, and those 40 campers had to be divided into four different buildings (meaning that cleaning and staffing costs were all substantially higher). Kids had to wear masks whenever they were inside, and we had staff cleaning and sanitizing more frequently meaning cleaning and personal protective equipment costs were higher than usual. Camp Sequoyah did pivot to provide a virtual facilitation program during the school year to help working parents make sure that their kids were getting their homework and class requirements completed during the day.

The pool and swim programs were cut in half because of requirements imposed on pools by the department of health. We had lots of families wanting to participate, but not as much available space at the pool.

Our organization did see an increase in people out walking, running, biking and and just playing outdoors in general. We saw families getting together on our grounds enjoying the rocking chairs or walking paths.

Staff continually worked to keep offering programs to help generate necessary income for the organization. The team offered to go meal service, outdoor, socially distanced concerts, a completely outdoor art installation, and much more. Mount Sequoyah provided housing for University of Arkansas students needing to quarantine due to contracting COVID-19, and Peace at Home reached housed some overflow families in rooms for a short time. Basically, the staff at Mount Sequoyah did all that they could during this time period often working twice as hard to serve half as many people.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

From March 3, 2020 to March 2, 2021, Mount Sequoyah sustained a 78% decrease in individuals and groups coming to campus for weddings, conferences, and personal retreats compared to March 3, 2019 to March 2, 2020. This resulted in \$723,500 less in revenue attributed to outside groups because of pandemic restrictions.

Income for day camp decreased by about 17% or \$22,700 despite opening a year-round pandemic school facilitation program in the fall of 2020. Although there was high demand for childcare services, governmental ordinances intended to keep groups safe kept our camps smaller than pre-pandemic camps.

Even with aid from the Paycheck Protection Program, Arkansas Business Interruption Grant, and other sources of pandemic funding, Mount Sequoyah still made \$529,000 less in income than in the same period in 2019.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

If provided, this funding would make a tremendous difference to address the negative economic impact sustained by the organization as described above. Even after aid from other sources, Mount Sequoyah still made less in income than in the same period in 2019. If funding is provided, Mount Sequoyah will be able to directly offset the expenses incurred paying staff to continue working to offer programming, clean facilities, maintain the buildings and grounds, and so much more. Because of safety concerns and government restrictions, continuing operations often meant working more to be able to serve even less individuals. Recouping some of this negative impact would help sustain the organization into the years to come, so that Mount Sequoyah can continue to serve Fayetteville residents with programs, events, and facilities.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

Mount Sequoyah has addressed the financial impacts of COVID-19 in a variety of ways. Initially, many of the staff were let go due to the substantial loss of income. Thanks to Paycheck Protection funds, Mount Sequoyah was able to bring staff back during 2020 and continue limited operations. However, we have been slow to bring back some positions or expand staffing much due to the financial impacts of COVID-19.

In 2020, the staff transformed outdated lodging spaces into art studio space to be able to bring in consistent monthly income and serve the art community in Fayetteville. By expanding artist studio spaces Mount Sequoyah better utilized unoccupied spaces on site and provided isolated office space for creatives to create their work.

Mount Sequoyah also applied for COVID related assistance and grants as well as making appeals directly to community supporters and donors. Successful grant funding resulted in a number of programs being created even during financially stressful times.

Mount Sequoyah welcomed a new renter in Clubhaus fitness during the pandemic to help increase revenue as well as the number of people using the facility.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

The COVID-19 health emergency resulted in a decrease in overall staffing (at least before PPP funds were received), and Mount Sequoyah had to make sure to keep staff and patrons as safe as possible. Constantly researching best practices and safest protocols with the CDC and other health entities was trying on our small staff.

We saw a decrease in volunteers - especially large groups and those needing to travel to Mount Sequoyah to help. Volunteers are a particularly important component of maintaining the grounds at Mount Sequoyah, so having fewer volunteers meant that less grounds work was able to be accomplished.

Camp Sequoyah was not able to utilize any outside organization partners as in previous years which meant that campers were not exposed to as many outside learning opportunities, and more programming had to be created and implemented internally.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:
N/A

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

Paycheck Protection Program 04/14/2020-09/19/2020 Salaries and Utilities \$224,100.00
Arkansas Ready for Business Grant 5/28/2020 -12/31/2020 Personal Protective Equipment and Advertising \$15,500.00
Arkansas Business Interruption Grant 03/01/2020-09/30/2020 Business Insurance \$21,658.65
Employee Retention Credit Q1 2021 Tax Credits For Salaries \$11,047.99
Employee Retention Credit Q2 2020 Tax Credits For Salaries \$11,937.55
Employee Retention Credit Q4 2020 Tax Credits For Salaries \$13,677.04
Economic Injury Disaster Loan 9/22/2020 Upkeep of buildings \$150,000.00

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: [City of Fayetteville Qualified Census Tracts](#) ? ☐ YES ☒ NO

If Yes, please list:
N/A

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?
☐ YES ☒ NO

If Yes above, please describe the relationship
N/A

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?
Fayetteville residents: 11000 Total residents: 5000

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

We wish to cover payroll from periods not covered by Paycheck Protection Program or Employee Retention Credits.

We are seeking reimbursement for these costs because our staff are what enable our organization to serve Fayetteville residents through the variety of events, activities, and services that we offer. During March 3, 2020 through March 2, 2021 the staff of Mount Sequoyah continued offering programming despite limitations imposed to keep citizens safe. Camp and swim programs were still offered in a limited capacity. Available artist studio space was expanded. Outdoor, socially distanced concerts were offered. To go meals were prepared and extra food was donated to the Friendly Fridge at St. Paul's Church. Lodging rooms were made available for University students who contracted COVID-19 and needed a place to stay quarantined away from roommates. We did all of this and much more, and it would not have been possible without staff.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?



YES



NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

77,802.20

Total requested (must match total documented expenses below): _____

Date	Vendor	Expense Description	Amount
03/15/2020	Employees	Payroll	29,897.65
03/31/2020	Employees	Payroll	22,400.56
09/30/2020	Employees	Payroll	25,503.99

Total 77,802.20

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.

Emily Gentry

Digitally signed by Emily Gentry
DN: cn=Emily Gentry, o, ou,
email=emily.gentry@mountsequeoyah.org, c=US
Date: 2023.02.26 19:06:00 -06'00'

2/27/2023

Authorized Signature

Date

Emily Gentry, President & CEO

Printed Name and Title

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov

Applications and supporting documentation are due by 5:00 PM on March 10, 2023

For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Rockin Baker Academy
Requested Amt: \$49,120.12

COVID-19 claimed impacts for Nonprofit organizations can include:

Decreased Revenue (e.g. Donations and Fees)

Financial Insecurity

Increased Costs (e.g., uncompensated increases in service need)

Capacity to weather financial hardship

Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and decreased revenues during 2020-2021 as a result of the pandemic.

Supported amount of reimbursement per applicant documentation: \$49,120.12



AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 2/27/2023

Year of Nonprofit Incorporation 01/24/2016

Organization Name Rockin' Baker Academy

Organization Email hello@rockinbaker.org

Mailing Address 3761 N Mall Avenue Ste 4, Fayetteville AR 72703

Physical Address (if different) _____

Organization Phone Number 479-313-6767

Website https://www.rockinbaker.org/

EIN 81-1302899

SAM Unique Entity ID Number FG9TQEUNMG59

(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Daymara Baker

Phone 479-871-4082

Email hello@rockinbaker.org

Primary Contact Name Daymara Baker

Title CEO/Founder

Phone 479-871-4082

Email hello@rockinbaker.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

Rockin' Baker's mission is to help neurodiverse adults and adolescents gain confidence and independence to transition into permanent employment through meaningful work that contributes to the health of our community. Rockin' Baker is committed to pay over minimum wage independently of their capabilities rather than the lower amount allowed by the law.

Note: Rockin' Baker Inc. is a Benefit Corporation offering commercial and wholesale high quality artisan bread products to leading hospitality groups and restaurants in Northwest Arkansas, produced by an extraordinary team: young adults on the autism spectrum. The bakery provides a hands-on training ground for Rockin' Baker Academy, its non-profit 501 c 3 entity that raises funds to support the training program, a significant line item in our corporate budget. This entity duality has allowed the B-Corp to apply and secure loans to remodel the space and purchase all the equipment needed to open the bakery on November 11, 2016, and the nonprofit entity to apply for grants to corporate and private foundations.

List and describe the services the organization provides to Fayetteville residents:

Rockin' Baker is a dynamic on-the-job culinary training and placement program. We teach bakery trade skills as well as social and life skills. This segment of our population faces an 85% unemployment rate. Our life-changing commercial bakery is operated 100% by neurodivergents producing high quality artisan breads to leading restaurants and other outlets in NWA.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

Neurodiverse individuals ranging from 18 to mid 30 years-old.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

The spread of Omicron in our region led to a significant drop in sales from our wholesale accounts. The decrease in revenue forced Rockin' Baker to reconsider its participation in schools field trips to the bakery. Productivity drops by the distraction caused by visitors touring the facility. While these field trips are important to the organization's mission of acting as a role model where other individuals on the autism spectrum can see themselves represented, when the revenue drops, the organization must focus on minimizing distractions to increase productivity to reduce any additional financial impact.

Due to lack of additional funding to support its donation program, Rockin' Baker didn't have any other option but to pause the majority of the production for food banks and schools after summer 2021. Until then, the organization donated over 140,000 fresh-made rolls, providing food relief weekly to over 395 food insecure families, 225 individuals and 20 seniors. This is a major achievement for such a small bakery.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

The organization generates earned income through the sales of artisan bread to the public and many leading restaurants in NWA with the ultimate goal of depending less on grants and donations. This model moves towards being a market-based solution to the problem underemployment of the neurodiverse population. However, significant financial gaps remain. The business has seen sales impacted by the COVID-19 health crisis due to restaurant closures that led to dropping wholesale sales. The inflation has significantly impacted production costs due to supply chain disruptions and Russian/Ukraine war (wheat prices).

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

This grant will continue helping Rockin' Baker keep its neurodiverse workforce employed above minimum wage while educating the community at large on the benefits of hiring and training neurodivergents in Fayetteville.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19? The organization continues engaging in aggressively pursuing new accounts beyond the traditional hospitality industry by targeting CSAs, retirement complexes and corporate cafeterias.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

During the various COVID variant surges, Rockin' Baker limited the participation of volunteers to minimize the risk of having any of its cadet bakers infected by the virus. This situation caused the organization to spend more on labor costs to complete the needed tasks to continue its commercial operations. The organization also incurred in overtime costs when two (2) of the cadet bakers contracted COVID-19. There was an eminent need to keep our cadets safe and healthy by minimizing their exposure to new people in such a small place, causing overtime cost from those covering the gaps created by the absences.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

PPP1 = \$22,548.10 (4/10/20-6/30/20, \$20,645.89 payroll, \$1,815 rent April, \$19.19 water April, \$68.02 phone April)-See tab PPP1 in excel file

AR Ready for Business \$3,500 (4/28/20-8/11/20, ingredients, PPE supplies, etc) see tab

AR Business Interruption Grant \$12,251.00 (2020Q3 payroll applied to Daymara Baker)

PPP2 \$28,603 (1/21/21-3/26/21 payroll) see PPP2 tab

City of Fayetteville ARPA 2b \$40,988.856 3/3/21-3/3/22

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: [City of Fayetteville Qualified Census Tracts](#) ? ☐ YES ☒ NO

If Yes, please list:

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 58,000

Total residents: 80,000

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

Rocking Baker never closed its baking operations, even when its wholesale accounts were forced to shut down. The organization found creative ways to keep some of its cadet bakers employed while producing solely for food banks and schools. When restaurants starting to open back up, Rockin' Baker balanced the production of wholesale and donation, until funding stopped coming in to continue supporting its donation program called Rise Up Together. At the end of summer 2021, this small bakery had distributed over 140,000 fresh-made rolls to our neighbors in Fayetteville. Per our partnering organizations Tri Cycle Farms and Seeds that Feed, our program provided food relief to over 395 food insecure families, 225 individuals and 20 seniors every single week.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?



YES



NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

49,120.106

Total requested (must match total documented expenses below): _____

Date	Vendor	Expense Description	Amount
3/3/20-3/2-21	Rockin' Baker	Payroll (see excel file for details)	30,439.55
3/3/20-3/2/21	Creekside Center	rent & CAM (see excel file for details)	13,255.85
3/3/20-3/2/21	Swepeco	electricity (utilities), see excel files for details	3,180.90
3/3/20-3/2/21	Shelter	various insurance, see excel files for details	1,387.34
3/3/20-3/2/21	Cintas	disinfectants/cleaning supplies, see excel file for details	532.94
3/3/20-3/2/21	Black Energy	gas (utilities), see excel file for details	323.54

Total 49,120.106

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.


Authorized Signature

Daymara Baker, CEO/Founder

Printed Name and Title

2/27/2023

Date

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023
For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Sheep Dog Impact Assistance
Requested Amt: \$109,480.21

COVID-19 claimed impacts for Nonprofit organizations can include:

Decreased Revenue (e.g. Donations and Fees)

Financial Insecurity

Increased Costs (e.g., uncompensated increases in service need)

Capacity to weather financial hardship

Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship, decrease in donation revenue, and increased demand for services during 2020-2021 as a result of the pandemic.

Supported amount of reimbursement per applicant documentation: \$100,000.00



AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 2/27/2023

Year of Nonprofit Incorporation 2010

Organization Name Sheep Dog Impact Assistance

Organization Email BWest@SheepDogIA.org

Mailing Address 4940 Maple Grove Dr, Fayetteville, AR 72764

Physical Address (if different) _____

Organization Phone Number 417-812-6035

Website www.SheepDogIA.org

EIN 26-4521779

SAM Unique Entity ID Number CMM1LMT1L6L4
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Lance Nutt

Phone 479-466-9713

Email Lance@SheepDogIA.org

Primary Contact Name Bridgette West

Title Development Director

Phone 479-685-7640

Email BWest@SheepDogIA.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

Through our Get Off The Couch™ programming, Sheep Dog Impact Assistance (SDIA) is the national nonprofit providing charitable services benefitting the overall well-being of our nation's Veterans and First Responders through Outdoor Adventures (physical activity), Warrior PATHH training (mental wellness) and Continued Service/Disaster Response (volunteerism) programs.

List and describe the services the organization provides to Fayetteville residents:

Through our Get Off The Couch™ programming, Sheep Dog Impact Assistance (SDIA) is the national nonprofit providing charitable services benefitting the overall well-being of our nation's Veterans and First Responders through Outdoor Adventures (physical activity), Warrior PATHH training (mental wellness) and Continued Service/Disaster Response (volunteerism) programs.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

SDIA primarily serves veterans, first responders, and their families. Our nation's heroes have an innate desire to serve, and their service gives meaning and purpose to their lives. After an injury or shift/tour of duty ends, that meaning and purpose is often lost. Post-traumatic stress, injuries, depression, addiction, and isolation plague our Sheep Dogs to the point of thinking about and/or attempting suicide. Through our Get Off The Couch™ programming, Sheep Dogs who have suffered similar traumas & experiences gather together for camaraderie and opportunities to continue serving, which helps prevent suicides in our Veteran and First Responder communities.

When Sheep Dogs #GetOffTheCouch together, their attitude and perspective are drastically improved, and many find healing and a renewed sense of purpose and belonging.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

During the COVID-19 Pandemic, SDIA was faced with a significant decrease in donation revenue as well as a significant increase in demand for our programs. The isolation encouraged by social distancing practices to slow the spread of COVID-19 proved to be severely detrimental to the mental health of our nation's veterans and first responders. Because of this, SDIA utilized smaller, more frequent Outdoor Adventures to encourage mental wellness for these Sheep Dogs while adhering to social distancing practices. SDIA also partnered with the NWA COVID-19 Task Force to assist with the collection and distribution of PPE to police and fire stations in Washington and Benton Counties, created and distributed cloth masks, and assisted with food and medication deliveries to vulnerable populations in Washington and Benton Counties.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

During the COVID-19 Pandemic, SDIA was faced with a significant decrease in donation revenue as well as a significant increase in demand for our programs. In 2020, SDIA reported a loss of nearly \$70,000 on our 2020 990 after reporting a surplus of nearly \$60,000 on our 2019 990. This significant change in economic standing was caused by a decrease of \$31,982 in revenue and an increase of \$94,954 in expenses because of the increase in demand for our programs. SDIA was unable to hold our largest annual fundraising event with an average profit of \$100,000 in 2020 and 2021.

The increase in expenses can be attributed to the additional 47,459 people assisted by SDIA in 2020 which was a 2300% increase over the number of people served by SDIA in 2019.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

This funding would allow SDIA to begin filling the gap between the decrease in earnings and increase in expenses during the COVID-19 Pandemic. This funding would also allow SDIA to sustain the growth in the number of people we serve each year that began during the COVID-19 pandemic.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19? SDIA has addressed the financial impacts we have experienced due to the COVID-19 pandemic by increasing our strategic partnerships with other nonprofit organizations like the Avalon Action Alliance, Carry the Load, Boulder Crest Foundation, Walmart SERVES, and Veterans United Foundation. SDIA also utilized withdrawals from our endowment campaign in order to be able to continue serving veterans and first responders.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

Due to the COVID-19 pandemic, SDIA had less ability to utilize volunteers to assist with the operations of our nonprofit. SDIA also saw several instances of "sunk costs" in which we organized travel and activities for participants to participate in Outdoor Adventures who ended up testing positive or needing to quarantine very close to the time of the event and were thus unable to attend.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

SDIA received a Paycheck Protection Program loan in May 2020 to assist with payroll for SDIA employees. SDIA is not asking for reimbursement of payroll expenses in this application.

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: [City of Fayetteville Qualified Census Tracts](#)? ☒ YES ☐ NO

If Yes, please list:

SDIA has operated in all Qualified Census Tracts illustrated on this map.

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 500+

Total residents: 48,343

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

During the COVID-19 Pandemic, SDIA utilized smaller, more frequent Outdoor Adventures (OAs) to encourage mental wellness for these Sheep Dogs while adhering to social distancing practices. Due to the nature of the trauma many Sheep Dogs experience, the isolation encouraged by COVID-19 protocols were significantly detrimental to their mental health. Participating in OAs gives them the camaraderie and peer support they were missing. SDIA also partnered with the NWA COVID-19 Task Force to assist with the collection and distribution of PPE to police and fire stations in Washington and Benton Counties, created and distributed cloth masks, and assisted with food and medication

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?



YES



NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

\$100,000

Total requested (must match total documented expenses below): _____

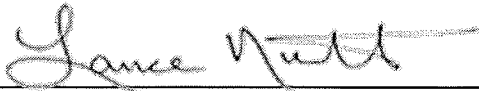
Date	Vendor	Expense Description	Amount
		See "Fayetteville ARPA Expense	Breakdown"

\$109,480.21

Total

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.



Authorized Signature

2/27/23

Date

Lance Nutt, CEO & Founder

Printed Name and Title

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov

Applications and supporting documentation are due by 5:00 PM on March 10, 2023

For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



1200 West Walnut Street, Suite 2310 | Rogers, AR 72756

April 26, 2023

To Whom It May Concern:

This is my signed attestation that Sheep Dog Impact Assistance (SDIA) has conducted services from the following address during 2020 and 2021:

4940 Maple Grove

Fayetteville, AR 72764

The primary use for this satellite office was coordinating and conducting services for Fayetteville residents who are veterans and first responders in relation to our Disaster Response program. During the COVID-19 pandemic, SDIA activated our Disaster Response program to provide support and resources to communities affected by the COVID-19 pandemic. This support included but was not limited to: acting as a "hub" for the NWA COVID-19 task force which was responsible for collecting and distributing PPE to first responder agencies in Fayetteville, delivering face masks and other supplies to first responder agencies and hospitals in Fayetteville, and providing assistance accessing groceries and medical supplies for vulnerable populations.

SDIA has served over 1000 Fayetteville citizens through these efforts and currently has over 400 members and volunteers registered from the Fayetteville area. We are proud to serve the community of Fayetteville through all three of our programs: Outdoor Adventures (recreational therapy), Warrior PATHH (mental wellness), and Continued Service/Disaster Response (volunteerism).

Best Regards,

A handwritten signature in black ink, appearing to read 'Lance Nutt', with a long horizontal flourish extending to the right.

Lance Nutt

SgtMaj, USMCR (Ret.)

SDIA CEO & Founder

HELPING OTHERS IS A WAY OF LIFE

SHEEPDOGIA.ORG

Sheep Dog Impact Assistance is a 501c3 Nonprofit Organization | Tax ID # 26-4521779



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Northwest Arkansas Community Creative Center
Requested Amt: \$135,208.00

COVID-19 claimed impacts for Nonprofit organizations can include:

Decreased Revenue (e.g. Donations and Fees)

Financial Insecurity

Increased Costs (e.g., uncompensated increases in service need)

Capacity to weather financial hardship

Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and decreased revenue during 2020-2021 as a result of the pandemic, and additional costs related to sanitizing their facility against COVID-19.

Supported amount of reimbursement per applicant documentation: \$100,000.00



CITY OF
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ARKANSAS

AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 2/27/2023

Year of Nonprofit Incorporation 2007

Organization Name Northwest Arkansas Community Creative Center

Organization Email Communitycreativecenter1@gmail.com

Mailing Address 505 W. Spring St., Fayetteville, AR 72701

Physical Address (if different) _____

Organization Phone Number 479-571-2706

Website communitycreativecenter.org

EIN 26-0166277

SAM Unique Entity ID Number J7Y4AHUEFC29

(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Bryce Brisco

Phone 479-571-2706

Email brycebrisco@gmail.com

Primary Contact Name Anita Cowan

Title Director of Community Partnerships

Phone 479-571-2703

Email anita@communitycreativecenter.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

Community Creative Center is a Visual Art Studio. Our programming is intentionally developed to fulfill our mission of awakening the extraordinary power of art to engage individuals and the community through accessible Arts education. We strive to meet the needs and demands of art enthusiasts and students of all ages, skill levels and art genres. Class syllabuses are developed with an educational, historical, and artistic foundation that deeply grounds all we offer. Students learn how, but they also learn why, when and what. We regularly survey to learn what our students want but avoid fads or superficial attempts at artmaking. We believe art takes time, requires patience and thoughtful persistence.

List and describe the services the organization provides to Fayetteville residents:

Community Creative Center (CCC) is a visual arts organization providing hands-on studio classes and workshops in a variety of art forms including clay and ceramics, painting, drawing, glass fusion, printmaking, watercolor, sand casting, air-brushing, and mixed media. We serve youth and adults of all ages and skill levels. Our 6900 sq.ft. space includes a fully equipped pottery studio, multi-purpose art studios and exhibition space for local artists. We provide arts education experiences for community members, area schools and partner with other non-profit arts and community organizations. Our programming is also designed to support the power art has in bringing people together. Our Family Nights, Date Nights and Friends Night Out workshops provide the opportunity for people to find enriching and creative ways to spend time together. In addition, we seek partnerships with the education community, youth organizations, community non-profits and social service agencies that use the powerful nature of the arts to heal, empower, relax, engage, and learn. We also look forward to getting the Wheel Mobile back on the road. Our mobile studio further underpins our aesthetic strategy.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

CCC's target audience is EVERYONE - from seniors to youth, anyone wanting to engage in Visual Arts and embrace the joy and creativity that art brings to lives. We continue to develop and implement appealing, affordable programming for adults, seniors and youth art students, education communities and underserved groups. We will identify new groups and re-build pre-COVID connections in order to develop needs-based programming to cultivate participation.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

After the initial suspension of all CCC programming in March 2020, we realized it could be possible to restart our Open Studio program once we evaluated our studio spaces, social distancing needs and the safety of students, staff, and teaching artists. Open Studio is CCC's membership program where community members work independently in our clay studio accessing pottery wheels, studio equipment, glazing room and staff-assisted kiln firings. Before the pandemic, 25-30 members had 7-day a week studio access. Upon restarting in April, members could elect to suspend their membership or continue to use our resources on a safe yet limited basis, 10 hours/week. Active members dropped to 50% of our pre-pandemic numbers. Before Covid, Open Studio program expenses were covered in part through earned income generated by robust wheel class and other program student fees. We then restarted classes and workshops: Offering abbreviated (4 week) pottery wheel and painting classes; fall and winter holiday (2 hr.) workshops. Starting out slowly to gauge interest, evaluate safety protocols and adapt appropriately. Offering fewer classes with less students (for safety.) However, most expenses, teacher fees, marketing, rent, etc., remain the same. The Pandemic may have been toughest of all on our Wheel Mobile Traveling Art Studio. Due to the confined space and the inability to social distance inside the Wheel Mobile all Wheel Mobile Programs were suspended and The Wheel Mobile put into storage. Completely wiping out an entire revenue stream but the expenses remained the same. Keeping the organization operating as best as possible through this crisis, with a goal of keeping our staff paid and working to develop new ways to meet our mission, like creating Take-&-Make boxes with Zoom instructions, but to the best of our abilities, in October of 2020, 75% of Community Creative Center's staff was laid-off and most programs suspended.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

As our Statement of Activities will show that from March 3rd, 2019 to March 2nd, 2020 our earned income from Classes, Workshops, Art Parties and Gallery Sales was \$176,469.03, and our March 3rd 2020 to March 2nd 2021 our earned income from Classes, Workshops, Art Parties and Gallery Sales fell to \$53,945.12 at total of 69% less in 2020 then the previous year of 2019.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

Community Creative Center would use the ARPA Reimbursement funds to bring our staff and programming offered back to the pre-pandemic levels. They will hire a full-time Wheel Mobile, Marketing and Printmaking Staff. We envision a continued expansion of offerings, events and partnerships and have made concrete goals to meet as we emerge from pandemic related restrictions. We continue to develop and implement appealing, affordable programming for adult and youth art students, education communities and underserved groups by regularly surveying existing student and community groups through needs assessment instruments and focus groups to seek feedback that will ensure our programming is meeting their needs. Assessment of growth trajectories reveal that we are in need of physical expansion of studio space, greater diversity of programming, and full time staff to support both.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19? In Spring of 2021, a new staff was hired to the CCC. This scappy new staff has worked hard to develop new and diverse program offerings. Create new fun educational events that are free to the public. They have used these new programs and events to increase their earned income but also to create corporate sponsorships revenue as well. They have attended pop-up markets (i.e. First Thursdays and Goshen Farmers Market) to sell pottery and promote CCC. They team up with the City and other organizations whenever possible to partner on events by providing face painting and Art activities. Combined, all of these efforts of our hard working staff has helped CCC rebound for the financial impacts due to Covid-19.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

Covid made us suspend our school based grant funded out-reach programs like Stage to Studio, Arts Forward After School Program, Wheel Mobile and Summer Camps. We had great hope for these programs to return immediately after the vaccine became available to school aged students for the new 2021-2022 school year. However, because of the Delta variant and then the Omicron variant of Covid switching in-person learning to Alternative Method of Instruction in the 2021-2022 school year made scheduling these programs nearly impossible.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

PPP Loan - received 4/17/2020, \$33,800

Arkansas CARES grant - received 8/13/2020, \$6034

Arkansas Business Interruption Grant (BIG) - received 12/23/020, \$7154

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: [City of Fayetteville Qualified Census Tracts](#) ? ☐ YES ☒ NO

If Yes, please list:

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 8231

Total residents: 10,974

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

CCC is respectfully requesting ARPA funding for RENT we paid for our studio building and PAYROLL for 8 full and parttime staff employed during a portion of the program's covered period. As noted above, CCC received a PPP loan and two federal grants supporting rent, payroll and other administrative expenses totalling \$46,997 awarded during the program's covered period, 3/3/2020 - 3/2/2021. The amount of \$46,997 has been deducted from CCC's total rent and payroll expense for the same time period and is not included in the current ARPA \$135,208 request. Keeping the organization going--doors open and staff employed--assisted Fayetteville residents by allowing this creative resource to remain operational as best as possible until it was safe to restart normal operations.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021? ☒ YES ☐ NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

\$135208

Total requested (must match total documented expenses below): _____

Date	Vendor	Expense Description	Amount
8/1/2020-3/1/2021	Walton Arts Center	Rent	21,669
6/1/2020-3/1/21	Organization Operations	Payroll	113,539

Total \$135,208

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.

Authorized Signature

Date

2-25-2023

BRYCE BRISCO / EXECUTIVE DIRECTOR

Printed Name and Title

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023
For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Theater Squared
Requested Amt: \$100,000.00

COVID-19 claimed impacts for Nonprofit organizations can include:

Decreased Revenue (e.g. Donations and Fees)

Financial Insecurity

Increased Costs (e.g., uncompensated increases in service need)

Capacity to weather financial hardship

Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and decreased revenue during 2020-2021 as a result of the pandemic.

Supported amount of reimbursement per applicant documentation: \$100,000.00



CITY OF
FAYETTEVILLE
ARKANSAS

AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 02/27/2023

Year of Nonprofit Incorporation 2004

Organization Name Theatre Squared, Inc.

Organization Email elliott@theatre2.org

Mailing Address PO Box 4188, Fayetteville, AR 72702

Physical Address (if different) 477 W Spring St, Fayetteville, AR 72701

Organization Phone Number 479-445-6333

Website www.theatre2.org

EIN 20-1016258

SAM Unique Entity ID Number PHLWMHAMZD94

(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Martin Miller

Phone 479-445-6333

Email martin@theatre2.org

Primary Contact Name Elliott James

Title Director of Finance

Phone 479-777-7079

Email elliott@theatre2.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

We believe that theatre—done well and with passion—can transform lives and communities.

At the theatre, in schools and online, we create remarkable performances; broaden access; foster empathy, equity and cohesion; and gather with one another around art, conversation, food and other shared experiences in a welcoming, inclusive space.

List and describe the services the organization provides to Fayetteville residents:

TheatreSquared (T2) is Arkansas's largest professional theatre, nationally recognized for its artistic excellence and trailblazing educational work. T2 produces 250 mainstage performances in downtown Fayetteville and 90 educational touring performances, bringing remarkable live theatre experiences to 75,000 audience members annually in Fayetteville and beyond—including more than 24,000 students and teachers. TheatreSquared's activity also serves as an economic engine for surrounding businesses—generating nearly \$10 million in local spending every year (Americans for the Arts). The theatre employs dozens of theatre professionals and artists residing in Fayetteville. Through "Lights Up! for Access," T2 offers more than 10,000 free and deeply discounted tickets annually to underserved community members who would not otherwise have access. The vast majority of Lights Up recipients are Fayetteville residents and clients of Fayetteville-based nonprofit partners. Although the "true cost" of a ticket to a T2 performance is nearly \$150, charitable support enables TheatreSquared to keep ticket prices accessible to the broader community, with an average public ticket price of \$31 and even greater accessibility for Lights Up participants through free tickets for clients of 100+ nonprofit community partners, \$1 tickets for SNAP recipients, and \$10 tickets for students and youth.

TheatreSquared's far-reaching educational programs reach more than 24,000 students and teachers at 90 schools each year, including many Fayetteville schools. TheatreSquared also offers free community events in its open-all-day public Commons, welcoming even non-theatre-goers inside and helping build strong connections across the community.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

TheatreSquared annually serves more than 75,000 community members of all backgrounds, including 25,000 students and teachers. Nearly half of TheatreSquared's beneficiaries experience professional theatre and education programs at free or deeply discounted rates, including more than 10,000 participants in the Lights Up! for Access program and 25,000 students and teachers from elementary school to high school, in Fayetteville and across the state. Lights Up participants include low-income families who qualify for SNAP benefits, underserved clients of more than 100 local non-profit partners, and students and youth under 30 who may not yet earn a steady income. Beyond these groups, the demographics of the remainder of T2's audience align closely with those of the city of Fayetteville. In the 2021/22 season, more than 25,000 of the 48,000 community members reached by T2's mainstage season were residents of Fayetteville.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

As a professional theatre company, TheatreSquared's programs rely upon the gathering of individuals in a shared space. On March 14, 2020, in response to the onset of the COVID-19 pandemic, TheatreSquared suspended performances of its sold-out and twice-extended run of "Ann" and rescheduled the remainder of performances in its 2019/2020 season. In the year-long period immediately following the shutdown, ticket sales plummeted by 74% over the previous year. The consequences to TheatreSquared's ongoing Our Next Stage Campaign were just as dire.

The theatre's future was uncertain, but the company was determined to continue serving the community. T2 staff and artists quickly innovated and adapted to the new circumstances, expending significant funds and staff time on the purchase of and training on new, multi-camera HD video and streaming equipment, acquiring the knowledge and skills necessary to film, edit, and share the theatre's productions digitally. TheatreSquared's subscribers, single ticket buyers, and Lights Up for Access participants had the opportunity to experience six streaming productions and five new-works-in-development between June 2020 and March 2021. These productions brought national attention to Fayetteville's arts offerings, including a New York Times Critics' Pick, acclaim from the Wall Street Journal, and even an Obie Award, off-Broadway's highest honor.

With T2's education team unable to visit schools in person, T2 Education staff reached out to teachers to find out how they could help and subsequently developed the original, 30-part series "Play On," providing free, daily online content for the students, teachers, and community members they would have otherwise been serving in person. Education staff also adapted five summer camps to immersive, two-way virtual programs (provided to students tuition-free) and worked to modify the 2020/21 Schools Tour to an interactive, virtual format, which has been shared free-of-charge with schools in Fayetteville and throughout Arkansas since spring 2021.

From spring 2020 to spring 2021, TheatreSquared's calendar was worked and reworked multiple times to meet the changing protocols and uncertain timeline of the pandemic. When public health conditions finally allowed a return to in-person performances in April 2021, T2 was among the first theatres in the country prepared for a safe return, due to its retention of staff throughout its March 2020 - March 2021 closure and diligent planning to maintain the highest health and safety standards.

While the theatre's return to in-person performances has been largely positive, ticket sales still have not returned to their pre-pandemic volume, leaving the theatre's earned income lagging despite increased expenses due to both COVID and inflation.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

T2's earned income from ticket sales, events, and hospitality was decimated by the COVID-19 public health emergency, dropping by 74% (nearly \$1 million) between March 3, 2020, and March 2, 2021 when compared to the previous year's ticket sales. Campaign fundraising for the closing phase of the Our Next Stage Campaign was also significantly impacted. A pending \$2.5 million request to a major foundation, which had received initial indications of approval, was scheduled to receive its final review in April 2020. The foundation instead shifted its focus to pandemic response in late March and the request was abandoned. The suspension of in-person meetings and events also had a substantial negative impact on the closing phase of the campaign. As a result, in FY20 alone, the theatre's fundraising came in more than \$3 million below its anticipated pace by the end of the fiscal year, leaving the company with unanticipated additional debt service expense for the foreseeable future.

The company's virtual productions were well received, but while expenses for the virtual productions remained similar to in-person, streaming ticket sales could never keep pace with the revenue earned from in-person tickets. Earned income remains deeply impacted in the current season. Throughout 2022, attendance remained 30-50% below pre-pandemic levels. A similar experience is reflected at theatres across the nation. Independent experts anticipate that audiences may take up to three years to fully return, even though health and safety precautions have been eliminated—simply because habits have changed during the extended crisis.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

Funding in the amount proposed would cover a small fraction of the substantial and ongoing economic losses sustained while performances were suspended due to the public health crisis and from continuing diminished attendance. The maximum grant award of \$100,000 through this program would help to mitigate a portion of the theatre's immediate challenges from reduced attendance, a nationwide phenomenon following the COVID-19 pandemic, within the currently announced programmatic year.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

TheatreSquared staff were quick to ramp up fundraising efforts and apply for every available form of assistance to help mitigate the significant losses brought about by the pandemic shutdown, including government relief grants such as the Paycheck Protection Program and Shuttered Venue Operations Grant. T2's ongoing fiscal responsibility and the diligent building of a healthy reserve fund over the past decade helped the company to weather the crisis. While other theatres across the country suspended all activity, canceled artistic contracts, and laid off the majorities of their staff, TheatreSquared instead invested in retaining its team, honoring contracts, and upholding high health and safety standards while continuing to produce innovative artistic work, even providing months of free housing for visiting artists who were unable to return home due to the public health emergency.

The company has maintained its staff and operations despite the significant headwinds faced by theatres across the country. In the current season, 96% of LORT (League of Regional Theatres) members reported a substantial deficit, averaging 16% of revenue—or \$3.3 million—and continued to project deficits forward for the 23/24 fiscal year. From Oregon to Ohio to New York, and hundreds of municipalities in between, ARPA funds made available via statewide, countywide, or citywide efforts have helped to offset these losses, but TheatreSquared has forged its own path by necessity in the absence of local or statewide efforts to provide support using federal funds intended to offset industry losses.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

Even after returning to streaming and, eventually, in-person performances, TheatreSquared has had to cancel numerous performances in efforts to monitor and contain the spread of COVID-19. The crisis period substantially increased turnover in staffing for the café and front-of-house areas. The building was closed to the public for performances and events from March 2020 to April 2021.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

see attached document titled "Other COVID-19 related funding assistance"

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: City of Fayetteville Qualified Census Tracts? ☒ YES ☐ NO

If Yes, please list:

Census Tract 113.02

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 14,584

Total residents: 40,009

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

TheatreSquared is seeking reimbursement for payroll expenses during the covered period. The significant majority of T2 staff live and work in Fayetteville, providing services to an audience that, in most seasons, is predominantly composed of Fayetteville residents. Through its Lights Up! for Access program, TheatreSquared partners with more than 100 nonprofit organizations to distribute free and reduced-price tickets to those who would otherwise be unable to attend due to price or other barriers. The majority of Lights Up partners are also based in Fayetteville. Low-income populations were disproportionately impacted by the economic effects of the COVID-19 pandemic. The tourism and hospitality sector was deeply affected by the pandemic, and T2's commitment to maintaining the employment of artists, hospitality workers, and arts professionals during this time was of significant assistance to these residents.

Audience members, students and teachers who participated in TheatreSquared's digital streaming productions and education programs enthusiastically shared with T2 the positive impact these services had on their mental and emotional wellbeing, calling them "a godsend," a "beacon of light," and a "life line" in a difficult time.

In addition to T2's regular activities, TheatreSquared's resident costume designer and costume technicians spent many weeks early in the pandemic sewing cloth masks, which were donated to frontline workers in Fayetteville, including healthcare workers at Washington Regional and other local medical facilities.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?



YES



NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

Total requested (must match total documented expenses below): \$100,000

Date	Vendor	Expense Description	Amount
10/1/2020-12/31/2020	Employee Payroll	Wages / Compensation. See supplemental documents for detail.	\$100,000

Total \$100,000

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.

Elliott James

Digitally signed by Elliott James
Date: 2023.02.27 00:01:58 -06'00'

2/27/2023

Authorized Signature

Date

Elliott James

Printed Name and Title

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023
For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Symphony of Northwest Arkansas
Requested Amt: \$86,993.00

COVID-19 claimed impacts for Nonprofit organizations can include:

- Decreased Revenue (e.g. Donations and Fees)
- Financial Insecurity
- Increased Costs (e.g., uncompensated increases in service need)
- Capacity to weather financial hardship
- Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and reduced revenue from ticket sales, etc., during 2020-2021 as a result of the pandemic and additional costs related to mitigating the spread of COVID-19 in the facility.

Supported amount of reimbursement per applicant documentation: \$76,455.56



AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@favetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 2/26/23
Year of Nonprofit Incorporation 1975
Organization Name Symphony Orchestra of Northwest Arkansas (SoNA)
Organization Email riley@sonamusic.org
Mailing Address PO Box 1243, Fayetteville AR, 72702
Physical Address (if different) 217 E. Dickson St. Suite 106, Fay. AR 72701
Organization Phone Number 479.521.4166
Website sonamusic.org
EIN 23-7439184
SAM Unique Entity ID Number HVQ1TJPEMZR1
(see <https://sam.gov/content/entity-registration> for more information)
CEO/Executive Director Name D. Riley Nicholson
Phone 479.521.4166
Email riley@sonamusic.org

Primary Contact Name Riley Nicholson
Title Executive Director
Phone 479.521.4166
Email riley@sonamusic.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

Mission: SoNA brings great music to life in Northwest Arkansas.

Vision: SoNA will be recognized as a trailblazing orchestra as it: Expands the possibilities of what an orchestra can be; Changes lives by increasing interest and equity in the arts through outreach, education, collaboration and performance; Creatively honors the past, present and future of our artform, fostering the highest levels of artistic expression.

List and describe the services the organization provides to Fayetteville residents:

SoNA performs a season of 6+ mainstage symphonic concerts at the Walton Arts Center, and is the resident symphony orchestra of the Walton Arts Center. SoNA also performs out in the community across Northwest Arkansas and beyond the confines of the Walton Arts Center through its "SoNA Beyond" series, featuring innovative, accessible, and inclusive artistic experiences. SoNA also provides music education and youth-focused programming to support and inspire the next generation of musicians and music-lovers.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

SoNA, does not have one single target beneficiary; we aim to serve a wide, representative cross-section of Northwest Arkansas. We believe everyone should have the opportunity to experience live music.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

Due to large indoor gatherings being prohibitively dangerous during the time period of March 3, 2020 to March 2, 2021, SoNA was forced to cancel two concerts (March 21 and May 2 of 2020) during its 2019-20 mainstage season at the Walton Arts Center. Yet, while these concerts were canceled, SoNA still paid its musicians 100% of what they would have made if the concerts had occurred as planned. Additionally, SoNA had to cancel its gala, originally scheduled for March 17, 2020. SoNA also had to cancel the entire 2020-21 mainstage season. SoNA was able to launch its "Reimagined Season" during season 2020-21 in lieu of the mainstage season; this "Reimagined Season" consisted of virtual events and small scale, socially distanced and/or outdoor concerts.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

The two canceled mainstage concerts in spring of 2020 constituted a total projected loss of \$79,988 in ticket sale revenue (number based on previous two mainstage concerts before pandemic closures, see "P&L Comparison Data > concerts"). Additionally, the gala originally scheduled for March 17, 2020 was canceled – representing \$53,927 of projected contributed revenue that was not realized (number based on 2019 Gala, see "P&L Comparison Data > gala"). Lastly, as mentioned, the 2020-21 season was canceled, and in lieu of it SoNA produced its "Reimagined Season" which brought in only \$875 in ticket sales between 7/1/2020 and 3/2/2021; during a typical year SoNA brings in \$171,135 in ticket sales (comparison period 7/1/2019 and 3/2/2020, see "P&L Comparison Data > season"). This represents a total loss of \$250,248 in ticket sales and a loss of \$53,927 for gala revenue during the period in consideration (3/3/2020 - 3/2/2021) for this application.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

Despite the significant losses to both earned (box office) and contributed revenue, SoNA remained steadfast in its commitment to supporting its artists. SoNA still paid its artists the amount they would have made despite the cancelation of the concerts on March 21 and May 2 of 2020 totaling to \$70,211 in artist payroll. Additionally, in the 2020-21 "Reimagined Season" SoNA found ways to provide musicians work, including through two digital concerts where musicians recorded themselves from home including a holiday digital performance "Sleighride Together" in collaboration with Ballet AR – totaling to \$13,478 in artist payroll, and a recording of "Fanfare for the Common Man" totaling to \$3,304 in artist payroll. This totals to \$86,993 in artist payroll expense that was not supported by earned income or other pandemic relief. ARPA funding from the City of Fayetteville would help reimburse SoNA for these payroll expenses.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19? Since the beginning of the pandemic, SoNA has relied on individual, corporate, government, and foundational giving more than ever to support its operations despite disruptions to ticket sales and significantly less contracted services (events presented by external parties where SoNA musicians are hired to play). At the end of fiscal year 2019-20, cash reserves were used to make up for the significant deficits due to the pandemic; that fiscal year we paid musicians 100% of their service rates for canceled concerts. In fiscal year 2020-21, ticket sales continued to be severely impacted, down approximately 99%. This revenue loss has been balanced by decreased expenses, the continuation of contributed income, and government relief including PPP, the Arkansas Business Interruption, and the Shuttered Venue Operators Grant. The current fiscal year somewhat represents a return to normalcy with the return to our mainstage performances; however, ticket sales continue to be volatile and need to be balanced by other sources of income and cash reserves more than ever.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

Even once we were able to return to large scale concerts in season 2021-22, the public health emergency has required that we take precautions to mitigate risk including vaccination mandates, testing, masking, distancing, air filters, and other measures (safety policies have varied according to the levels of community spread and recommendations/guidelines from the CDC and State of Arkansas).

Even once these precautions could be relaxed in 2022, the public health emergency continues to significantly affect artistic staffing – an unusually high number of last-minute musician substitutes have been needed as musicians test positive and quarantine at home. This has increased the workload of our staff as we adapt to substitutions and an ongoing and dynamic situation.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:
See attachment.

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: [City of Fayetteville Qualified Census Tracts](#)? ☒ YES ☐ NO

If Yes, please list:

Primary venue (Walton Arts Center) is within census tract 113.02. Admin offices are not.

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 22533

Total residents: 54958

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

See attachment.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?



YES



NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

\$86,993

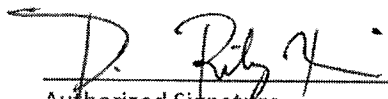
Total requested (must match total documented expenses below): _____

Date	Vendor	Expense Description	Amount
3/27/2020	artist payroll	artist payroll for canceled 3/21/20 concert	\$31,485
5/11/2020	artist payroll	artist payroll for canceled 5/2/20 concert	\$38,726
11/04/2020	artist payroll	artist payroll for virtual concert	\$3,304
12/17/2020	artist payroll	artist payroll for virtual concert	\$13,478

Total \$86,993

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.


Authorized Signature

2-26-23
Date

D. Riley Nicholson, Executive Director
Printed Name and Title

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023
For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds?

If Yes, describe amount(s), use(s), and timeframe:

Two PPP loans: totaling to \$60,727, used between the period of 5/1/2020 to 9/21/2021, used for salaried administrative employee payroll (not artistic payroll) and rent expenses.

Arkansas Business Interruption Grant: \$18,602, reimbursement for qualified expenses during the period of March 1, 2020 to September 30, 2020. Qualified expenses included: rent expenses, operational and professional business licenses, certified payroll documentation (not including that covered by PPP), telephone and internet service expenses, business insurance expenses, PPE and covid mitigation expenses. Reimbursement was not used for artistic payroll expense.

Shuttered Venue Operators Grant: used for fiscal year 2022 costs (fiscal year is July 1, 2021-June 30, 2022). \$236,880 is used for: personnel (payroll cost), contractual obligations with independent contractors, office rent, insurance payment, advertising, and administrative costs. (not overlapping with PPP or Business Interruption Grant expenses)

ARPA support through the City of Fayetteville (round one of funding): reimbursed venue costs incurred between 1/27/2022 3/1/2022 totaling to \$19,314.

Please describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

Funding is requested to reimburse for artistic payroll costs for:

- 1.) Two canceled symphonic concerts at the Walton Arts Center (March 21 and May 2 of 2020) where artists were still paid 100% of their service fees (totaling to \$70,211)
- 2.) Two virtual performances during the "Reimagined Season" including "Sleighride Together" and "Fanfare for the Common Man" (totaling to \$16,782)

Working artists have disproportionately suffered from pandemic cancellations and the inability to perform. Therefore, we were and remain committed to supporting our local artists by still paying them for canceled concerts (despite having no contractual obligation to do so), as well as by continuing to provide work through virtual concerts and other "Reimagined Season" activities. Additionally, during this time when we were unable to gather in large contexts, these "Reimagined Season" activities allowed us to still serve our community and provide great music to Northwest Arkansas. We appreciate the opportunity from ARPA Non-Profit Assistance to help us continue to serve our artists, partners, and community.



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Botanical Garden Society of the Ozarks
Requested Amt: \$100,000.00

COVID-19 claimed impacts for Nonprofit organizations can include:

Decreased Revenue (e.g. Donations and Fees)

Financial Insecurity

Increased Costs (e.g., uncompensated increases in service need)

Capacity to weather financial hardship

Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and decreased revenue from fundraising and fees during 2020-2021 as a result of the pandemic, and additional costs related to COVID-19 mitigation.

Supported amount of reimbursement per applicant documentation: \$100,000.00



CITY OF
FAYETTEVILLE
ARKANSAS

AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 2/27/2023

Year of Nonprofit Incorporation 1994

Organization Name Botanical Garden Society of the Ozarks, Inc.

Organization Email info@bgozarks.org

Mailing Address P.O. Box 10407, Fayetteville AR 72703

Physical Address (if different) 4703 N. Crossover Rd, Fayetteville AR 72764

Organization Phone Number 479-750-2620

Website www.bgozarks.org

EIN 71-0750464

SAM Unique Entity ID Number SX91DQXLSLY9
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Paul Prewitt

Phone 479-750-2620

Email pprewitt@bgozarks.org

Primary Contact Name Paul Prewitt

Title Executive Director

Phone 479-750-2620

Email pprewitt@bgozarks.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

We are dedicated to the education and environmental awareness and serve as a community destination for unique nature experiences.

List and describe the services the organization provides to Fayetteville residents:

Demonstration gardens showing the woody, herbaceous and exotic plant species that can be included in Northwest Arkansas gardens. Along with providing scientific research capabilities.

Event and regularly scheduled at the Garden to increase garden awareness with the public and provide outdoor enjoyment for families.

Educational programs, classes, and workshops for children and adults of all ages.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

We are here to serve the entire NWA community. This includes families, seniors, youth, veterans, LGBTQ, minorities and beyond. It is our pleasure to bring together beautifully diverse plants and people to enjoy unique nature experiences in our community.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

All money making events were unable to be held with the exception of our annual gala but less than half the guests could attend in person. We added a virtual open but that was very costly and few joined this way. Rentals cancelled or moved their event to the future.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

Revenue losses (comparing YoY for Mar 3 - 2 see attached report):

- Events Revenue -\$31,415.32
- Program/Education Revenues -\$15,271.49
- Sponsorships Revenues -\$67,200
- Fundraising (events) Revenues -\$76,527.07
- Facilities Rental Revenues -\$18,734.49
- Garden Admissions Gate Receipts -\$24,950.50

The Garden also continued to see normal operational expenses including payroll (\$462,945), utilities (\$14,755), etc. along with \$11,165.11 in additional COVID-19 readiness expenses.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

As the Garden has already recieved other grants to help cover some of the COVID-19 expenses, we are specifically seeking assistance with covering unreimbursed Personnel costs during the 3/3/20-3/2/21 timeframe.

This funding, if granted, would help us continue to ensure our abilitiy to cover salaries for our small and mighty team which are dedicated to making a different for the community.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19? Like most nonprofits, we realigned our priorities, tightened out belts and applied for all possible funding options. The Garden has struggled through the COVID-19 financial impacts as we do not have the traditional endowment (or reserves) that most botanical gardens are founded with at the onset. As such, we've seen mulitple financial losses and limitations on our continued growth for community impact due to the losses.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

Covid-19 changed everything except the flora and fauna in the Garden. The Garden closed for 2.5 months and 4 staff members resigned and one died during the first 5 months of the shutdown. We have not fully replaced all the positions at this time with the uncertainty of the economic future.

Volunteers, are a viatal part of our organziation but unfortunately the majority are of the senior age bracket which has extremely limited their abilty to be out and about to help support the Garden. As restrictions have lifted more have come but we are at less than half the total number of volunteer that we had prior to the pandemic.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☒ YES ☐ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

PPP Loan #1, Federal, \$94,800, applied to payroll

PPP Loan #2, Federal, \$94,867, applied to payroll

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

PPP Loan #1, Federal, \$94,800, applied to payroll, May 10, 2020 - July 18, 2020

PPP Loan #2, Federal, \$94,867, applied to payroll, awarded in Mar. 2021 and applied to personnel and utilities expenses from 2021 - however, I've shown how it could have been historically applied to prevent duplication of reimbursement.

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: City of Fayetteville Qualified Census Tracts? ☐ YES ☒ NO

If Yes, please list:

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: not tracked Total residents: 56,985

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

Un-reimbursed Personnel Expenses from 3/3/20-3/2/21.

We are strictly seeking reimbursement of previously un-reimbursed personnel costs. The staff are the greatest expense as they pull together all the events, activities and services that supported residents during COVID-19.

During this time the Garden spent \$417,997.38 on gross payroll. However, we've only received PPP Loans to cover \$189,667 of these costs. This leaves us with a gap of \$228,330.38.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?



YES



NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

\$100,000

Total requested (must match total documented expenses below): _____

Date	Vendor	Expense Description	Amount
3/3/20-3/2/21	N/A	Un-reimbursed Payroll Expenses	\$100,000
		see detailed report showing the full gap	

Total \$100,000

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.



Authorized Signature

2/27/2023

Date

Paul Prewitt, Executive Director

Printed Name and Title

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023
For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Northwest Arkansas Jazz Society, Inc.
Requested Amt: \$18,690.00

COVID-19 claimed impacts for Nonprofit organizations can include:

Decreased Revenue (e.g. Donations and Fees)

Financial Insecurity

Increased Costs (e.g., uncompensated increases in service need)

Capacity to weather financial hardship

Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship decreased revenue from fees during 2020-2021 as a result of the pandemic.

Supported amount of reimbursement per applicant documentation: \$18,690.00



AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 02/27/23

Year of Nonprofit Incorporation 1992

Organization Name Northwest Arkansas Jazz Society, Inc.

Organization Email info@digjazz.com

Mailing Address 40 E Elm Street, Fayetteville, AR 72703

Physical Address (if different) _____

Organization Phone Number 479-225-2306

Website digjazz.com

EIN 71-0720637

SAM Unique Entity ID Number TLXEBXVL6BT5
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Graham Stewart

Phone 740-591-3358

Email graham@digjazz.com

Primary Contact Name graham@digjazz.com

Title Executive Director

Phone 740-591-3358

Email graham@digjazz.com

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

Please see attached

List and describe the services the organization provides to Fayetteville residents:

Please see attached

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

Please see attached

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

Please see attached

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

Please see attached

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

Please see attached

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

Please see attached

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

Please see attached

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

ARPA Grant, 2021-22

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: City of Fayetteville Qualified Census Tracts ? ☐ YES ☒ NO

If Yes, please list:

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 1800

Total residents: 3200

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

Please see attached

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021? ☒ YES ☐ NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

\$18,690

Total requested (must match total documented expenses below): _____

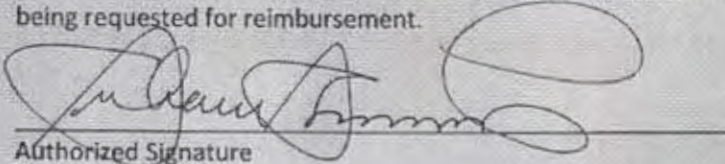
Date	Vendor	Expense Description	Amount
2/1/20-12/31/20	Robert Ginsberg	80% of compensation for 2/1 - 12/31/23	\$10000
2/1/20-12/31/20	Jacob Christiansen	77% of compensation for 2/1-12/31/23	\$6765
2/1/20-12/31/20	KayEllen Wilkenson	77% of compensation for 2/1-12/31/23	\$1925

\$18,690

Total _____

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.



Authorized Signature

02/26/2023

Date

Graham Stewart, Executive Director

Printed Name and Title

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov

Applications and supporting documentation are due by 5:00 PM on March 10, 2023

For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov

2020 ARPA application responses from Northwest Arkansas Jazz Society, Inc.

Please provide the philosophy, purpose and/or mission statement of the nonprofit entity:

The mission of the Northwest Arkansas Jazz Society (NAJS) is to present, preserve, promote, and celebrate the great American art form known as jazz.

NAJS was founded in 1982, incorporated in 1992, and we accomplish our mission by creating live concert presentations of our own, supporting regional and touring musicians by providing paid performance opportunities, collaborating on jazz projects with numerous regional organizations, and by developing and sustaining an innovative youth education program.

Highlights of our work to support our mission include:

- Since 1982, We have engaged the community through the production of an all-jazz radio show on our local NPR affiliate, KUAF.
- In 1998, NAJS founded the Summer Jazz Concert Series which still annually showcases local musicians alongside jazz masters.
- Collaborations are a pivotal part of our mission, and NAJS serves as jazz artist curator for Walton Arts Center, Crystal Bridges Museum, the University of Arkansas, and other regional arts organizations.
- We seek to educate future local jazz musicians. In 2002, NAJS established a scholarship fund and awarded scholarships to more than 90 music students. And, in 2017, NAJS founded the Jazz All-Stars Youth Ensemble (JYE), an annual big-band / small ensemble intensive for high school students, in collaboration with Walton Arts Center. In 2020, NAJS took full financial and operational leadership of JYE.

List and describe the services the organization provides to Fayetteville residents:

Northwest Arkansas Jazz Society (NAJS) is located in Fayetteville, Arkansas, and we serve Northwest Arkansas (NWA) - a population of more than 500,000 - including Bentonville, Rogers, Springdale, etc.

NAJS develops and promotes jazz performances held in Fayetteville, educational opportunities for its high school students, and collaborations with other Fayetteville non-profits in order to present internationally renowned jazz performers in NWA.

NAJS has a part-time staff of 4, (1 FTE employee), a board of 11, and more than 200 members.

What started as one-off concerts presented in partnership with Walton Arts Center (WAC) and the University of Arkansas, NAJS quickly grew to present the Summer Jazz Concert Series (SJCS), a unique program multi-concert program which celebrated its 25th year in 2022.

In 2018, NAJS founded a successful, monthly jam-style jazz performance, held in Fayetteville, in collaboration with local businesses. NAJS publicizes these "jam sessions," supplies a house rhythm section, and encourages local musicians of every age to sit in with professionals. The jam format is crucial in the history of jazz music and education.

NAJS has significantly improved the quality, quantity, and profile of jazz education in the region. In 2002, NAJS founded a scholarship program for music students with funding provided by revenue from its concert presentations. Since its inception, NAJS has awarded more than 90 scholarships.

NAJS partners with regional venues to present the Summer Jazz Concert Series. Examples of regular partners include Roots HQ (on the Fayetteville square) Botanical Garden of the Ozarks, Sunrise Guitars, and the Jones Center. Recently, Fayetteville-based NAJS has begun several new long-term collaborations, developing concert series with the Roots Festival, Crystal Bridges Museum of American Art, and the Walmart Museum.

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans etc.)

NAJS primarily serves three groups: musicians, music students, and audiences.

We serve musicians of all ages and levels by providing opportunities to perform. We book and promote Fayetteville based artists like Claudia Burson and Ben Harris to perform in Fayetteville and at other regional venues. Our successful, monthly jam-style jazz performance, held in Fayetteville, books local musicians to be the house rhythm section, and encourages local musicians of every age to sit in with professionals. The jam format is crucial in the history of jazz music and education.

As stated above, our youth education program includes a three-month intensive NAJS has significantly improved the quality, quantity, and profile of jazz education in the region. In 2002, NAJS founded a scholarship program for music students with funding provided by revenue from its concert presentations. Since its inception, NAJS has awarded more than 90 scholarships.

NAJS presents the Summer Jazz Concert Series, which highlights six to twelve local, regional and national artists in concerts held in Fayetteville (at Roots HQ, George's or other Fayetteville venues) as well as with regular partners.

Highlights of our efforts to expand access to quality jazz education, concerts, and opportunities to underrepresented groups include promotion and employment for regional musicians (who tend to be low-income), significant scholarships to empower students with financial need, and diverse programming - especially Latin Jazz to serve our expanding Latinx community.

Covid-19 impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to help those impacted by COVID-19, limited operations, etc.

Covid greatly impacted NAJS in 2020, as our organization depends on the ability to bring live music to audiences. Specific impact was as follows:

- Our Concert series offerings were cut in half, and some were offered free to the public, due to lower demand from in-person events, covid restrictions and artist cancellations. We brought in much less revenue from ticket sales and memberships declined as a result as well.
- NAJS' staff significantly shifted their duties to focus more on improving outreach to members and building online presence.
- The Jazz All-Stars Youth Ensemble (JYE) which was previously a live big-band, was adapted to focus on small-group ensembles and studio recording. The performance held at Walton Arts Center was socially distanced and had reduced attendance as a result.
- We did launch some new services to help students and jazz artists during covid, including a Jazz Education fundraising effort for the youth education program, and an online Jazz Musician Database (providing regional musicians a way to list their contact information for presenters and booking agents)
- NAJS curated a truncated, socially distanced concert series for Walton Arts Center, featuring regional and national artists.
- We revamped and sent out a weekly newsletter (highlighting local and national jazz events presented online).

List and describe the negative economic impact the COVID-19 public health emergency has had on the organization's finances (e.g., increased and new expenses, fundraising, loss of earnings, decline in revenue, etc.) Provide justification/calculation for any amount stated.:

2020 impacted the fiscal health of the Northwest Arkansas Jazz Society (NAJS) as seen in that year's nearly \$19,000 deficit. Specific examples of negative financial impacts include:

- Many of our pre-scheduled concerts were cancelled, and most others we presented were provided free to audiences. As a result, there was much less revenue from ticket sales than projected.
- NAJS had losses including funds spent on marketing the events, processing refunds where necessary, and pre-arranged logistical expenses for the season.

- Our annual fundraiser was not able to be held – instead we used our annual Jazz in Bloom concert at the Botanical Garden to provide free tickets to our members (as a thank you for sticking with us during the Pandemic) and to recruit new members. But net annual income from donations declined dramatically.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above:

ARPA grant funding from the City of Fayetteville would address the economic impact sustained by NAJS in 2020 by:

- Replacing lost revenue from ticket sales and donations by our patrons.
- Investing ARP funds in local professionals who we could book again for concerts in 2023.
- Bolstering the Jazz education program by using funds to promote the program further, audition and engage more high school students, and finding more opportunities for these young musicians to perform in public.
- Increasing our marketing and fundraising capabilities. We would use ARPA funds to increase our ability to reach our members more often (through planning and software investment), and execute an annual fundraising plan that would yield increased donations and membership.
- Provide the seed money needed to develop a signature annual fundraising event in 2023.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

We have addressed the financial impact caused by Covid 19 by:

- Negotiating lower fees with artists where possible
- Partnering with other organizations to share expenses
- Increasing our focus on individual donations, starting with building a larger board and requesting specific support.
- Cutting expenses where possible to allow us to be more creative with

marketing and software solutions (CRM for small-business purchased by a staff member for the organization)

- Booking more regional acts who have lower related costs. This is not sustainable long-term as our goal is to bring national and international acts to Fayetteville and NWA.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.)

- Fewer volunteers were willing to serve due to their personal fears about exposure in live settings.
- Staff were asked to shift their workloads to online priorities.
- Many of our available venues were not available for us, even if we wanted to host performances and market the event.

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted resident impacted by COVID-19.

We are seeking reimbursement for \$18,690 in losses incurred for 2020 – an amount represented by claiming a large percentage of the salaries (independent contractor fees) paid to three part time staff from March 1 through December 31, 2020. Even with the drastic reduction in performances, the services provided by our staff kept our members informed on status, upcoming plans, and jazz programs in the region. The staff invested time and effort in developing a stronger web presence to better connect with our members, donors and patrons. Despite the impact of the pandemic, we did produce several events and programs in 2020, including Jazz in Bloom and the Jazz all-stars youth education program. All programs were adapted to include social distancing measures for the musicians as well as audiences.

REQUIRED DOCUMENTS

Secretary of State filing number **100097176**

Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category **ATTACHED**

- Provide copies of IRS form 990 for 2019, 2020, and 2021 **ATTACHED**
- Provide copy of W-9 form (Taxpayer ID number and Certification) **ATTACHED**
- Provide a copy of IRS determination letter indicating nonprofit status **ATTACHED**
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website **100097176**
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s) **NONE CONDUCTED**
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information) **TLXEBXVL6BT5**
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid. ***Jacob Christiansen was paid almost \$1000 each month, KayEllen Wilkerson was paid \$3000 in October, Robert Ginsberg was paid \$15,000 in September.***

See ATTACHED bank statements from 03/20 to 12/20

- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement **N/A**
- Other supporting documentation if applicable **2020 1099's**
- Provide a copy of a signed application – **SIGNED**

SAM entity ID **TLXEBXVL6BT5**

EIN: 71-0720637



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Fayetteville Art Alliance dba Art Ventures
Requested Amt: \$137,402.71

COVID-19 claimed impacts for Nonprofit organizations can include:

Decreased Revenue (e.g. Donations and Fees)

Financial Insecurity

Increased Costs (e.g., uncompensated increases in service need)

Capacity to weather financial hardship

Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and reduced revenue from ticketed fundraising during 2020-2021 as a result of the pandemic.

Supported amount of reimbursement per applicant documentation: \$100,000.00



CITY OF
FAYETTEVILLE
ARKANSAS

AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 02/27/2023

Year of Nonprofit Incorporation 2012

Organization Name The Fayetteville Art Alliance dba Art Ventures

Organization Email contact@artventures-nwa.org

Mailing Address 20 S Hill Ave Fayetteville, AR 72701

Physical Address (if different) _____

Organization Phone Number 479.871.2722

Website WWW.ARTVENTURES-NWA.ORG

EIN 45-5196864

SAM Unique Entity ID Number H138XT5XR2G3

(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Lakeisha Edwards

Phone 479.571.0690

Email execdirector@artventures-nwa.org

Primary Contact Name Lakeisha Edwards

Title Executive Director

Phone 479.571.0690

Email execdirector@artventures-nwa.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

Art Ventures promotes the visual arts in Northwest Arkansas by actively collaborating with the community, supporting artists working to the highest standards, encouraging education and public engagement in the arts, and providing accessibility to under-represented communities. Art for Everyone improves quality of life. We envision inclusive communities characterized by mutual understanding and respect and communication across cultures through art.

List and describe the services the organization provides to Fayetteville residents:

Art unlocks our community's potential and creates understanding among Arkansans. We are one of the only arts organizations in the region that deliberately and systematically seeks out and creates a base for diverse artists and invites broad communities to regularly come together to share the experience of Art for Everyone. Our programming provides a forum for under-represented voices, a platform for artists to share and improve their work, and a welcoming, inclusive public space to allow the whole community to experience and learn about art. The work we do through the educational part of our mission prepares youth to enter the local and regional arts and culture workforce by providing paid internships and free art education for K-12 youth. The representation we provide for local artists boosts the local economy by providing financial support for creatives through art sales, commissioned projects, and access to opportunities to be exhibit in spaces such as Crystal Bridges and 21C Hotel.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

The target beneficiaries of Art Ventures include individuals of all ages, backgrounds, and abilities who are interested in exploring and participating in the arts.

Children and Youth: Providing art and cultural experiences to children and youth can help to foster creativity, critical thinking, and problem-solving skills. These experiences can also help to build confidence and self-esteem.

Adults: Art and cultural experiences can provide a creative outlet for adults, as well as opportunities for social interaction and community engagement.

Seniors: Providing art and cultural experiences to seniors can help to promote social connectedness and combat isolation. These experiences can also provide opportunities for lifelong learning and personal growth.

Individuals with Disabilities: Art and cultural experiences can be adapted to accommodate individuals with disabilities and provide opportunities for creative expression, social interaction, and skill-building.

Marginalized Communities: Art and cultural experiences can help to amplify the voices and experiences of marginalized communities, including those who have been historically excluded from mainstream cultural institutions.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

The COVID-19 pandemic has had a significant impact on our organization, both in terms of our operation and financial sustainability. Closure of our physical space and lack of access to our extended gallery spaces forced us to find new ways to provide access to art through virtual exhibitions and creating a more prominent presence on social media. While this allowed some continuity in operations, it has also required additional investments in technology. The closure of our physical space and the limited number of visitors after in person events were allowed, resulted in a loss of revenue from ticketed fundraising events and the social aspect of in person events. The lack of in person connections with our donors decreased engagement and contributions.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

Total Revenue :

FY2021: 208,097 vs FY2020: 372,970

This is a \$164K difference, a 44.21% decline

Contributions were \$203K in FY21 vs \$282K in FY20

Earned Revenue \$4,614 in FY21 vs \$33K in FY20

This is a difference of \$28,386, a 86% decline

Please see the attached document for details.

New expenses included technology upgrades for the website and donor management.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

Operational Expenses: The funding will be used to help cover the operational expenses of the art gallery, such as rent, utilities, salaries of employees, and maintenance costs. This will help Art Ventures continue providing free programming for the residents of Fayetteville and continue to support local artists.

Marketing and Promotion: The funding will be used for marketing and promoting the art gallery's exhibitions and events. This will help to attract more visitors to the art gallery and increase its visibility, which can lead to increased revenue.

Artist Support: The funding will also be used to support the artists whose work is displayed in the art gallery. This can include providing financial assistance, organizing artist residencies, and offering professional development opportunities.

Exhibitions: Art Ventures will use the funding to create and promote exhibitions, which will allow people to view and purchase art online. This will help to increase the organization's revenue, provide more financial support for our artist, and reach a wider audience.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

Applying for grant funding

Soliciting new donors

Community Partnerships and participation in group cohorts

Increased number of exhibition sites to increase sales/revenue

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

Our organization relied heavily on volunteers in the past. Since the beginning of the pandemic, our volunteer program has experienced a steep decline. Without the help of volunteers, we were forced to increase staffing and solicit virtual assistance from those who support our efforts. Many of our donors have been negatively impacted by the pandemic and are unable to give as they have in the past. Soliciting new donors during a pandemic and making introductions virtually was a challenge.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

PPP Loans for salaries

\$2,000 - 4/1/20

\$8,552 - 3/17/21

\$8,552 - 6/3/21

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: [City of Fayetteville Qualified Census Tracts](#)? ☒ YES ☐ NO

If Yes, please list:

Tract 106.01

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 3200

Total residents: 3200

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

ARPA Non-Profit Direct Assistance Application

Were all expenses incurred between March 3, 2020 and March 2, 2021? 4 YES

☐ NO

137,402.71

Total requested (must match total documented expenses below): 137,402.71

[illegible]

Total	137,402.71
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ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.

Lakeisha R. Edwards
Authorized Signature

2-27-23
Date

Lakeisha R Edwards Executive Director
Printed Name and Title

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023
For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Apple Seeds Inc.
Requested Amt: \$24,430.00

COVID-19 claimed impacts for Nonprofit organizations can include:

Decreased Revenue (e.g. Donations and Fees)

Financial Insecurity

Increased Costs (e.g., uncompensated increases in service need)

Capacity to weather financial hardship

Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and decreased revenue during 2020-2021 as a result of COVID-19 pandemic related impacts to fundraising.

Supported amount of reimbursement per applicant documentation: \$24,430.00



AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date February 27, 2023

Year of Nonprofit Incorporation 2007

Organization Name Apple Seeds Inc.

Organization Email mary@appleseedsnwa.org

Mailing Address 2648 N. Old Wire Road, Fayetteville, AR 72703

Physical Address (if different) _____

Organization Phone Number 479-966-6424

Website appleseedsnwa.org

EIN 20-8081842

SAM Unique Entity ID Number TA8XAGA3TRJ1
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Mary Thompson

Phone 479-966-6424

Email mary@appleseedsnwa.org

Primary Contact Name Mary Thompson

Title Executive Director

Phone 479-9066-6424

Email mary@appleseedsnwa.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

Apple Seeds is a non-profit organization based in Fayetteville, AR that works to educate and excite children about healthy food while also increasing access to fresh fruits and vegetables. Our mission is to inspire healthy living through garden-based education. Our programs increase exposure to healthy foods in a positive atmosphere, empower students with skills to prepare healthy foods, and inspire students to try new fruits and vegetables. The common goal across all programming is to increase access to fresh produce and increase the consumption of fresh fruits and vegetables in youth with a particular focus on underserved youth.

List and describe the services the organization provides to Fayetteville residents:

Apple Seeds works with almost every school in Fayetteville by offering programming in schools and on the teaching farm. Our programs are focused on teaching nutrition and culinary skills with a focus on fresh produce. In addition, we also grow food for food distribution through Fayetteville Outback Pantry. Apple Seeds sends cooking kits home with youth after participation in a program as well.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

Youth and their families. We place a priority on the schools with the highest free and reduced lunch rates.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

Apple Seeds places a top priority on hands-on engaging programming that connects youth with the garden and gives them autonomy to learn and practice a new skill (gardening, cooking, and trying new foods). All of our programming is in partnership with schools. In March of 2020 all schools closed and went to virtual learning which halted all of our regular programming.

As a result, our team analyzed how our efforts could provide the most service to new needs. We shifted our resources to support new endeavors and launched a program to grow and distribute fresh produce with digital links to educational videos and recipes. We also launched virtual programming applications.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

All of our fundraising was done in-person as well with events throughout the year. We adapted these to the need for social distancing and revenue was reduced. With this forecast of uncertainty and decreased fundraising, we decreased our budget by over \$100,000. We had 2020 Qtr 4 and 2021 Qtr 1 operating at a loss and we continued to adjust our spending based resources available. Our decline in revenue from 2019 to 2020 was \$130,000. In realization that our revenue would be uncertain and would not match the original 2020 budget of \$497,000, we reduced our budget and spending. In addition, we stopped all planned programming and started all new programming with new expenses to meet one of the highest needs of covid - food insecurity.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

Prior to 2020, Apple Seeds had built up a reserve of cash to hold us over if something unexpected were to happen. We have been able to stay thriving and growing because of this reserve. However, our operating costs are now higher as we are implementing all in person programming as well as new operations that started as a result of covid. We have needed to increase revenue at an incredible pace. Funding from this effort would balance out our new expenses as we develop a sustainable fundraising plan to support our efforts for many years to come.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

Apple Seeds responded by reducing the budget, holding off on growth of existing programs pre-2020, and by dipping into reserves set aside for emergency.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

Covid impact was seen in every aspect of how Apple Seeds operates. All in-person programming stopped, all volunteer support ceased, and our core staff handled all operations. We transitioned to meet the needs as they became apparent. We held off on hiring more staff until fundraising efforts became more stable.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

PPP round 1: \$39,600 awarded April 17, 2020. Applied to period of April to June, 2020
EIDL: \$5000 on April 21, 2020
PPP round 2: \$58,465 awarded Jan. 28, 2021. Applied to period of January to June, 2021.
Arkansas Comm. Foundation: \$1000 on 4-29-20 for farm supplies for covid relief efforts
NW AR Equitable Food Relief: \$27,170 on 12-1-21 for food relief efforts/ tractor and supplies
United Way Covid Support: \$2,500 on 5-13-20 for food donation program

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: City of Fayetteville Qualified Census Tracts ? ☐ YES ☒ NO

If Yes, please list:

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☒ YES ☐ NO

If Yes above, please describe the relationship

The executive director's husband is an employee of the City of Fayetteville. Quin Thompson: Building and Facilities Maintenance Manager

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 5000

Total residents: 5000

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

The reimbursement requests are for overhead expenses and payroll expenses for this time period. The expense covered the service of growing food and distributing it to families who needed access to fresh healthy food. In addition, our team created digital content to connect kids/families with how to cook this fresh food. We also translated recipes into Spanish and provided links to our website for additional recipes and cooking videos.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?



YES



NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

Total requested (must match total documented expenses below): \$24,431

Date	Vendor	Expense Description	Amount
3/27/2020	PRZ	Audit, accoutning	\$6,260
3/28/20	Payroll	Part of Salary for march 3-31,202	\$7,465
6/28/2020	Payroll	Part of Salary for Jun 1-30, 2020	\$4,017
11/06/2020	Hoffenrich Productions	New Digital Content for online resources	\$2,000
12/29/2020	Arkansas Children's Hospital	Payment for Americorps Service members	\$951
2/10/2021	Ryan Patterson	Relocation Expenses for new employee	\$2,000
2/17/2021	Powers Electric	Electrical work for maintenance of facility/ Overhead	\$531
8/28/2020	Payroll	Part of Salary for August 1-31, 2020	\$1,206

Total \$24,431

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.



Digitally signed by Mary
Date: 2023.02.28 08:34:05 -06'00'

2-27-23

Authorized Signature

Date

Mary Thompson

Printed Name and Title

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023
For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov

NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: 7 Hills Homeless Center
Requested Amt: \$100,000.10

COVID-19 claimed impacts for Nonprofit organizations can include:

Decreased Revenue (e.g. Donations and Fees)

Financial Insecurity

Increased Costs (e.g., uncompensated increases in service need)

Capacity to weather financial hardship

Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and increased costs (uncompensated increase in service need) during 2020-2021 as a result of the pandemic, and additional costs related to pandemic mitigation.

Supported amount of reimbursement per applicant documentation: \$85,608.76



CITY OF
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AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date February 27, 2023

Year of Nonprofit Incorporation 2001

Organization Name 7hills Homeless Center

Organization Email mike@7hillscenter.org

Mailing Address 1519 S. School Ave, Fayetteville AR 72701

Physical Address (if different) _____

Organization Phone Number 479-699-4378

Website www.7hillscenter.org

EIN 73-1603960

SAM Unique Entity ID Number EF6JF1UNAU3
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Mike Williams

Phone 901-237-0252

Email mike@7hillscenter.org

Primary Contact Name Becci Sisson

Title Director of Development

Phone 540-819-2075

Email becci@7hillscenter.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

7hills provides housing and basic needs services to people experiencing homelessness with a person-centered approach. We strive to incorporate dignity in all that we do, meeting individuals where they are with a spirit of compassion, and working with them to support their short and long-term needs as they work toward self-sufficiency. We envision a future where everyone in Northwest Arkansas has a place to call home.

List and describe the services the organization provides to Fayetteville residents:

For the past 20 years, 7hills Homeless Center has been a leader in the collaborative work of ending homelessness in Northwest Arkansas. We provide low-barrier basic needs resources, re-housing and support services to neighbors who are experiencing homelessness or are at risk of losing their home. Our services are designed to: 1) End our neighbors' homelessness by helping them achieve stable housing, and 2) Meet our neighbors immediate health and safety needs while they are experiencing homelessness.

We accomplish this through our two overarching programs:

1. Our HOPE Program - We provide several different types of housing assistance to help people into housing as quickly as possible.
2. Our Day Center- More than 2,000 people come to our Day Center each year to access daily needs such as meals, clothing, showers, storage lockers, computer access, basic health care and supplies. They also meet with our Case Managers for help in accessing resources needed for housing, additional health care, and obtaining identification.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

On any given night in Northwest Arkansas, there are approximately 900 individuals experiencing homelessness. Homelessness can range from couch surfing to staying in a temporary place like an emergency shelter or pay-per-week hotel to camping or staying somewhere else not meant for human habitation. These individuals are our organization's target beneficiaries.

They are welcome at our Day Center regardless of their race, religion or current circumstance. They are veterans who served our country. They are seniors who struggled to make ends meet and were unable to keep up with the rising inflation or perhaps were unprepared to live without a lost loved one. They are our classmates who had internal struggles, as we sat beside them every day unaware, that would lead to substance abuse disorders and mental health challenges.

The services 7hills provides to these people in need an integral part of our community's efforts to assist and stabilize these individuals experiencing homelessness. Our services help individuals meet their basic needs while homeless and are a stepping-stone in helping these individuals obtain housing and get back on their feet.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

During the March 2020 to March 2021 time period our organization not only saw an increase in demand for our services at our Day Center but we were faced with the incredible challenge of providing these much needed services WHILE keeping everyone SAFE and healthy. This required a shift of location to allow for social distancing and other safety precautions. In an effort to accomplish that, our Day Center operations moved to St. James Baptist Church to better serve our guests.

In August 2020 our organization opened Safe Camp, a COVID-19 sanctuary for people who were sheltering in place outdoors, also known as camping. We provided basic services including running water, restrooms, showers, sanitation stations, meals and onsite access to medical care.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

Increased and new expenses were the negative economic impact on our organization during this COVID-19 public health emergency. That amount was \$100,000 in expenses that were funded through our cash reserves, not reimbursed.

Safe Camp Portable Showers: \$426.77

Utilities: \$10,675.68

Internet: \$11,343.02

Payroll: \$47,836.95

Insurance: \$1,876.07

Food: \$2,852.81

Utility Assistance: \$24,988.80

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

This funding will be used to reimburse \$100,000 of unfunded expenses from our pandemic response. These expenses were funded from cash reserves at the time which have not recovered.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

1. To replace our in-person event, we hosted a virtual event. The virtual event was able to replace the income lost from the in-person event.
2. The organization received multiple COVID-specific grant awards designed to cover expenses incurred due to pandemic response. In total, we received 3 grants for \$234,829.41.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

1. Demands for services and rising expenses are still outpacing funding – a long standing problem with deep ramifications for delivery of programs and services in our community.
2. Staff Shortages and turnover due to salary competition with for-profit organizations, stress and burnout.
3. Decline in Volunteerism: We had to limit our volunteering activities during COVID-19 for safety reasons and corporations and entities had to limit their participation. We are still working to rebuild a strong volunteer base. Due to continual COVID-19 concerns, volunteers are still not comfortable working in large group settings.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

1. ESG19-22-CV (March 2020-March 2021) for Operating Expenses: \$15,659.41
2. CDBG (March 2020-March 2021) for Operating Expenses: \$85,470.00
3. SBA PPP Loan (March 2020-March 2021) for Payroll Expenses: \$133,700.00

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: [City of Fayetteville Qualified Census Tracts](#)? ☒ YES ☐ NO

If Yes, please list:

Our Day Center is located at 1832 S. School Avenue

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?
Fayetteville residents: 3315 Total residents: 3603

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

Our organization is requesting reimbursement for the following expenses:

- 1) Portable Showers used at our Safe Camp site.
- 2) Utilities used at our locations during this time period.
- 3) Internet used at our locations during this time period.
- 4) Payroll
- 5) Insurance
- 6) Food served at our locations during this time period.
- 7) Utility Assistance for residents in our transitional housing program.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?



YES



NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

\$100,000.10

Total requested (must match total documented expenses below):

Date	Vendor	Expense Description	Amount
see attached	Arkansas Portables	Safe Camp Portable Showers	426.77
see attached	City of Fayetteville	Utilities	10,675.68
see attached	Cox Communications	Internet	11,343.02
see attached	Employer Advantage	Payroll	47,836.95
see attached	Philadelphia IC	Insurance	1,876.07
see attached	Salvation Army	Food For Safe Camp	2,852.81
see attached	Southwest Power	Utility Payments	24,988.80

100,000.10

Total

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.


Authorized Signature

2/28/23
Date

Mike Williams, CEO
Printed Name and Title

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023
For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Cobblestone Farms – Cobblestone Project
Requested Amt: \$47,441.98

COVID-19 claimed impacts for Nonprofit organizations can include:

- Decreased Revenue (e.g. Donations and Fees)
- Financial Insecurity
- Increased Costs (e.g., uncompensated increases in service need)
- Capacity to weather financial hardship
- Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship, increased demand for services, and decreased revenues (donations and fees) during 2020-2021 as a result of the pandemic.

Supported amount of reimbursement per applicant documentation: \$46,968.85



CITY OF
FAYETTEVILLE
ARKANSAS

AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 03/01/2023

Year of Nonprofit Incorporation 2008

Organization Name The Cobblestone Project, DBA Cobblest

Organization Email kelton@cobblestonefarms.org

Mailing Address PO Box 3411 Fayetteville AR 72702

Physical Address (if different) 1210 N 54th Ave. Fayetteville, AR 72704

Organization Phone Number 479-718-6624

Website cobblestonefarms.org

EIN 26-2661349

SAM Unique Entity ID Number UN23GUHC68M1

(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Kelton Hays

Phone 870-654-5719

Email kelton@cobblestonefarms.org

Primary Contact Name Kelton Hays

Title Exec. Director

Phone 870-654-5719

Email kelton@cobblestonefarms.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

At Cobblestone Farms, we work to "cultivate a community free from hunger through sustainable agriculture". We operate a 25 acre farm at Wedington and 54th avenue where we grow food for community members experiencing food insecurity. We also operate education, training, and community engagement programs.

List and describe the services the organization provides to Fayetteville residents:

We grow and distribute fruit, vegetables and meats to community members experiencing food insecurity. We also provide volunteer and educational opportunities for Fayetteville residents.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

The target audience of our food distribution program is community members experiencing food insecurity. The target of our education and volunteering programs are any community resident.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

The Covid-19 pandemic had an immediate impact on the number of people experiencing food insecurity in our community. Prior to the pandemic, the charitable food system already lacked adequate food to service our community. The strain brought about due to the pandemic exacerbated the issue.

While we strive to employ a sufficient staff work our land, we rely heavily on volunteers. Like many other organizations, our volunteer program came to almost a complete halt due to covid 19.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

The biggest negative impact Covid-19 had on our organization was the reduction of income. Historically, we have relied on donations from community members, businesses and foundations.

We usually receive several hundred thousand dollars from business and individual donations each year. During 2020, that amount was close to zero.

Furthermore, we operate a small sales program that brings in around 50k annually. This did not happen in 2020 due to covid 19.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

In spite of the reduction in volunteers and donations, we continued limited operations with the hope that Covid would end and we could continue serving community members experiencing food insecurity.

This funding would help reimburse a portion of the expenses incurred serving our community from 3/4/20-3/2/21.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

We have spent the last 24 months rebuilding our fundraising program. We are on our way to pre-covid donation levels, but aren't quite there yet.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

As stated above, lack of volunteer labor.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

PPP Loan - 8/3/2020 \$28,735

PPP Loan - 1/21/21 \$28,735

EIDL Loan - 1/30/21 \$20,000 - WAS NOT FORGIVEN. LOAN STILL ACTIVE AND WILL BE REPAYED

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: City of Fayetteville Qualified Census Tracts? ☐ YES ☒ NO

If Yes, please list:

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 10000

Total residents: 20000

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

PPP Loan - 8/3/2020 \$28,735 - Payroll Costs in 2020

PPP Loan - 1/21/21 \$28,735 - Payroll costs in 2021

EIDL Loan - 1/30/21 \$20,000 - operating expenses after 1/30/2021. WAS NOT FORGIVEN. LOAN STILL ACTIVE AND WILL BE REPAYED

No payroll expenses were submitted with this application.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?



YES



NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

Total requested (must match total documented expenses below): 47,441.98

Date	Vendor	Expense Description	Amount
	Please see expense detail include with application	Please see expense detail include with application	
	Please see expense detail include with application	Please see expense detail include with application	
	Please see expense detail include with application	Please see expense detail include with application	
	Please see expense detail include with application	Please see expense detail include with application	
	Please see expense detail include with application	Please see expense detail include with application	

Total _____

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.

Authorized Signature

Kelton Hays, Executive Director

Printed Name and Title

3/1/2023

Date

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023
For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Washington County Historical Society
Requested Amt: \$23,780.52

COVID-19 claimed impacts for Nonprofit organizations can include:

- Decreased Revenue (e.g. Donations and Fees)
- Financial Insecurity
- Increased Costs (e.g., uncompensated increases in service need)
- Capacity to weather financial hardship
- Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and a reduction in revenue from fees, donations, and programs during 2020-2021 as a result of the pandemic.

Supported amount of reimbursement per applicant documentation: \$20,885.38



CITY OF
FAYETTEVILLE
ARKANSAS

AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date, February 27, 2023

Year of Nonprofit Incorporation 1968

Organization Name, Washington County Historical Society

Organization Email info@washcohistoricalsociety.org

Mailing Address, 118 E. Dickson Street, Fayetteville, AR 72701

Physical Address (if different) _____

Organization Phone Number 479-521-2970

Website, www.washcohistoricalsociety.org

EIN 71-0400895

SAM Unique Entity ID Number: DUNS 086626751 (applied for SAM on 2/26/23)
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Lee Anne Wiederkehr, President

Phone 949/338-6557

Email lawied@icloud.com

Primary Contact Name Lee Anne Wiederkehr

Title President

Phone 949/338-6557

Email lawied@icloud.com

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

The Washington County Historical Society is a nonprofit organization founded in 1951 with the mission to discover, preserve, and celebrate the history of Washington County, Arkansas, and to share that heritage with others.

List and describe the services the organization provides to Fayetteville residents:

Please see attachment.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

Please see attachment.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

Please see attachment.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

Please see attachment.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

Please see attachment.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

Please see attachment.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

Please see attachment.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☐ YES ☒ NO

If Yes, describe amount(s), use(s), and timeframe:

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: [City of Fayetteville Qualified Census Tracts](#)? ☒ YES ☐ NO

If Yes, please list:

113.20 for Headquarters House Museum, 118 E. Dickson St.; 113.20 for Ridge House, 230 W. Center

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☒ YES ☐ NO

If Yes above, please describe the relationship

City Council person, Mike Wiederkehr, is spouse of the Washington County Historical Society President, Lee Anne Wiederkehr.

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 2,185 Total residents: 3,050

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

Please see attachment.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?

☒ YES

☐ NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

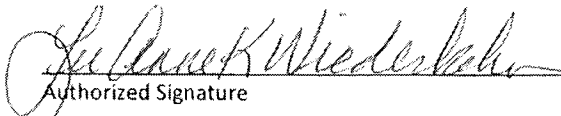
Total requested (must match total documented expenses below): \$23,780.52

Date	Vendor	Expense Description	Amount
SEE	ATTACHED	SPREADSHEET(S)	

Total _____

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.


Authorized Signature

February 27, 2023

Date

Lee Anne K. Wiederkehr, President

Printed Name and Title

City Use Only

Please submit application and all documentation via email to CDarden@fayetteville-ar.gov
Applications and supporting documentation are due by 5:00 PM on March 10, 2023
For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov

List and describe the services the organization provides to Fayetteville residents:

Washington County Historical Society (WCHS) was formed in 1951 by six individuals who held a meeting with more than 100 community members in attendance. WCHS is the oldest, continuous County level historical society in Arkansas. WCHS continues to uphold the vision of its founders and received the prestigious 'Diamond Award' from the Arkansas Historical Association for 'exceptional contribution to the study, preservation or promotion of Arkansas History'. Preserve Arkansas honored WCHS with 'Excellence in Heritage Preservation' for the 'This Place Matters' campaign launched at the Ridge House in May 2022.

Walter Lemke, University of Arkansas journalism professor, began to collect histories and publish *Flashback*, about the people, places and history of Washington County in 1953. *Flashback* has been indexed since its inception and is regularly used as a research tool all over the country.

The works of WCHS bring honor to Fayetteville and its region through the recent receipt of several Arkansas Historical Association awards. WCHS's quarterly journal, *Flashback*, received the 'Walter L. Brown Award for the Best County or Local Journal' in the state and for best articles in the state about 'Best School History' and 'Best Community History' during 2022.

The story of Fayetteville's earliest settlers is told through the preservation of two historic properties maintained and curated by WCHS. The Headquarters House Museum is open for tours conducted by the Museum Operations Manager and volunteers. The Museum and grounds are the site for programs, lectures, the Holiday Open House, Battle of Fayetteville commemoration, Statehood Day, Summer camp for public school children, Heritage School, and other events celebrating history and the public are welcome to attend. The Museum Bookstore makes available works by local and regional authors about history significant to the area.

WCHS offers tours of its properties free to the public, encouraging tourism, scholarship and activities in Washington County. Organized tours and bus tours are usually charged a fee to cover WCHS costs. Last year, the A&P Commission's Experience Fayetteville arranged a bus tour to the Headquarters House Museum.

In the early 1960s, the owners of 118 E. Dickson Street, Fayetteville, offered WCHS a below-market purchase price. Several Washington County leaders contributed to purchase this significant historic property, built for Judge Jonas Tebbetts and his wife, Matilda, in 1853 where they lived until the Civil War. Because Judge Tebbetts was an outspoken Unionist, his life was endangered, and the family left Fayetteville for Missouri after the Battle of Pea Ridge in 1862.

City of Fayetteville, AR: American Rescue Plan Act, Non-Profit Assistance Application

Applicant: Washington County Historical Society

February 27, 2023

On April 18, 1863, the Battle of Fayetteville was fought on the front lawn of the house. A doorway bears the scar of a mini-ball, which is preserved in testament to the battle endured by the citizens of Fayetteville – and which earned the intersection of College and Dickson the title of 'Bloody Corner'.

The house was placed on the National Register of Historic Places in 1971 and is called Headquarters House because twice during the Civil War, the house was used as headquarters by both the Union and Confederate forces thus saving the house from being burned. It, like the Ridge House, are two of only a few buildings not burned during the occupation of Fayetteville by Civil War soldiers - including the Masonic Lodge since many on both sides were Masons.

Annually in August, an old-fashioned Ice Cream Social is held on the lawn and is WCHS's primary fundraising event. This spring, an Osher Lifelong Learning Institute Class (OLLI) class will be taught at the museum. In addition, WCHS provides programs for civic clubs, the Chamber of Commerce and schools.

At the Annual Meeting, WCHS elects and honors two county residents as Distinguished Citizens. The list of Distinguished Citizens includes many elected officials, judges, professors and leaders as if it was the 'Who's Who' of Washington County.

Each year, WCHS's Diverse Settlers Committee provides programs highlighting diversity within the City and County focusing on the influence of African-American, Asian American and Pacific Islander, and Hispanic settlers. Diverse Settler have also presented a program entitled 'Women of Color'. In addition, WCHS has a newly formed Indigenous People Committee to provide focus and celebration about the influence of First Nations.

WCHS's Community History & Heritage Committee (aka Out in the County) hosts programs to sites around Washington County, including Fayetteville, of historic interest during the year.

WCHS offers Heritage School in the summer where children can take an immersive week-long educational camp into the history, culture and folkways of the region for a reasonable fee. Public schools use WCHS properties for special summer educational programs to teach the children history and, pre-COVID, for field trips when learning Arkansas History.

In 2022, WCHS received a Chamber of Commerce Building Industry Award for a major pre-COVID renovation of the Headquarters House Museum using local craftsmen to roof, clean and paint the structures and complete minor repairs on the 1853 building and the 1835 Yell Law Office, the oldest free standing law office in Arkansas.

City of Fayetteville, AR: American Rescue Plan Act, Non-Profit Assistance Application

Applicant: Washington County Historical Society

February 27, 2023

WCHS maintains a web-friendly Facebook page usually posting daily facts of historic significance about regional economic growth, schools, people and events. The time period of these postings begin in 1828 when Fayetteville officially became a town.

WCHS properties have been used to stage the film *The Blue and The Gray*, documentaries and historical re-enactments on topics that include Fayetteville's history as well as events of the era as a testament to the value of historic places.

WCHS also maintains and preserves the historic Ridge House built in 1834 before Arkansas' statehood in 1836, and is the oldest house that exists in the city. The house is an unofficial Trail of Tears landmark commemorating the Cherokee Nation, an indigenous people forced to leave their homeland and relocate to Indian Territory. It was purchased by Sarah Bird Northrup Ridge in the late 1830s as a refuge for her family of seven children, their tutor, Sophia Sawyer, and 14 girls of noble Cherokee families. Ridge was forced to flee her home in Georgia, after her husband, John Ridge, an influential leader in the Cherokee Nation, was killed.

Culturally, this house is significant since Sawyer and Ridge set up a school in 1839 at the Fayetteville courthouse, open to both white and Cherokee girls. Judge David Walker donated land for the Female Seminary and the school re-opened in 1841. The Female Seminary is often cited as one of the factors leading to the location of the state's land grant university in Fayetteville. The house was rescued by WCHS in the 1970s after it caught fire and suffered from dilapidation. Its pine floors and fieldstone fireplaces are original.

Today, the Ridge House lobby is open with a display about the house's history and offices are rented to psychologists and social workers. This rental income provides the primary source of funds for WCHS programs and operations.

The Ridge House was chosen by the City of Fayetteville in May 2022 as the kick-off site for the first 'This Place Matters' campaign created to celebrate Historic Preservation Month. The reasons for selecting the Ridge House for this inaugural event are that it is the oldest house existing in the community, was the home of significant indigenous people and founder of the Female Seminary, and, built prior to the year Arkansas became a state.

WCHS hosts events and programs and maintains historic properties without tax payer support as a 501(c)(3), nor does it receive financial support from the City or County. Our Board of Directors and officers are all volunteers, renewed annually. Board member term limit is ten years to provide the organization with institutional knowledge about what it does, how it runs its business, and cares for its properties.

Applicant: Washington County Historical Society

February 27, 2023

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

The organization benefits the entire community from every walk of life and of every age, from school children to the elderly, as well as those who visit Fayetteville from all over the United States and other countries. We offer memberships to help support the mission of the organization and pay for the publication of *Flashback*, a 70-year award-winning quarterly journal. Several school and public libraries subscribe to *Flashback* and use it as a resource about the people, places, culture, and historic events of the Fayetteville area.

Other organizations benefit from the existence of the Headquarters House Museum. For example, the garden is a 20-year sanctioned project of the Washington County Master Gardeners for which they have won 'Project of the Year' twice. The Master Gardeners worked during spring 2022 to prepare for the 2022 WCMG Garden Gate Tour. The Headquarters House Garden was the most popular garden on the tour with 250+ visitors who toured the house and garden on a single day.

The Washington County Bar Association and WCHS partner to preserve the oldest free standing law office in Arkansas. Archibald Yell – a judge, congressman, governor, and soldier – was a colorful figure from Arkansas Territory days who owned a large estate named Waxhaws in south Fayetteville. The Archibald Yell Law Office, built around 1835, was moved from its original location on South College Avenue to the grounds of Headquarters House Museum in 1992 at the request of the Washington County Bar Association.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

In March 2020, the Headquarters House Museum closed its doors to visitors and volunteers. Programs, tours and events ceased and, with a few exceptions, did not restart until summer 2022 when the Ice Cream Social was held after a two year hiatus.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increase or new expense, fundraising, loss of earnings, decline in revenue, etc.). Provide justification / calculation for any amount stated:

The loss of precious revenue is extremely impactful since WCHS Programs are provided and, the Headquarters House Museum and Ridge House are maintained on a

thin margin. Any loss in revenue reduces WCHS's capacity to provide its members with services such as publishing *Flashback* and maintaining structures that are on the National Historic Register that are important to the heritage, culture and history of Fayetteville

Primary financial support for the Headquarters House Museum and Ridge House comes from membership fees, donations, programs, activities and critical rental income from the Ridge House. The eight offices in the Ridge House provide office space for a dozen psychologists and social workers who serve a patient population throughout our community. Several of them have provided care to patients in this location for over 40 years. During the pandemic, WCHS reduced rents by half to: (1) support the psychologists and social workers struggling to pay rent during the pandemic shut down, and, (2) support mental health services for existing patients and new patients, many of whom were enduring the loss of family members or caring for loved ones impacted by COVID-19 with chronic health issues.

WCHS felt additional financial impact because the museum was closed and events canceled eliminating almost every source of income for the organization.

WCHS's fiscal year is October 1 through September 30. Therefore, the IRS Form 990s could not be used to directly determine the loss from the specified time period from March 3, 2020 through March 2, 2021. WCHS uses QuickBooks for bookkeeping which is used to prepare IRS Form 990s.

Attached are WCHS's IRS Form 990s for your review. In these documents, one can see that the income and operating expenses for the organization remain relatively constant with the exception of 2020. Therefore, the change in income during the pandemic can be generally identified in IRA Form 990s even though they are not for the specified time period of this application.

To show the specified period of time for this application, an adjusted QuickBooks report was prepared to compare income received from memberships and donations, activities and programs, and Ridge House rent from March 3, 2019 through March 2, 2020, prior to the pandemic, and during the pandemic year of March 3, 2020 through March 2, 2021. This comparison establishes the economic impact to WCHS from the COVID-19 public health emergency with a loss of \$31,676.35.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

It would be a tremendous gift to receive reimbursement of operating expenses to make up for losses suffered during the pandemic. Receiving ARPA funding would be important to help WCHS fulfill its Mission, as stated above, and include:

Applicant: Washington County Historical Society

February 27, 2023

- Publication of the quarterly journal *Flashback*.
- Help WCHS fund programs and volunteer opportunities that serve Fayetteville residents that includes, to name a few:
 - Heritage School, the summer educational camp for children,
 - Summer Academy for school children re-acclimating to a traditional learning environment after the COVID-19 shut down,
 - Washington County Master Gardener sanctioned project at Headquarters House.
- Help preserve and keep the Headquarters House Museum, its accessory buildings and garden open to the public.
- Help preserve the Ridge House.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

WCHS operates on a thin margin as a non-profit and the Board is in the habit of adopting budgets that correspond to the income of the organization that includes deferring maintenance on the historic buildings. This practice helped WCHS during the pandemic but we continue to experience the impacts of loss of revenue due to COVID-19. Fortunately, WCHS has a restricted endowment. In response to the financial loss experienced during the pandemic, WCHS's Finance Committee developed and presented, and the Board adopted, an investment policy and a spending policy to facilitate responsible utilization of funds that may be withdrawn from the endowment. These policies have been used to make up for shortfalls in income as a result of the pandemic.

Toward the end of the pandemic, WCHS received an unexpected grant of \$5,000 from a new donor. This was used to help cover the cost to publish *Flashback* since the grant was given due to the quality of *Flashback*. The annual direct cost to publish *Flashback* is \$7,200. This also helped WCHS's finances.

In addition, WCHS is embracing the opportunity to apply for ARPA Funds. Receipt of ARPA Funds would truly make a significant difference for WCHS!

List any other impact the COVID -19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to covid-19 mitigation, etc.):

WCHS has one paid part-time employee, the Museum Operations Manager, who could work since the employee was working alone. The good news is that book sales increased as the Manager filled bookstore orders to ship to people staying at home.

Executive Board and Board of Directors meetings were conducted via Zoom for two and a half years which impacted our connections with each other. The Zoom subscription

Applicant: Washington County Historical Society

February 27, 2023

was a new expense for the organization. The Board began meeting in person beginning November 2021 but not at the museum because the space is too small to accommodate social distancing.

WCHS Board members are grateful to have had access to larger venues and a grant from the Fayetteville Public Library that made meeting in person possible in their facility starting in late 2021. Meetings were again conducted via zoom during the resurgences of COVID-19 cases during the winter months of early 2022. At last, the Board will meet in person at Headquarters House Museum beginning in April 2023.

The Ice Cream Social, WCHS's primary fundraiser, was canceled for two years and was held for the first time in August 2022. Some programs, like Heritage School, were conducted remotely but at a reduced fee and with reduced numbers of attendees.

The Washington County Master Gardeners did not tend the garden for the entire growing season of 2020 but returned in 2021 adhering to COVID guidelines. In the meantime, the Garden & Grounds Committee hosted a campaign to call Master Gardener volunteers to keep them interested in Headquarters House garden. The Master Gardeners provide a service to the museum grounds worth thousands of dollars and the results of their work are enjoyed by the entire community, which utilizes our large outdoor property as a tree shaded park.

Committee meetings also moved to Zoom which was difficult since many of our members and volunteers are senior citizens with limited technological skills. However, it gave many who were extremely fearful of COVID and had been home alone with little or no contact with their friends, a way to stay connected and learn a new skill as we coached them to use Zoom.

It has taken much effort to bring things back to a new normal and to engage the volunteer community but it is worth it and we are recovering!

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

During the pandemic, many people sought refuge on the paths and relaxed on the benches in the gardens of the Headquarters House Museum. Many Fayetteville residents could be found in the garden out for a stroll during the pandemic. Many, looking for a place to take a break from home, experienced the historic site for the first time and read the plaques displayed in the garden that interpret the history of the garden. This is one way that WCHS's work to maintain the Headquarters House Museum serves the people of Fayetteville in addition to the events and programs described previously in this application.

City of Fayetteville, AR: American Rescue Plan Act, Non-Profit Assistance Application

Applicant: Washington County Historical Society

February 27, 2023

Heritage School programs were modified so children could attend remotely during the summers of 2020 and 2021. This gave the children interesting things to do and gave the parents a break from in-home teaching.

When it was possible, WCHS lifted spirits by moving events outdoors. For example, guests and carolers were masked, distanced, and bundled up on a cold December day in 2020 for the WCHS caroling event held outdoors as a substitute for the annual Holiday Open House. The carolers were staged in a location so that people who wanted to be more isolated could drive by to hear the festive tunes from inside their automobiles.

The reimbursement will allow Washington County Historical Society to recover from economic loss and allow the organization to fully resume its activities and events and fulfill its responsibilities.



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Arts Live Theater Inc
Requested Amt: \$34,920

COVID-19 claimed impacts for Nonprofit organizations can include:

- Decreased Revenue (e.g. Donations and Fees)
- Financial Insecurity
- Increased Costs (e.g., uncompensated increases in service need)
- Capacity to weather financial hardship
- Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and decreased revenue from donations/fees and ticket sales during 2020-2021 as a result of the pandemic.

Supported amount of reimbursement per applicant documentation: \$18,748.99



CITY OF
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AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the [American Rescue Plan Act](#).
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation to <https://documents.fayetteville-ar.gov/Forms/arpaassistance>

Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 2.28.2023

Year of Nonprofit Incorporation 1984

Organization Name Arts Live Theatre

Organization Email info@artslivetheatre.com

Mailing Address PO Box 4362, Fayetteville, AR 72702

Physical Address (if different) 818 North Sang Avenue, Fayetteville, AR 72701

Organization Phone Number 1.479.521.4932

Website www.artslivetheatre.com

EIN 71--599469

SAM Unique Entity ID Number FLRLNPXAL8K6
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Mark Landon Smith

Phone 1.479.236.6849

Email marksmith@artslivetheatre.com

Primary Contact Name Mark Landon Smith

Title Executive Director

Phone 1.479.236.6849

Email marksmith@artslivetheatre.com

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

To empower children and enrich lives through excellence in children's theatre and education.

List and describe the services the organization provides to Fayetteville residents:

Arts Live Theatre, Inc., founded in 1984, is Northwest Arkansas' only dedicated children's and youth theatre. Programming includes 14 productions annually, with five performances per production for a total of 70 performances. Fifty two after-school, spring break and summer classes are offered for young artists in grades K-12. Arts Live Theatre also develops original works and adaptations for production and provide students the opportunity to experience all facets of the Theatre.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

Arts Live Theatre's target beneficiaries are children and youth ages 4-18 and their families.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

COVID-19 resulted in Arts Live Theatre having to cancel programming including productions and classes. Upon cancellation, Arts Live Theatre transitioned to virtual programming within a week and became a leader in the region for online productions, classes, workshops and special events. Arts Live offered virtual productions directed by theatre professionals with cast of young actors from across the country. Arts Live also created partnerships with other national organizations such as the 24-Hour Play and the 24-Hour Monologue to create programming and gave young playwrights an opportunity to write original plays for virtual production. (The Ada Project and In The Year 2025). In addition Arts Live produced original programming for the ALT YouTube Channel including the series One on One, Curtain Up!, Living Room Theatre, Shaky Bugs, Black History Month, Women in History, Splash Theatre, Book of Wonders and Me Interview You Too. ALT also uploaded previous productions for at-home viewing. Since the March 2020 the ALT YouTube Channel has had over 134,000 views.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

COVID-19 effected Arts Live Theatre finances through a loss and decline of revenue from cancelled productions, participation fees, ticket sales, cancelled classes, spring break camps and fundraising events. The cancelled productions of The Wizarding Way and Shrek resulting in a loss of \$9,825 in participation fees and a loss of \$1,382 in Shrek royalties. The cancellation of classes and spring break camps resulted in a loss of \$13,600 in tuition. Arts Live Theatre staff were also asked to take a 50% and then an 80% pay cut resulting in \$10,515.43 in lost wages.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

Funding would be use to reimburse Arts Live for financial losses due to cancellation of programming as the organization continues to financially recover due to COVID-19 losses.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

Arts Live Theatre addressed the financial impacts due to COVID -19 by creating programming exclusively for the virtual market, applying for government assistance, (PPP/CARE ACT/EIDL, etc), holding virtual fund raising events, cutting on site costs by working remotely, cutting hours and wages for Arts Live Theatre staff.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

COVID-19 caused Arts Live Theatre to close its physical location and strategize on adjusting programming and making a plan for eventual re-opening. Staffing was reduced as a result of cancelled programming and the volunteer program was suspended due to a lack of events to volunteer for. The Arts Live Theatre volunteer board remained very active providing governance and guidance.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

Payroll Protection Program: \$12,932.35/payroll/7.1.2020

EIDL: \$15,000/general operating support/7.30.2021

CARES Act: \$6,034/general operating support/7.20.2020

Windgate Foundation: \$9,000/COVID relief/general operating support/8.30.2020

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: [City of Fayetteville Qualified Census Tracts](#)? ☐ YES ☒ NO

If Yes, please list:

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 3,000

Total residents: 6,000

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

Tuition fees from cancelled Arts Live Theatre spring classes: \$10,600

Tuition fees from cancelled Arts Live Theatre spring break camps: \$2,600

Participation fees from the cancelled Arts Live Theatre production of The Wizarding Way: \$2,625

Participation fees from the cancelled Arts Live Theatre production of Shrek: \$7,200

Shrek royalties: \$1,380

Lost wages: \$10,515

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021? ☒ YES ☐ NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

\$34,920

Total requested (maximum requested amount allowable is \$100,000): _____

Date	Vendor	Expense Description	Amount
3.15.2020	MTI Shows	Shrek Royalties	\$1,380
3.15.2020	Arts Live Theatre	Participation Fees	\$9,825
3.15.2020	Arts Live Theatre	Tuition Fees	\$13,200
3.15.2020	Arts Live Theatre	Lost Wages	\$10,515

Total \$34,920

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.



Authorized Signature

2.28.2023

Date

Mark Landon Smith, Executive Director

Printed Name and Title

City Use Only

Please submit application and all documentation to <https://documents.fayetteville-ar.gov/Forms/arpaassistance>

Applications and supporting documentation are due by 5:00 PM on March 10, 2023

For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Omni Center for Peace, Justice, and Ecology
Requested Amt: \$34,835.00

COVID-19 claimed impacts for Nonprofit organizations can include:

- Decreased Revenue (e.g. Donations and Fees)
- Financial Insecurity
- Increased Costs (e.g., uncompensated increases in service need)
- Capacity to weather financial hardship
- Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and decreased revenue from donations during 2020-2021 as a result of the pandemic, and additional costs related to sanitizing their facility against COVID-19.

Supported amount of reimbursement per applicant documentation: \$20,566.05



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AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation to <https://documents.fayetteville-ar.gov/Forms/arpaassistance>

Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date March 5, 2023

Year of Nonprofit Incorporation 2005

Organization Name Omni Center for Peace Justice Ecology

Organization Email omni@omnicenter.org

Mailing Address 3274 N Lee Ave

Physical Address (if different) _____

Organization Phone Number 479-935-4422

Website www.omnicenter.org

EIN 20-1247116

SAM Unique Entity ID Number XRPQFMKBS5Q3
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Gladys Tiffany

Phone 479-283-2167

Email gladystiffany@yahoo.com

Primary Contact Name Gladys Tiffany

Title Executive Director

Phone 477-283-2167

Email omni@omnicenter.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

Our vision is a world that works for everyone, starting in our home town.
Our mission is to "educate, empower and connect people for a world that is nonviolent, sustainable and just"

List and describe the services the organization provides to Fayetteville residents:

We operate a community radio station, KPSQ FM Radio at 91.3 fm and www.kpsq.org as a community building and educational outreach. We are organizing a time bank, the NWA Time Exchange, to help socially re-connect and heal after covid and build a community resilient enough to meet future challenges. We operate MayDay Community Kitchen, whose volunteers feed hungry people for free. We hold cultural events and discussion groups to promote a culture of peace. We support work for homeless neighbors. And we help others with great ideas to help our community start up new work by fiscally sponsoring their projects. We've assisted TriCycle Farms, Seeds That Feed, the Black Action Collective, and other local groups in their early phases.

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

Omni Center serves a broad constituency because we are working to weave a network that includes all of us. We're working toward a network of care and fairness. That means work on the connections between us as much as the individuals we connect to. Here are some examples of why our target audiences are so broad:

Targeted communities during covid, though, included some specific groups. These were our most active projects during this period.

MayDay Kitchen targeted people who were food insecure during this period

The Student Life Program targeted students who were food insecure

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

Our annual Members and Friends Gathering was an important fundraiser for us for many years but was not held in 2020, 2021, 2022 and will probably not happen in 2023. We are hopeful for 2024.

We have not been able to hold our normal schedule of educational and cultural events in person, where they are most impactful. We've done a number of activities by zoom and hybrid, but they're not the same, and many people lack access to zoom technology or skill. From a calendar of roughly 220 events in the course of a year, we now have scheduled only about 36 events and 100 smaller meetings. Income from events was a definite asset to our program.

In 2020 when our President, Alex Tripodi's work closed because of the pandemic, he asked for support to start MayDay Community Kitchen. For 18 months he and up to 40 volunteers fed 500 meals a week to people whose access to food had been curtailed by shut-downs. Now that shut-downs are over they fix fewer meals, but volunteers still feed over 100 homeless people per week. Omni volunteers worked hard to fund and support their work from the beginning to the present day. However, it sometimes included an expense that was partly born by donations from Omni's reserve that was depleted over the course of the pandemic.

These are representative samples of pandemic impact, not an exhaustive account.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

Our net operating revenue dropped drastically by Aug 2021

Program income was zero

Pre-covid program income went down drastically after the pandemic began

Member donations down 32% (grateful for that. Could have been worse)

Other event donations were down 100%

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

The draw on our reserve has left us with fewer programming resources at a time when our community needs more from us.

We have post-covid plans to build out our Time Exchange now that it's easier to meet in person, and expand MayDay Kitchen, and we're considering how we might participate in work to alleviate distresses of the homeless community in our area. ARPA funds could assist in developing all these emerging projects.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

Unfortunately, we had to draw heavily on our financial reserves. Fortunately, we had reserves to draw from. As we emerge from covid we need to take lessons from the shocks we endured.

Primarily we reduced expenses in areas where possible and put off needed renovations and maintenance to our building. We are an almost entirely volunteer organization. Some staff receive stipends, but most of us volunteer time, knowledge and skills toward our mission. That makes our budget very lean, which is an advantage at times like this.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

For much of the 3 years of the pandemic we were virtually closed.
Our volunteer base still has not fully emerged from seclusion.

We had the tragic experience of watching a staff member slide into a mental health crisis directly related to stresses of the virus.

An important project organizing university students closed and did not successfully re-open.
Of 16 different projects related to our mission of peace, justice and the environment, two were re-opened as the virus abated.

However,
We have also used the time to focus our energies and zero in on what is important to us to achieve our vision.

We choose to prioritize local service even as we continue to uphold the global elements of our mission

Where we can help our community grapple with current problems and prepare for the next crisis that's where we want to take a stand. We love our city and its people. We see it as a beacon for the South, striding toward a difficult future with confidence that we can thrive when we do it together. Omni people can be active participants in this exciting journey.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☒ YES ☐ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Omni received \$1000 from the Cares Act to build an outdoor patio for covid programming.
None of those expenses have been included in this application.

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☐ YES ☒ NO

If Yes, describe amount(s), use(s), and timeframe:

The original Cares Act money is the only other covid grant we've received.

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: City of Fayetteville Qualified Census Tracts? ☒ YES ☐ NO

If Yes, please list:

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: 5300 Total residents: 5364

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

KPSQ Community Radio immediately moved their producers into healthy seclusion at the beginning of the virus. Within a month they had all producers recording their programming from home. Only 2 producer/engineers were absolutely essential to go to the station in person, keeping the station equipment running smoothly. We continued to present cultural and educational programming that was calming and nurturing for listeners in Fayetteville as we endured those first terrible months. They are now partially operating in person but are optimistically cautious about returning to the old normal.

Our MayDay Community Kitchen served 500 meals per week to food-insecure people put out of work by covid. It also utilized the skills of many volunteers who could not work for the first 18 months of the pandemic. Some participants said it "saved my sanity." to have this productive work to do at that time. They are still feeding people today on a smaller scale.

Our Student Life Coordinators collaborated with MayDay Kitchen to see that there was food for students who had nowhere to go when the university was closed. The cafeterias and most restaurants were closed, and some low-and moderate-income students were put in a terrific bind. This was not a large population, but Student Life feed 10-20 students every week for a year and a half.

Omni is not a high-tech organization, but we managed to take some of our services online through zoom. It helped our Board and our Climate Change Forum continue so that we could maintain operations.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021? ☒ YES ☐ NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

34835

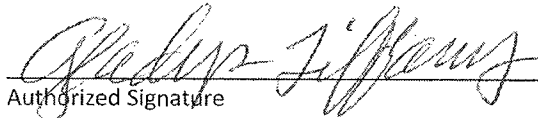
Total requested (maximum requested amount allowable is \$100,000): _____

Date	Vendor	Expense Description	Amount
		Please see a spreadsheet attached	

Total _____

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.


Authorized Signature

Gladys Tiffany, Executive Director

Printed Name and Title

March 5, 2023

Date

City Use Only

Please submit application and all documentation to <https://documents.fayetteville-ar.gov/Forms/arpaassistance>

Applications and supporting documentation are due by 5:00 PM on March 10, 2023

For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Credit Counseling of Arkansas, Inc.
Requested Amt: \$59,328.58

COVID-19 claimed impacts for Nonprofit organizations can include:

- Decreased Revenue (e.g. Donations and Fees)
- Financial Insecurity
- Increased Costs (e.g., uncompensated increases in service need)
- Capacity to weather financial hardship
- Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and decreased revenue during 2020-2021 as a result of the pandemic.

Supported amount of reimbursement per applicant documentation: \$58,269.63



CITY OF
FAYETTEVILLE
ARKANSAS

AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation to <https://documents.fayetteville-ar.gov/Forms/arpaassistance>

Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date 03/09/2023

Year of Nonprofit Incorporation 1995

Organization Name Credit Counseling Of Arkansas, Inc.

Organization Email contactus@ccoacares.com

Mailing Address 1111 E. Zion Road, Fayetteville, AR 72703

Physical Address (if different) _____

Organization Phone Number 479-521-8877

Website https://www.ccoacares.com/

EIN 71-0772094

SAM Unique Entity ID Number 839888831
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Mary Catherine Harcourt

Phone 479-521-8877

Email maryh@ccoacares.com

Primary Contact Name Mary Catherine Harcourt

Title Executive Director

Phone 479-521-8877

Email maryh@ccoacares.com

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

The mission is to improve the quality of life of individuals and families through financial education, credit and housing counseling and debt management services.

List and describe the services the organization provides to Fayetteville residents:

See attachment: City of Fayetteville_ARPA_WD_CCOA_2023

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

CCOA works to do outreach to the Arkansas communities that are most affected by income and economic inequality. According to Arkansas Advocates for Children and Families (AACF), while 22% of the state's overall child population lives in poverty, that number jumps to 27% among the Latin community, and in the Black community, to a startling 39%. In 2020, Arkansas' Black population experienced one of the country's highest mortgage denial rates. Throughout the beginning of the coronavirus pandemic, Northwest Arkansas' Hispanic and Marshallese immigrant communities struggled disproportionately with housing insecurity and high debt. CCOA partners with 11 other organizations to invite these communities to seek help and bring the assistance they need.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

Due to the COVID-19 public health emergency, CCOA experienced substantial shifts in its programs and operations between March 3, 2020, and March 2, 2021. CCOA has suffered a significant decline in its business due to the pandemic. Additionally, CCOA had to adapt the way it provided services to clients. Due mainly to local regulations and the requirement to adhere to social distancing guidelines, CCOA was forced to temporarily close its physical offices and replace in-person counseling sessions with virtual counseling sessions.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

The COVID-19 pandemic caused a decline in demand for CCOA's services, as people have been more focused on immediate needs like food and rent rather than financial counseling. Additionally, clients have faced job loss or reduced income, which has impacted the ability to pay for CCOA's services. This loss of earnings has led to a decrease in revenue for the organization.

During the COVID-19 pandemic, CCOA lost two staff members to retirement. While this may have been planned for one of them, the retirement of the other due to COVID-19 illness impacted CCOA's operations and potentially led to an increased workload for the remaining staff.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

ARPA funding can provide financial relief to organizations such as CCOA negatively impacted by the COVID-19 pandemic. If CCOA were to receive ARPA funding, it would use the money to mitigate its financial difficulties, such as covering the administrative costs of its services and essential operating expenses. This would help alleviate the burden on its counselors and improve the organization's overall sustainability. Additionally, ARPA funding would enable CCOA to expand its services and reach more people struggling financially due to the pandemic, thereby fulfilling its mission of helping as many individuals as possible.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19? While CCOA has faced significant financial difficulties throughout the COVID-19 pandemic, the organization has been able to continue providing its services. At times of economic insecurity, credit counseling groups have difficulty staying afloat. Because of this volatility, CCOA was forced to discontinue employee benefits. This is a frightening scenario for these committed counselors, making hiring support staff to relieve the administrative burden practically difficult.

CCOA counselors, on the other hand, are passionate and service-oriented persons motivated to help others. Notwithstanding these challenges, many employees have remained with the organization for over a decade. While budget counseling can only be offered if the organization's administrative costs are met, CCOA is dedicated to making this resource available for as long and as extensively as possible.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

See attachment: City of Fayetteville_ARPA_WD_CCOA_2023

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:
n/a

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

11/18/2020: Capital One COVID Relief Grant - 15,000.00

5/26/2020: Paycheck Protection Program (PPP) Loan - \$130,472

2/5/2021: Paycheck Protection Program (PPP) Loan - \$130,472

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: [City of Fayetteville Qualified Census Tracts](#)? ☒ YES ☐ NO

If Yes, please list:

While the organization's office is not in a designated Qualified Census Tract, CCOA provides services to clients who reside within the following designated Qualified Census Tracts: 106.1, 106.2, 107.3, 107.4, 111.04, 111.05, 113.01, and 113.02.

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship
n/a

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?
Fayetteville residents: 226 Total residents: 1552

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

See attachment: City of Fayetteville_ARPA_WD_CCOA_2023

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?
 ☒ YES
 ☐ NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.
 59328.58

Total requested (maximum requested amount allowable is \$100,000):

Date	Vendor	Expense Description	Amount
	See Attachment:	CCOA_City of Fayetteville_ARPA_Billing	
Total			\$59,328.58

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.

Mary Catherine Harcourt

03/09/2023

Authorized Signature

Date

Mary Catherine Harcourt

Printed Name and Title

City Use Only

Please submit application and all documentation to <https://documents.fayetteville-ar.gov/Forms/arpaassistance>

Applications and supporting documentation are due by 5:00 PM on March 10, 2023

For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov

**Credit Counseling of Arkansas
City of Fayetteville - ARPA
Expenses to be Reimbursed**

TOTAL - \$59,328.58

City of Fayetteville - Water, Sewer, Recycling & Trash

04/03/2020 - \$114.22 - Paid 04/15/2020
05/05/2020 - \$98.89 - Paid 05/15/2020
06/04/2020 - \$98.89 - Paid 06/15/2020
07/02/2020 - \$122.29 - Paid 07/15/2020
08/05/2020 - \$121.67 - Paid 08/17/2020
09/03/2020 - \$99.05 - Paid 09/15/2020
10/05/2020 - \$99.05 - Paid 10/15/2020
11/05/2020 - \$99.05 - Paid 11/13/2020
12/03/2020 - \$99.05 - Paid 12/15/2020
01/05/2021 - \$99.05 - Paid 01/15/2021
02/03/2021 - \$100.84 - Paid 02/15/2021
03/03/2021 - \$100.84 - Paid 03/15/2021
Total - \$1,252.89

Ozark Electric

Acct # 135622001

03/16/2020 - \$116.71 - Paid 04/02/2020
04/16/2020 - \$55.71 - Paid 05/04/2020
05/15/2020 - \$44.65 - Paid 06/02/2020
06/15/2020 - \$90.66 - Paid 07/02/2020
07/16/2020 - \$138.49 - Paid 08/03/2020
08/14/2020 - \$172.10 - Paid 09/03/2020
09/16/2020 - \$62.04 - Paid 10/05/2020
10/15/2020 - \$70.54 - Paid 11/02/2020
11/16/2020 - \$52.91 - Paid 12/03/2020
12/15/2020 - \$56.52 - Paid 01/04/2021
01/18/2021 - \$70.38 - Paid 02/04/2021
02/15/2021 - \$68.81 - Paid 03/04/2021
03/15/2021 - \$68.55 - Paid 04/01/2021
Total - \$1,068.07

Acct # 135622002

03/16/2020 - \$84.92 - Paid 04/02/2020
04/16/2020 - \$62.35 - Paid 05/04/2020
05/15/2020 - \$55.28 - Paid 06/02/2020
06/15/2020 - \$85.27 - Paid 07/02/2020
07/16/2020 - \$113.15 - Paid 08/03/2020

08/14/2020 - \$103.55 - Paid 09/03/2020
09/16/2020 - \$95.66 - Paid 10/05/2020
10/15/2020 - \$59.14 - Paid 11/02/2020
11/16/2020 - \$61.82 - Paid 12/03/2020
12/15/2020 - \$62.17 - Paid 01/04/2021
01/18/2021 - \$72.53 - Paid 02/04/2021
02/15/2021 - \$64.50 - Paid 03/04/2021
03/15/2021 - \$68.05 - Paid 04/01/2021
Total - \$988.39

Cox Communications

Acct # 0020806514781401

03/01/2020 - \$169.95 - Paid 03/13/2020
04/01/2020 - \$169.95 - Paid 04/15/2020
05/01/2020 - \$169.95 - Paid 05/15/2020
06/01/2020 - \$169.95 - Paid 06/16/2020
07/01/2020 - \$186.82 - Paid 07/16/2020
08/01/2020 - \$186.82 - Paid 08/17/2020
09/01/2020 - \$186.82 - Paid 09/15/2020
10/01/2020 - \$186.82 - Paid 10/15/2020
11/01/2020 - \$186.82 - Paid 11/13/2020
12/01/2020 - \$186.82 - Paid 12/15/2020
01/01/2021 - \$186.82 - Paid 01/29/2021
02/01/2021 - \$186.82 - Paid 02/15/2021
03/01/2021 - \$186.82 - Paid 03/15/2021
Total - \$2,361.18

Acct # 0010806514781401

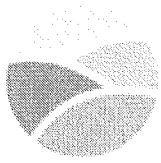
03/01/2020 - \$54.89 - Paid 03/13/2020
04/01/2020 - \$54.89 - Paid 04/15/2020
05/01/2020 - \$54.89 - Paid 05/15/2020
06/01/2020 - \$54.89 - Paid 06/16/2020
07/01/2020 - \$48.03 - Paid 07/16/2020
08/01/2020 - \$52.72 - Paid 08/17/2020
09/01/2020 - \$50.38 - Paid 09/15/2020
10/01/2020 - \$50.38 - Paid 10/15/2020
11/01/2020 - \$50.38 - Paid 11/13/2020
12/01/2020 - \$50.38 - Paid 12/15/2020
01/01/2021 - \$54.45 - Paid 01/29/2021
02/01/2021 - \$54.45 - Paid 02/15/2021
03/01/2021 - \$54.45 - Paid 03/15/2021 (NO BILL - ONLY CHECK)
Total - \$685.18

Black Hills Energy

03/19/2020 - \$168.68 - Paid 03/30/2020
04/17/2020 - \$76.06 - Paid 04/30/2020
05/18/2020 - \$48.67 - Paid 05/16/2020
06/22/2020 - \$26.83 - Paid 06/30/2020
07/20/2020 - \$26.04 - Paid 07/30/2020
08/19/2020 - \$26.10 - Paid 08/28/2020
09/17/2020 - \$26.10 - Paid 09/30/2020
10/16/2020 - \$27.68 - Paid 10/30/2020
11/17/2020 - \$96.47 - Paid 11/30/2020
12/17/2020 - \$213.30 - Paid 01/04/2021
01/19/2020 - \$316.99 - Paid 01/29/2021
02/17/2021 - \$319.95 - Paid 02/28/2021
Total - \$1,372.87

Rent

April 2020 - \$4,300 - Paid 04/01/2020
May 2020 - \$4,300 - Paid 05/01/2020
June 2020 - \$4,300 - Paid 05/29/2020
July 2020 - \$4,300 - Paid 06/30/2020
August 2020 - \$4,300 - Paid 08/03/2020
September 2020 - \$4,300 - Paid 08/31/2020
October 2020 - \$4,300 - Paid 10/01/2020
November 2020 - \$4,300 - Paid 12/01/2020
December 2020 - \$4,300 - Paid 01/04/2021
January 2021 - \$4,300 - Paid 01/22/2021
February 2021 - \$4,300 - Paid 02/01/2021
March 2021 - \$4,300 - Paid 03/01/2021
Total - \$51,600



NONPROFIT ASSISTANCE REQUEST APPLICATION REVIEW

Per City Council RES 46-23 on February 21, 2023, Council voted unanimously to establish and fund a non-profit corporation assistance plan to provide assistance to non-profit corporations operating and serving residents in Fayetteville in response to impacts of COVID-19.

Applicant: Habitat for Humanity of Washington County Arkansas
Requested Amt: \$91,800.00

COVID-19 claimed impacts for Nonprofit organizations can include:

Decreased Revenue (e.g. Donations and Fees)

Financial Insecurity

Increased Costs (e.g., uncompensated increases in service need)

Capacity to weather financial hardship

Challenges covering payroll, rent or mortgage, and other operating costs

Application Review:

Per review of the application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and decreased revenue from a closure to some operations and a reduction to the donations and fundraising during 2020-2021 as a result of the pandemic.

Supported amount of reimbursement per applicant documentation: \$19,675.73



CITY OF
FAYETTEVILLE
ARKANSAS

AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Eligible nonprofit organizations must meet the following requirements:

- Qualifying nonprofit organizations include 501(c)(3) or 501(c)(19) organizations
- Located in the City of Fayetteville, serving City of Fayetteville residents
- Be in good standing with the Arkansas Secretary of State
- Maintain a current City of Fayetteville business license (if required, per City Code Chapter 118)
- Have a demonstrated negative economic impact that is directly related to COVID-19
- Nonprofit must have been incorporated no later than June 30, 2019

Costs eligible for nonprofit assistance:

- Costs sustained by a nonprofit that experienced negative economic impact directly related to the COVID-19 pandemic. This could be due to an increased demand for services provided, changing operational needs, a decline in revenue sources such as donations and fees, reduced ability to hold fundraising events, increased costs such as uncompensated increases in service need, or challenges covering payroll, rent, or other operating costs of the nonprofit organization.
- Examples of costs eligible for reimbursement include:
 - Operating expenses - utility bills, rent, etc.
 - COVID-19 related expenses
 - Supplies for COVID-19 relief activities (ex. food bank, donations, testing site, ... etc.)

Ineligible Costs – these are examples of costs that cannot be claimed for reimbursement:

- Loss that bears no relation to the COVID-19 public health emergency, or costs that are grossly disproportionate to the type or extent of harm experienced due to COVID-19.
- Any purpose that conflicts with or contravenes the statutory purpose of the American Rescue Plan Act.
- Contributions to any rainy-day funds, financial reserves, or similar funds.
- Payment of interest or principal on outstanding debt instruments.
- Inherently religious activities, such as worship, religious instruction, or proselytization and/or those that promote or inhibit religious interest.
- Lobbying or other political activities.
- Funding for programs or organizations that do not serve City of Fayetteville residents.
- Payment of any type of judicial settlement/judgment
- Economic hardship incurred outside of the period beginning March 3, 2020 and ending March 2, 2021.
- Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. This would include (but not be limited to) other COVID-19 programs, Federal CARES Act funding, Paycheck Protection Program (PPP) loans, Economic Injury Disaster Loans (EIDL) or Community Development Block Grant – Coronavirus (CDBG-CV) funding.
- Past due balances

ARPA Non-Profit Direct Assistance Application

Assistance Period and Application Process:

Applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2020 and ending March 2, 2021. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Please submit completed application and all documentation to <https://documents.fayetteville-ar.gov/Forms/arpaassistance>

Applications and supporting documentation are due by 5:00 PM on March 10, 2023

The application process for the ARPA nonprofit assistance program is as follows:

1. Qualifying nonprofit organizations complete this application form
2. Submit the application form along with the documents outlined in the "Required Document" section below. The financial records and documentation provided need to clearly show the total negative economic effect or loss sustained, which would be the maximum reimbursable amount under this program.
3. Provide supporting documentation (invoices, etc.) of operating expenses paid during the 3/3/20 – 3/2/21 time period for reimbursement, up to the amount shown in step 2 above.

Required Documents:

- Approved operating budget for 2019, 2020, and 2021, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for 2019, 2020, and 2021
- Provide copy of W-9 form (Taxpayer ID number and Certification)
- Provide a copy of IRS determination letter indicating nonprofit status
- Provide a copy of the entity's Secretary of State Filing number, available at the Secretary of State website https://www.sos.arkansas.gov/corps/search_all.php
- If a Financial Audit has been performed in 2019, 2020, 2021, provide copies of the Financial Audit(s)
- SAM Unique Entity ID Number (see <https://sam.gov/content/entity-registration> for more information)
- Bank statements, receipts, cancelled checks, and other supporting documents illustrating how the organization's claimed operating expenses were paid
- Invoices and supporting documentation for paid operating expenses for which the nonprofit organization is seeking reimbursement
- Other supporting documentation if applicable
- Provide a copy of a signed application

All required documents must be submitted along with application form. If all required documentation is not provided at the time of submission, the application will be moved to the end of the line until the documentation is provided. Funds for this program are limited, and payments under this program will be provided on a first come, first served basis. This is a reimbursement program; reimbursements will only be provided based on qualifying paid operating expenses. Non-qualifying expenses claimed for reimbursement will be deducted from the total calculated reimbursement.

ARPA Non-Profit Direct Assistance Application

Application Date March 10, 2023

Year of Nonprofit Incorporation 1991

Organization Name Habitat for Humanity of Washington County, Arkansas

Organization Email brandon@habitatwashingtoncoar.org

Mailing Address P.O. Box 3872, Fayetteville, AR 72702

Physical Address (if different) 1421 E. 15th Street, Fayetteville, AR 72701

Organization Phone Number 479.575.9696

Website www.habitatwashingtoncounty.org

EIN 71-0712905

SAM Unique Entity ID Number M9HLZ88E1UF7
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Brandon Swoboda

Phone 479.418.9499

Email brandon@habitatwashingtoncoar.org

Primary Contact Name Brandon Swoboda

Title Executive Director

Phone 479.418.9499

Email brandon@habitatwashingtoncoar.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

Habitat for Humanity believes everyone deserves to live in an affordable, decent home. We accomplish this vision by bringing people together to build homes, communities and hope. Habitat works specifically with low-income families earning 80% or less of the AMI to become homeowners through new construction and an affordable monthly payment. In addition, Habitat works with low-income homeowners to retain homeownership through repairs and an affordable re-payment program.

List and describe the services the organization provides to Fayetteville residents:

Habitat ReStore: The ReStore is a re-sale, retail outlet offering affordable home goods and construction materials to Fayetteville residents. The ReStore accepts donated, gently used goods from local residents which are re-sold to local residents. Any materials not able to be re-sold are recycled keeping materials out of the land fill.

New Construction: Habitat builds new homes for low-income families earning 80% or less of the AMI and offers 0% interest loans to create affordable monthly mortgage payments.

Repairs: Habitat offers repairs and an affordable 0% interest re-payment program for low income homeowners earning 80% or less AMI.

Training: Habitat offers free monthly community wide trainings around subjects such as homeownership, budgeting, home maintenance, car maintenance, will and end of life planning, investing, banking, aging in place, etc.

Advocacy: Habitat advocates for affordable homeownership by communicating needs with local and state government agencies and collaborates with other area non-profits to provide housing resources to local residents

ARPA Non-Profit Direct Assistance Application

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

Habitat's target beneficiaries are local residents and/or families earning 80% or less of the area median income. There is no restriction on age, sex, gender, or religious affiliation.

COVID-19 Impact

Describe the impact of the COVID-19 public health emergency on the nonprofit organization's programs or activities during the period beginning March 3, 2020 and March 2, 2021, such as changes in the demand for services, changes due to social distancing, new services to assist those impacted by COVID-19, limited operations, etc.:

When the COVID-19 lockdowns began, Habitat was forced to close the ReStore which is the primary funding source for our operations and programs. Residents were unable to drop off donations and Habitat was unable to pick up donated goods from homes. Residents were unable to shop. In addition, Habitat was forced to stop in-person fundraising and limit volunteers on construction projects. This forced our construction to slow significantly.

List and describe the negative economic impact that the COVID-19 public health emergency has had on the organization's finances (e.g., increased or new expenses, fundraising, loss of earnings, decline in revenue, etc.). Provide justification/calculation for any amount stated:

Negative Impact Includes:

- Loss of income via ReStore sales
- Loss of donated goods made to the ReStore due to not being able to receive donations or be able to pick up donated goods at donor residences
- Loss of income via in-person fundraising
- Increased cost of construction due to volunteers being unable to help with projects
- Loss of income due to hiring freeze

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

This funding, if provided, would allow us to recapture lost income spent on rent. Habitat was unable to pick up or receive donated home goods due to Covid lockdowns. In addition, the ReStore was unable to sell product. Construction slowed without volunteer help. Habitat was unable to fundraise. This funding would help us recover loss income which was spent on rent instead.

How has the nonprofit organization addressed the financial impacts it has experienced due to COVID-19?

Habitat address the financial impact during the pandemic by retaining staff and pouring any funds into rent and operations. We intentionally chose not to layoff any workers because we value people. We dwindled any reserves in the bank in order to do this. We stopped construction, closed the ReStore, stopped receiving volunteers, stopped receiving donated goods, and hoped for the best. This funding will help us recover those losses.

List any other impact the COVID-19 public health emergency has had on the organization (e.g., staffing or volunteer impacts, closure, closure due to COVID-19 mitigation, etc.):

Covid lockdown hurt our volunteer base. We could no longer receive volunteers to run the ReStore or perform construction. This pandemic put us back on housing production which negatively impacts low-income families in Fayetteville wish for a better housing option for them and their children. Habitat was forced to install a hiring freeze. We closed our offices and our ReStore.

ARPA Non-Profit Direct Assistance Application

Have any expenses claimed under this application been claimed for reimbursement under any other program, or by any other entity related to the organization? ☐ YES ☒ NO

If Yes, please list the type of funding (federal, state, or private), the amount of funding, and how it was used:

Expenses reimbursed through any other funding assistance are not eligible for duplicate reimbursement. Has the nonprofit organization received other COVID-19 related funding assistance such as, but not limited to, Federal CARES Act funding; Paycheck Protection Program (PPP) loans; Economic Injury Disaster Loans (EIDL); or Community Development Block Grant – Coronavirus (CDBG-CV) funds? ☒ YES ☐ NO

If Yes, describe amount(s), use(s), and timeframe:

We applied for the PPP loan. Our average monthly income at the time was \$32,081.90. Habitat applied for $\$32,081.90 \times 2.5 = \$80,204.75$. This amount was proposed to be used to help cover payroll, utilities and rent on the application but was used primarily to cover payroll.

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: [City of Fayetteville Qualified Census Tracts](#)? ☐ YES ☒ NO

If Yes, please list:

Is anyone with control over the nonprofit organization (i.e., owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville?

☐ YES ☒ NO

If Yes above, please describe the relationship

How many persons/households did the organization serve from March 3, 2020 through March 2, 2021?

Fayetteville residents: Total residents:

Please list and describe the events, activities, or services provided by the nonprofit organization that reimbursement will be sought for. Please indicate how these events, activities, or services assisted residents impacted by COVID-19.

We are seeking reimbursement for rent of the facilities used to operate the ReStore and Habitat offices during the pandemic. As described above, the ReStore and offices assist in providing affordable home goods, new home construction and repairs for residents of Fayetteville especially low income families earning 80% or less of the AMI.

ARPA Non-Profit Direct Assistance Application

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2020 and March 2, 2021?



YES



NO

Please complete the table below for the requested nonprofit reimbursements. If more room is needed, please attach a separate sheet to your completed application. Please include all receipts and/or other supporting documentation. Examples could include nonprofit operating costs such as, payroll records, utility bills, rent, etc.

\$91,800

Total requested (maximum requested amount allowable is \$100,000): _____

Date	Vendor	Expense Description	Amount
April 1, 2020	Burt Hanna, LLC	Rent	\$7,650
May 1, 2020	Burt Hanna, LLC	Rent	\$7,650
June 1, 2020	Burt Hanna, LLC	Rent	\$7,650
July 1, 2020	Burt Hanna, LLC	Rent	\$7,650
August 1, 2020	Burt Hanna, LLC	Rent	\$7,650
September 1, 2020	Burt Hanna, LLC	Rent	\$7,650
October 1, 2020	Burt Hanna, LLC	Rent	\$7,650
November 1, 2020	Burt Hanna, LLC	Rent	\$7,650
December 1, 2020	Burt Hanna, LLC	Rent	\$7,650
January 1, 2021	Burt Hanna, LLC	Rent	\$7,650
February 1, 2021	Burt Hanna, LLC	Rent	\$7,650
March 1, 2021	Burt Hanna, LLC	Rent	\$7,650

Total \$91,800

ARPA Non-Profit Direct Assistance Application

I am an authorized employee/agent of the applicant nonprofit organization and I am authorized to submit this application. The information provided is true and complete to the best of my knowledge and belief. I understand that any willful misstatement of material fact will be grounds for disqualification. I attest that I have not received financial assistance from other sources for the funding request submitted in the application. I understand that all documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes, and that all applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. I understand that funding under this program is limited, funding may not be available for all applicants, and funding might not be provided or provided for the full requested amount. I agree to provide any and all requested documentation to further support the charges being requested for reimbursement.

Brandon M. Swoboda

Authorized Signature

Brandon M. Swoboda

Printed Name and Title

March 10, 2023

Date

City Use Only

Please submit application and all documentation to <https://documents.fayetteville-ar.gov/Forms/arpaassistance>

Applications and supporting documentation are due by 5:00 PM on March 10, 2023

For assistance, please contact Chantel Darden at 479-718-7627 - CDarden@fayetteville-ar.gov



Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule

U.S. DEPARTMENT OF THE TREASURY

January 2022



The Overview of the Final Rule provides a summary of major provisions of the final rule for informational purposes and is intended as a brief, simplified user guide to the final rule provisions.

The descriptions provided in this document summarize key provisions of the final rule but are non-exhaustive, do not describe all terms and conditions associated with the use of SLFRF, and do not describe all requirements that may apply to this funding. Any SLFRF funds received are also subject to the terms and conditions of the agreement entered into by Treasury and the respective jurisdiction, which incorporate the provisions of the final rule and the guidance that implements this program.



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Introduction

The Coronavirus State and Local Fiscal Recovery Funds (SLFRF), a part of the American Rescue Plan, delivers \$350 billion to state, local, and Tribal governments across the country to support their response to and recovery from the COVID-19 public health emergency. The program ensures that governments have the resources needed to:

- Fight the pandemic and support families and businesses struggling with its public health and economic impacts,
- Maintain vital public services, even amid declines in revenue, and
- Build a strong, resilient, and equitable recovery by making investments that support long-term growth and opportunity.

EARLY PROGRAM IMPLEMENTATION

In May 2021, Treasury published the Interim final rule (IFR) describing eligible and ineligible uses of funds (as well as other program provisions), sought feedback from the public on these program rules, and began to distribute funds. The IFR went immediately into effect in May, and since then, governments have used SLFRF funds to meet their immediate pandemic response needs and begin building a strong and equitable recovery, such as through providing vaccine incentives, development of affordable housing, and construction of infrastructure to deliver safe and reliable water.

As governments began to deploy this funding in their communities, Treasury carefully considered the feedback provided through its public comment process and other forums. Treasury received over 1,500 comments, participated in hundreds of meetings, and received correspondence from a wide range of governments and other stakeholders.

KEY CHANGES AND CLARIFICATIONS IN THE FINAL RULE

The final rule delivers broader flexibility and greater simplicity in the program, responsive to feedback in the comment process. Among other clarifications and changes, the final rule provides the features below.

Replacing Lost Public Sector Revenue

The final rule offers a standard allowance for revenue loss of up to \$10 million, allowing recipients to select between a standard amount of revenue loss or complete a full revenue loss calculation. Recipients that select the standard allowance may use that amount – in many cases their full award – for government services, with streamlined reporting requirements.

Public Health and Economic Impacts

In addition to programs and services, the final rule clarifies that recipients can use funds for capital expenditures that support an eligible COVID-19 public health or economic response. For example, recipients may build certain affordable housing, childcare facilities, schools, hospitals, and other projects consistent with final rule requirements.



In addition, the final rule provides an expanded set of households and communities that are presumed to be “impacted” and “disproportionately impacted” by the pandemic, thereby allowing recipients to provide responses to a broad set of households and entities without requiring additional analysis. Further, the final rule provides a broader set of uses available for these communities as part of COVID-19 public health and economic response, including making affordable housing, childcare, early learning, and services to address learning loss during the pandemic eligible in all impacted communities and making certain community development and neighborhood revitalization activities eligible for disproportionately impacted communities.

Further, the final rule allows for a broader set of uses to restore and support government employment, including hiring above a recipient’s pre-pandemic baseline, providing funds to employees that experienced pay cuts or furloughs, avoiding layoffs, and providing retention incentives.

Premium Pay

The final rule delivers more streamlined options to provide premium pay, by broadening the share of eligible workers who can receive premium pay without a written justification while maintaining a focus on lower-income and frontline workers performing essential work.

Water, Sewer & Broadband Infrastructure

The final rule significantly broadens eligible broadband infrastructure investments to address challenges with broadband access, affordability, and reliability, and adds additional eligible water and sewer infrastructure investments, including a broader range of lead remediation and stormwater management projects.

FINAL RULE EFFECTIVE DATE

The final rule takes effect on April 1, 2022. Until that time, the interim final rule remains in effect; funds used consistently with the IFR while it is in effect are in compliance with the SLFRF program.

However, recipients can choose to take advantage of the final rule’s flexibilities and simplifications now, even ahead of the effective date. Treasury will not take action to enforce the interim final rule to the extent that a use of funds is consistent with the terms of the final rule, regardless of when the SLFRF funds were used. Recipients may consult the *Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule*, which can be found on Treasury’s website, for more information on compliance with the interim final rule and the final rule.



Overview of the Program

The Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program provides substantial flexibility for each jurisdiction to meet local needs within the four separate eligible use categories. This Overview of the Final Rule addresses the four eligible use categories ordered from the broadest and most flexible to the most specific.

Recipients may use SLFRF funds to:

- **Replace lost public sector revenue**, using this funding to provide government services up to the amount of revenue loss due to the pandemic.
 - Recipients may determine their revenue loss by choosing between two options:
 - A standard allowance of up to \$10 million in aggregate, not to exceed their award amount, during the program;
 - Calculating their jurisdiction's specific revenue loss each year using Treasury's formula, which compares actual revenue to a counterfactual trend.
 - Recipients may use funds up to the amount of revenue loss for government services; generally, services traditionally provided by recipient governments are government services, unless Treasury has stated otherwise.
- **Support the COVID-19 public health and economic response** by addressing COVID-19 and its impact on public health as well as addressing economic harms to households, small businesses, nonprofits, impacted industries, and the public sector.
 - Recipients can use funds for programs, services, or capital expenditures that respond to the public health and negative economic impacts of the pandemic.
 - To provide simple and clear eligible uses of funds, Treasury provides a list of enumerated uses that recipients can provide to households, populations, or classes (i.e., groups) that experienced pandemic impacts.
 - Public health eligible uses include COVID-19 mitigation and prevention, medical expenses, behavioral healthcare, and preventing and responding to violence.
 - Eligible uses to respond to negative economic impacts are organized by the type of beneficiary: assistance to households, small businesses, and nonprofits.
 - Each category includes assistance for "impacted" and "disproportionately impacted" classes: impacted classes experienced the general, broad-based impacts of the pandemic, while disproportionately impacted classes faced meaningfully more severe impacts, often due to preexisting disparities.
 - To simplify administration, the final rule presumes that some populations and groups were impacted or disproportionately impacted and are eligible for responsive services.



- Eligible uses for assistance to impacted households include aid for re-employment, job training, food, rent, mortgages, utilities, affordable housing development, childcare, early education, addressing learning loss, and many more uses.
- Eligible uses for assistance to impacted small businesses or nonprofits include loans or grants to mitigate financial hardship, technical assistance for small businesses, and many more uses.
- Recipients can also provide assistance to impacted industries like travel, tourism, and hospitality that faced substantial pandemic impacts, or address impacts to the public sector, for example by re-hiring public sector workers cut during the crisis.
- Recipients providing funds for enumerated uses to populations and groups that Treasury has presumed eligible are clearly operating consistently with the final rule. Recipients can also identify (1) other populations or groups, beyond those presumed eligible, that experienced pandemic impacts or disproportionate impacts and (2) other programs, services, or capital expenditures, beyond those enumerated, to respond to those impacts.
- **Provide premium pay for eligible workers performing essential work**, offering additional support to those who have and will bear the greatest health risks because of their service in critical sectors.
 - Recipients may provide premium pay to eligible workers – generally those working in-person in key economic sectors – who are below a wage threshold or non-exempt from the Fair Labor Standards Act overtime provisions, or if the recipient submits justification that the premium pay is responsive to workers performing essential work.
- **Invest in water, sewer, and broadband infrastructure**, making necessary investments to improve access to clean drinking water, to support vital wastewater and stormwater infrastructure, and to expand affordable access to broadband internet.
 - Recipients may fund a broad range of water and sewer projects, including those eligible under the EPA’s Clean Water State Revolving Fund, EPA’s Drinking Water State Revolving Fund, and certain additional projects, including a wide set of lead remediation, stormwater infrastructure, and aid for private wells and septic units.
 - Recipients may fund high-speed broadband infrastructure in areas of need that the recipient identifies, such as areas without access to adequate speeds, affordable options, or where connections are inconsistent or unreliable; completed projects must participate in a low-income subsidy program.

While recipients have considerable flexibility to use funds to address the diverse needs of their communities, some restrictions on use apply across all eligible use categories. These include:

- **For states and territories:** No offsets of a reduction in net tax revenue resulting from a change in state or territory law.

Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule



- **For all recipients except for Tribal governments:** No extraordinary contributions to a pension fund for the purpose of reducing an accrued, unfunded liability.
- **For all recipients:** No payments for debt service and replenishments of rainy day funds; no satisfaction of settlements and judgments; no uses that contravene or violate the American Rescue Plan Act, Uniform Guidance conflicts of interest requirements, and other federal, state, and local laws and regulations.

Under the SLFRF program, funds must be used for costs incurred on or after March 3, 2021. Further, funds must be obligated by December 31, 2024, and expended by December 31, 2026. This time period, during which recipients can expend SLFRF funds, is the “period of performance.”

In addition to SLFRF, the American Rescue Plan includes other sources of funding for state and local governments, including the [Coronavirus Capital Projects Fund](#) to fund critical capital investments including broadband infrastructure; the [Homeowner Assistance Fund](#) to provide relief for our country’s most vulnerable homeowners; the [Emergency Rental Assistance Program](#) to assist households that are unable to pay rent or utilities; and the [State Small Business Credit Initiative](#) to fund small business credit expansion initiatives. Eligible recipients are encouraged to visit the Treasury website for more information.



Replacing Lost Public Sector Revenue

The Coronavirus State and Local Fiscal Recovery Funds provide needed fiscal relief for recipients that have experienced revenue loss due to the onset of the COVID-19 public health emergency. Specifically, SLFRF funding may be used to pay for “government services” in an amount equal to the revenue loss experienced by the recipient due to the COVID-19 public health emergency.

Government services generally include any service traditionally provided by a government, including construction of roads and other infrastructure, provision of public safety and other services, and health and educational services. Funds spent under government services are subject to streamlined reporting and compliance requirements.

In order to use funds under government services, recipients should first determine revenue loss. They may, then, spend up to that amount on general government services.

DETERMINING REVENUE LOSS

Recipients have two options for how to determine their amount of revenue loss. Recipients must choose one of the two options and cannot switch between these approaches after an election is made.

- 1. Recipients may elect a “standard allowance” of \$10 million to spend on government services through the period of performance.**

Under this option, which is newly offered in the final rule Treasury presumes that up to \$10 million in revenue has been lost due to the public health emergency and recipients are permitted to use that amount (not to exceed the award amount) to fund “government services.” The standard allowance provides an estimate of revenue loss that is based on an extensive analysis of average revenue loss across states and localities, and offers a simple, convenient way to determine revenue loss, particularly for SLFRF’s smallest recipients.

All recipients may elect to use this standard allowance instead of calculating lost revenue using the formula below, including those with total allocations of \$10 million or less. Electing the standard allowance does not increase or decrease a recipient’s total allocation.

- 2. Recipients may calculate their actual revenue loss according to the formula articulated in the final rule.**

Under this option, recipients calculate revenue loss at four distinct points in time, either at the end of each calendar year (e.g., December 31 for years 2020, 2021, 2022, and 2023) or the end of each fiscal year of the recipient. Under the flexibility provided in the final rule, recipients can choose whether to use calendar or fiscal year dates but must be consistent throughout the period of performance. Treasury has also provided several adjustments to the definition of general revenue in the final rule.

To calculate revenue loss at each of these dates, recipients must follow a four-step process:



- a. Calculate revenues collected in the most recent full fiscal year prior to the public health emergency (i.e., last full fiscal year before January 27, 2020), called the *base year revenue*.
- b. Estimate *counterfactual revenue*, which is equal to the following formula, where n is the number of months elapsed since the end of the base year to the calculation date:

$$\text{base year revenue} \times (1 + \text{growth adjustment})^{\frac{n}{12}}$$

The *growth adjustment* is the greater of either a standard growth rate—5.2 percent—or the recipient’s average annual revenue growth in the last full three fiscal years prior to the COVID-19 public health emergency.

- c. Identify *actual revenue*, which equals revenues collected over the twelve months immediately preceding the calculation date.

Under the final rule, recipients must adjust actual revenue totals for the effect of tax cuts and tax increases that are adopted after the date of adoption of the final rule (January 6, 2022). Specifically, the estimated fiscal impact of tax cuts and tax increases adopted after January 6, 2022, must be added or subtracted to the calculation of actual revenue for purposes of calculation dates that occur on or after April 1, 2022.

Recipients may subtract from their calculation of actual revenue the effect of tax increases enacted prior to the adoption of the final rule. Note that recipients that elect to remove the effect of tax increases enacted before the adoption of the final rule must also remove the effect of tax decreases enacted before the adoption of the final rule, such that they are accurately removing the effect of tax policy changes on revenue.

- d. Revenue loss for the calculation date is equal to *counterfactual revenue* minus *actual revenue* (adjusted for tax changes) for the twelve-month period. If actual revenue exceeds counterfactual revenue, the loss is set to zero for that twelve-month period. Revenue loss for the period of performance is the sum of the revenue loss on for each calculation date.

The supplementary information in the final rule provides an example of this calculation, which recipients may find helpful, in the Revenue Loss section.



SPENDING ON GOVERNMENT SERVICES

Recipients can use SLFRF funds on government services up to the revenue loss amount, whether that be the standard allowance amount or the amount calculated using the above approach. **Government services generally include *any service traditionally provided by a government***, unless Treasury has stated otherwise. Here are some common examples, although this list is not exhaustive:

- ✓ Construction of schools and hospitals
- ✓ Road building and maintenance, and other infrastructure
- ✓ Health services
- ✓ General government administration, staff, and administrative facilities
- ✓ Environmental remediation
- ✓ Provision of police, fire, and other public safety services (including purchase of fire trucks and police vehicles)

Government services is the most flexible eligible use category under the SLFRF program, and funds are subject to streamlined reporting and compliance requirements. Recipients should be mindful that certain restrictions, which are detailed further in the Restrictions on Use section and apply to all uses of funds, apply to government services as well.



Responding to Public Health and Economic Impacts of COVID-19

The Coronavirus State and Local Fiscal Recovery Funds provide resources for governments to meet the public health and economic needs of those impacted by the pandemic in their communities, as well as address longstanding health and economic disparities, which amplified the impact of the pandemic in disproportionately impacted communities, resulting in more severe pandemic impacts.

The eligible use category to respond to public health and negative economic impacts is organized around the types of assistance a recipient may provide and includes several sub-categories:

- public health,
- assistance to households,
- assistance to small businesses,
- assistance to nonprofits,
- aid to impacted industries, and
- public sector capacity.

In general, to identify eligible uses of funds in this category, recipients should (1) identify a COVID-19 public health or economic impact on an individual or class (i.e., a group) and (2) design a program that responds to that impact. Responses should be related and reasonably proportional to the harm identified and reasonably designed to benefit those impacted.

To provide simple, clear eligible uses of funds that meet this standard, Treasury provides a non-exhaustive list of enumerated uses that respond to pandemic impacts. Treasury also presumes that some populations experienced pandemic impacts and are eligible for responsive services. In other words, recipients providing enumerated uses of funds to populations presumed eligible are clearly operating consistently with the final rule.¹

Recipients also have broad flexibility to (1) identify and respond to other pandemic impacts and (2) serve other populations that experienced pandemic impacts, beyond the enumerated uses and presumed eligible populations. Recipients can also identify groups or “classes” of beneficiaries that experienced pandemic impacts and provide services to those classes.

¹ However, please note that use of funds for enumerated uses may not be grossly disproportionate to the harm. Further, recipients should consult the Capital Expenditures section for more information about pursuing a capital expenditure; please note that enumerated capital expenditures are not presumed to be reasonably proportional responses to an identified harm except as provided in the Capital Expenditures section.



Step	1. Identify COVID-19 public health or economic impact	2. Design a response that addresses or responds to the impact
Analysis	• Can identify impact to a specific household, business or nonprofit or to a class of households, businesses, or nonprofits (i.e., group) • Can also identify disproportionate impacts, or more severe impacts, to a specific beneficiary or to a class	• Types of responses can include a program, service, or capital expenditure • Response should be related and reasonably proportional to the harm • Response should also be reasonably designed to benefit impacted individual or class
Simplifying Presumptions	• Final Rule presumes certain populations and classes are impacted and disproportionately impacted	• Final Rule provides non-exhaustive list of enumerated eligible uses that respond to pandemic impacts and disproportionate impacts

To assess eligibility of uses of funds, recipients should first determine the sub-category where their use of funds may fit (e.g., public health, assistance to households, assistance to small businesses), based on the entity that experienced the health or economic impact.² Then, recipients should refer to the relevant section for more details on each sub-category.

While the same overall eligibility standard applies to all uses of funds to respond to the public health and negative economic impacts of the pandemic, each sub-category has specific nuances on its application. In addition:

- Recipients interested in using funds for capital expenditures (i.e., investments in property, facilities, or equipment) should review the Capital Expenditures section in addition to the eligible use sub-category.
- Recipients interested in other uses of funds, beyond the enumerated uses, should refer to the section on “Framework for Eligible Uses Beyond Those Enumerated.”

² For example, a recipient interested in providing aid to unemployed individuals is addressing a negative economic impact experienced by a household and should refer to the section on assistance to households. Recipients should also be aware of the difference between “beneficiaries” and “sub-recipients.” Beneficiaries are households, small businesses, or nonprofits that can receive assistance based on impacts of the pandemic that they experienced. On the other hand, sub-recipients are organizations that carry out eligible uses on behalf of a government, often through grants or contracts. Sub-recipients do not need to have experienced a negative economic impact of the pandemic; rather, they are providing services to beneficiaries that experienced an impact.



RESPONDING TO THE PUBLIC HEALTH EMERGENCY

While the country has made tremendous progress in the fight against COVID-19, including a historic vaccination campaign, the disease still poses a grave threat to Americans' health and the economy. Providing state, local, and Tribal governments the resources needed to fight the COVID-19 pandemic is a core goal of the Coronavirus State and Local Fiscal Recovery Funds, as well as addressing the other ways that the pandemic has impacted public health. Treasury has identified several public health impacts of the pandemic and enumerated uses of funds to respond to impacted populations.

- **COVID-19 mitigation and prevention.** The pandemic has broadly impacted Americans and recipients can provide services to prevent and mitigate COVID-19 to the general public or to small businesses, nonprofits, and impacted industries in general. Enumerated eligible uses include:
 - ✓ Vaccination programs, including vaccine incentives and vaccine sites
 - ✓ Testing programs, equipment and sites
 - ✓ Monitoring, contact tracing & public health surveillance (e.g., monitoring for variants)
 - ✓ Public communication efforts
 - ✓ Public health data systems
 - ✓ COVID-19 prevention and treatment equipment, such as ventilators and ambulances
 - ✓ Medical and PPE/protective supplies
 - ✓ Support for isolation or quarantine
 - ✓ Ventilation system installation and improvement
 - ✓ Technical assistance on mitigation of COVID-19 threats to public health and safety
 - ✓ Transportation to reach vaccination or testing sites, or other prevention and mitigation services for vulnerable populations
 - ✓ Support for prevention, mitigation, or other services in congregate living facilities, public facilities, and schools
 - ✓ Support for prevention and mitigation strategies in small businesses, nonprofits, and impacted industries
 - ✓ Medical facilities generally dedicated to COVID-19 treatment and mitigation (e.g., ICUs, emergency rooms)
 - ✓ Temporary medical facilities and other measures to increase COVID-19 treatment capacity
 - ✓ Emergency operations centers & emergency response equipment (e.g., emergency response radio systems)
 - ✓ Public telemedicine capabilities for COVID-19 related treatment



- **Medical expenses.** Funds may be used for expenses to households, medical providers, or others that incurred medical costs due to the pandemic, including:
 - ✓ Unreimbursed expenses for medical care for COVID-19 testing or treatment, such as uncompensated care costs for medical providers or out-of-pocket costs for individuals
 - ✓ Paid family and medical leave for public employees to enable compliance with COVID-19 public health precautions
 - ✓ Emergency medical response expenses
 - ✓ Treatment of long-term symptoms or effects of COVID-19
- **Behavioral health care, such as mental health treatment, substance use treatment, and other behavioral health services.** Treasury recognizes that the pandemic has broadly impacted Americans' behavioral health and recipients can provide these services to the general public to respond. Enumerated eligible uses include:
 - ✓ Prevention, outpatient treatment, inpatient treatment, crisis care, diversion programs, outreach to individuals not yet engaged in treatment, harm reduction & long-term recovery support
 - ✓ Enhanced behavioral health services in schools
 - ✓ Services for pregnant women or infants born with neonatal abstinence syndrome
 - ✓ Support for equitable access to reduce disparities in access to high-quality treatment
 - ✓ Peer support groups, costs for residence in supportive housing or recovery housing, and the 988 National Suicide Prevention Lifeline or other hotline services
 - ✓ Expansion of access to evidence-based services for opioid use disorder prevention, treatment, harm reduction, and recovery
 - ✓ Behavioral health facilities & equipment
- **Preventing and responding to violence.** Recognizing that violence – and especially gun violence – has increased in some communities due to the pandemic, recipients may use funds to respond in these communities through:
 - ✓ Referrals to trauma recovery services for victims of crime
 - ✓ Community violence intervention programs, including:
 - Evidence-based practices like focused deterrence, with wraparound services such as behavioral therapy, trauma recovery, job training, education, housing and relocation services, and financial assistance
 - ✓ In communities experiencing increased gun violence due to the pandemic:
 - Law enforcement officers focused on advancing community policing
 - Enforcement efforts to reduce gun violence, including prosecution
 - Technology & equipment to support law enforcement response



RESPONDING TO NEGATIVE ECONOMIC IMPACTS

The pandemic caused severe economic damage and, while the economy is on track to a strong recovery, much work remains to continue building a robust, resilient, and equitable economy in the wake of the crisis and to ensure that the benefits of this recovery reach all Americans. While the pandemic impacted millions of American households and businesses, some of its most severe impacts fell on low-income and underserved communities, where pre-existing disparities amplified the impact of the pandemic and where the most work remains to reach a full recovery.

The final rule recognizes that the pandemic caused broad-based impacts that affected many communities, households, and small businesses across the country; for example, many workers faced unemployment and many small businesses saw declines in revenue. The final rule describes these as “impacted” households, communities, small businesses, and nonprofits.

At the same time, the pandemic caused disproportionate impacts, or more severe impacts, in certain communities. For example, low-income and underserved communities have faced more severe health and economic outcomes like higher rates of COVID-19 mortality and unemployment, often because pre-existing disparities exacerbated the impact of the pandemic. The final rule describes these as “disproportionately impacted” households, communities, small businesses, and nonprofits.

To simplify administration of the program, the final rule presumes that certain populations were “impacted” and “disproportionately impacted” by the pandemic; these populations are presumed to be eligible for services that respond to the impact they experienced. The final rule also enumerates a non-exhaustive list of eligible uses that are recognized as responsive to the impacts or disproportionate impacts of COVID-19. Recipients providing enumerated uses to populations presumed eligible are clearly operating consistently with the final rule.

As discussed further in the section Framework for Eligible Uses Beyond Those Enumerated, recipients can also identify other pandemic impacts, impacted or disproportionately impacted populations or classes, and responses.

However, note that the final rule maintains that general infrastructure projects, including roads, streets, and surface transportation infrastructure, would generally not be eligible under this eligible use category, unless the project responded to a specific pandemic public health need or a specific negative economic impact. Similarly, general economic development or workforce development – activities that do not respond to negative economic impacts of the pandemic but rather seek to more generally enhance the jurisdiction’s business climate – would generally not be eligible under this eligible use category.



Assistance to Households

Impacted Households and Communities

Treasury presumes the following households and communities are impacted by the pandemic:

- ✓ Low- or-moderate income households or communities
- ✓ Households that experienced unemployment
- ✓ Households that experienced increased food or housing insecurity
- ✓ Households that qualify for the Children's Health Insurance Program, Childcare Subsidies through the Child Care Development Fund (CCDF) Program, or Medicaid
- ✓ *When providing affordable housing programs:* households that qualify for the National Housing Trust Fund and Home Investment Partnerships Program
- ✓ *When providing services to address lost instructional time in K-12 schools:* any student that lost access to in-person instruction for a significant period of time

Low- or moderate-income households and communities are those with (i) income at or below 300 percent of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines or (ii) income at or below 65 percent of the area median income for the county and size of household based on the most recently published data. For the vast majority of communities, the Federal Poverty Guidelines are higher than the area's median income and using the Federal Poverty Guidelines would result in more households and communities being presumed eligible. Treasury has provided an easy-to-use spreadsheet with Federal Poverty Guidelines and area median income levels on its website.

Recipients can measure income for a specific household or the median income for the community, depending on whether the response they plan to provide serves specific households or the general community. The income thresholds vary by household size; recipients should generally use income thresholds for the appropriate household size but can use a default household size of three when easier for administration or when measuring income for a general community.

The income limit for 300 percent of the Federal Poverty Guidelines for a household of three is \$65,880 per year.³ In other words, recipients can always presume that a household earning below this level, or a community with median income below this level, is impacted by the pandemic and eligible for services to respond. Additionally, by following the steps detailed in the section Framework for Eligible Uses Beyond Those Enumerated, recipients may designate additional households as impacted or disproportionately impacted beyond these presumptions, and may also pursue projects not listed below in response to these impacts consistent with Treasury's standards.

³ For recipients in Alaska, the income limit for 300 percent of the Federal Poverty Guidelines for a household of three is \$82,350 per year. For recipients in Hawaii, the income limit for 300 percent of the Federal Poverty Guidelines for a household of three is \$75,780 per year.



Treasury recognizes the enumerated projects below, which have been expanded under the final rule, as eligible to respond to impacts of the pandemic on households and communities:

- ✓ Food assistance (e.g., child nutrition programs, including school meals) & food banks
- ✓ Emergency housing assistance: rental assistance, mortgage assistance, utility assistance, assistance paying delinquent property taxes, counseling and legal aid to prevent eviction and homelessness & emergency programs or services for homeless individuals, including temporary residences for people experiencing homelessness
- ✓ Health insurance coverage expansion
- ✓ Benefits for surviving family members of individuals who have died from COVID-19
- ✓ Assistance to individuals who want and are available for work, including job training, public jobs programs and fairs, support for childcare and transportation to and from a jobsite or interview, incentives for newly-employed workers, subsidized employment, grants to hire underserved workers, assistance to unemployed individuals to start small businesses & development of job and workforce training centers
- ✓ Financial services for the unbanked and underbanked
- ✓ Burials, home repair & home weatherization
- ✓ Programs, devices & equipment for internet access and digital literacy, including subsidies for costs of access
- ✓ Cash assistance
- ✓ Paid sick, medical, and family leave programs
- ✓ Assistance in accessing and applying for public benefits or services
- ✓ Childcare and early learning services, home visiting programs, services for child welfare-involved families and foster youth & childcare facilities
- ✓ Assistance to address the impact of learning loss for K-12 students (e.g., high-quality tutoring, differentiated instruction)
- ✓ Programs or services to support long-term housing security: including development of affordable housing and permanent supportive housing
- ✓ Certain contributions to an Unemployment Insurance Trust Fund⁴

⁴ Recipients may only use SLFRF funds for contributions to unemployment insurance trust funds and repayment of the principal amount due on advances received under Title XII of the Social Security Act up to an amount equal to (i) the difference between the balance in the recipient's unemployment insurance trust fund as of January 27, 2020 and the balance of such account as of May 17, 2021, plus (ii) the principal amount outstanding as of May 17, 2021 on any advances received under Title XII of the Social Security Act between January 27, 2020 and May 17, 2021. Further, recipients may use SLFRF funds for the payment of any interest due on such Title XII advances. Additionally, a recipient that deposits SLFRF funds into its unemployment insurance trust fund to fully restore the pre-pandemic balance may not draw down that balance and deposit more SLFRF funds, back up to the pre-pandemic balance. Recipients that deposit SLFRF funds into an unemployment insurance trust fund, or use SLFRF funds to repay principal on Title XII advances, may not take action to reduce benefits available to unemployed workers by changing the computation method governing regular unemployment compensation in a way that results in a reduction of average weekly benefit amounts or the number of weeks of benefits payable (i.e., maximum benefit entitlement).



Disproportionately Impacted Households and Communities

Treasury presumes the following households and communities are disproportionately impacted by the pandemic:

- ✓ Low -income households and communities
- ✓ Households residing in Qualified Census Tracts
- ✓ Households that qualify for certain federal benefits⁵
- ✓ Households receiving services provided by Tribal governments
- ✓ Households residing in the U.S. territories or receiving services from these governments

Low-income households and communities are those with (i) income at or below 185 percent of the Federal Poverty Guidelines for the size of its household based on the most recently published poverty guidelines or (ii) income at or below 40 percent of area median income for its county and size of household based on the most recently published data. For the vast majority of communities, the Federal Poverty Guidelines level is higher than the area median income level and using this level would result in more households and communities being presumed eligible. Treasury has provided an easy-to-use spreadsheet with Federal Poverty Guidelines and area median income levels on its website.

Recipients can measure income for a specific household or the median income for the community, depending on whether the service they plan to provide serves specific households or the general community. The income thresholds vary by household size; recipients should generally use income thresholds for the appropriate household size but can use a default household size of three when easier for administration or when measuring income for a general community.

The income limit for 185 percent of the Federal Poverty Guidelines for a household of three is \$40,626 per year.⁶ In other words, recipients can always presume that a household earning below this level, or a community with median income below this level, is disproportionately impacted by the pandemic and eligible for services to respond.

⁵ These programs are Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), Free- and Reduced-Price Lunch (NSLP) and/or School Breakfast (SBP) programs, Medicare Part D Low-Income Subsidies, Supplemental Security Income (SSI), Head Start and/or Early Head Start, Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Section 8 Vouchers, Low-Income Home Energy Assistance Program (LIHEAP), and Pell Grants. For services to address educational disparities, Treasury will recognize Title I eligible schools as disproportionately impacted and responsive services that support the school generally or support the whole school as eligible.

⁶ For recipients in Alaska, the income limit for 185 percent of the Federal Poverty Guidelines for a household of three is \$50,783 per year. For recipients in Hawaii, the income limit for 185 percent of the Federal Poverty Guidelines for a household of three is \$46,731 per year



Treasury recognizes the enumerated projects below, which have been expanded under the final rule, as eligible to respond to disproportionate impacts of the pandemic on households and communities:

- ✓ Pay for community health workers to help households access health & social services
- ✓ Remediation of lead paint or other lead hazards
- ✓ Primary care clinics, hospitals, integration of health services into other settings, and other investments in medical equipment & facilities designed to address health disparities
- ✓ Housing vouchers & assistance relocating to neighborhoods with higher economic opportunity
- ✓ Investments in neighborhoods to promote improved health outcomes
- ✓ Improvements to vacant and abandoned properties, including rehabilitation or maintenance, renovation, removal and remediation of environmental contaminants, demolition or deconstruction, greening/vacant lot cleanup & conversion to affordable housing⁷
- ✓ Services to address educational disparities, including assistance to high-poverty school districts & educational and evidence-based services to address student academic, social, emotional, and mental health needs
- ✓ Schools and other educational equipment & facilities
- ✓ Responses available to respond to impacts of the pandemic on households and communities (including those listed on page 18)

⁷ Please see the final rule for further details and conditions applicable to this eligible use. This includes Treasury's presumption that demolition of vacant or abandoned residential properties that results in a net reduction in occupiable housing units for low- and moderate-income individuals in an area where the availability of such housing is lower than the need for such housing is ineligible for support with SLFRF funds.



Assistance to Small Businesses

Small businesses have faced widespread challenges due to the pandemic, including periods of shutdown, declines in revenue, or increased costs. The final rule provides many tools for recipients to respond to the impacts of the pandemic on small businesses, or disproportionate impacts on businesses where pre-existing disparities like lack of access to capital compounded the pandemic's effects.

Small businesses eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "small business," specifically:

1. Have no more than 500 employees, or if applicable, the size standard in number of employees [established](#) by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates, and
2. Are a small business concern as defined in section 3 of the Small Business Act⁸ (which includes, among other requirements, that the business is independently owned and operated and is not dominant in its field of operation).

Impacted Small Businesses

Recipients can identify small businesses impacted by the pandemic, and measures to respond, in many ways; for example, recipients could consider:

- | | |
|---------------------------------------|--|
| ✓ Decreased revenue or gross receipts | ✓ Capacity to weather financial hardship |
| ✓ Financial insecurity | ✓ Challenges covering payroll, rent or mortgage, and other operating costs |
| ✓ Increased costs | |

Assistance to small businesses that experienced negative economic impacts includes the following enumerated uses:

- | | |
|---|--|
| ✓ Loans or grants to mitigate financial hardship, such as by supporting payroll and benefits, costs to retain employees, and mortgage, rent, utility, and other operating costs | ✓ Technical assistance, counseling, or other services to support business planning |
|---|--|

Disproportionately Impacted Small Businesses

Treasury presumes that the following small businesses are disproportionately impacted by the pandemic:

⁸ 15 U.S.C. 632.



- ✓ Small businesses operating in Qualified Census Tracts
- ✓ Small businesses operated by Tribal governments or on Tribal lands
- ✓ Small businesses operating in the U.S. territories

Assistance to disproportionately impacted small businesses includes the following enumerated uses, which have been expanded under the final rule:

- ✓ Rehabilitation of commercial properties, storefront improvements & façade improvements
- ✓ Technical assistance, business incubators & grants for start-up or expansion costs for small businesses
- ✓ Support for microbusinesses, including financial, childcare, and transportation costs



Assistance to Nonprofits

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees.

Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Impacted Nonprofits

Recipients can identify nonprofits impacted by the pandemic, and measures to respond, in many ways; for example, recipients could consider:

- ✓ Decreased revenue (e.g., from donations and fees)
- ✓ Financial insecurity
- ✓ Increased costs (e.g., uncompensated increases in service need)
- ✓ Capacity to weather financial hardship
- ✓ Challenges covering payroll, rent or mortgage, and other operating costs

Assistance to nonprofits that experienced negative economic impacts includes the following enumerated uses:

- ✓ Loans or grants to mitigate financial hardship
- ✓ Technical or in-kind assistance or other services that mitigate negative economic impacts of the pandemic

Disproportionately Impacted Nonprofits

Treasury presumes that the following nonprofits are disproportionately impacted by the pandemic:

- ✓ Nonprofits operating in Qualified Census Tracts
- ✓ Nonprofits operated by Tribal governments or on Tribal lands
- ✓ Nonprofits operating in the U.S. territories

Recipients may identify appropriate responses that are related and reasonably proportional to addressing these disproportionate impacts.



Aid to Impacted Industries

Recipients may use SLFRF funding to provide aid to industries impacted by the COVID-19 pandemic. Recipients should first designate an impacted industry and then provide aid to address the impacted industry's negative economic impact.

This sub-category of eligible uses does not separately identify disproportionate impacts and corresponding responsive services.

1. Designating an impacted industry. There are two main ways an industry can be designated as "impacted."

1. If the industry is in the travel, tourism, or hospitality sectors (including Tribal development districts), the industry is impacted.
2. If the industry is outside the travel, tourism, or hospitality sectors, the industry is impacted if:
 - a. The industry experienced at least 8 percent employment loss from pre-pandemic levels,⁹ or
 - b. The industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries as of the date of the final rule, based on the totality of economic indicators or qualitative data (if quantitative data is unavailable), and if the impacts were generally due to the COVID-19 public health emergency.

Recipients have flexibility to define industries broadly or narrowly, but Treasury encourages recipients to define narrow and discrete industries eligible for aid. State and territory recipients also have flexibility to define the industries with greater geographic precision; for example, a state may identify a particular industry in a certain region of a state as impacted.

2. Providing eligible aid to the impacted industry. Aid may only be provided to support businesses, attractions, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. Further, aid should be generally broadly available to all businesses within the impacted industry to avoid potential conflicts of interest, and Treasury encourages aid to be first used for operational expenses, such as payroll, before being used on other types of costs.

⁹ Specifically, a recipient should compare the percent change in the number of employees of the recipient's identified industry and the national Leisure & Hospitality sector in the three months before the pandemic's most severe impacts began (a straight three-month average of seasonally-adjusted employment data from December 2019, January 2020, and February 2020) with the latest data as of the final rule (a straight three-month average of seasonally-adjusted employment data from September 2021, October 2021, and November 2021). For parity and simplicity, smaller recipients without employment data that measure industries in their specific jurisdiction may use data available for a broader unit of government for this calculation (e.g., a county may use data from the state in which it is located; a city may use data for the county, if available, or state in which it is located) solely for purposes of determining whether a particular industry is an impacted industry.



Treasury recognizes the enumerated projects below as eligible responses to impacted industries.

- ✓ Aid to mitigate financial hardship, such as supporting payroll costs, lost pay and benefits for returning employees, support of operations and maintenance of existing equipment and facilities
- ✓ Technical assistance, counseling, or other services to support business planning
- ✓ COVID-19 mitigation and infection prevention measures (see section Public Health)

As with all eligible uses, recipients may pursue a project not listed above by undergoing the steps outlined in the section Framework for Eligible Uses Beyond Those Enumerated.



PUBLIC SECTOR CAPACITY

Recipients may use SLFRF funding to restore and bolster public sector capacity, which supports government's ability to deliver critical COVID-19 services. There are three main categories of eligible uses to bolster public sector capacity and workforce: Public Safety, Public Health, and Human Services Staff; Government Employment and Rehiring Public Sector Staff; and Effective Service Delivery.

Public Safety, Public Health, and Human Services Staff

SLFRF funding may be used for payroll and covered benefits for public safety, public health, health care, human services and similar employees of a recipient government, for the portion of the employee's time spent responding to COVID-19. Recipients should follow the steps below.

1. **Identify eligible public safety, public health, and human services staff.** Public safety staff include:

- ✓ Police officers (including state police officers)
- ✓ Sheriffs and deputy sheriffs
- ✓ Firefighters
- ✓ Emergency medical responders
- ✓ Correctional and detention officers
- ✓ Dispatchers and supervisor personnel that directly support public safety staff

Public health staff include:

- ✓ Employees involved in providing medical and other physical or mental health services to patients and supervisory personnel, including medical staff assigned to schools, prisons, and other such institutions
- ✓ Laboratory technicians, medical examiners, morgue staff, and other support services essential for patient care
- ✓ Employees of public health departments directly engaged in public health matters and related supervisory personnel

Human services staff include:

- ✓ Employees providing or administering social services and public benefits
- ✓ Child welfare services employees
- ✓ Child, elder, or family care employees

2. **Assess portion of time spent on COVID-19 response for eligible staff.**

Recipients can use a variety of methods to assess the share of an employees' time spent responding to COVID-19, including using reasonable estimates—such as estimating the share of time based on discussions with staff and applying that share to all employees in that position.

For administrative convenience, recipients can consider public health and safety employees entirely devoted to responding to COVID-19 (and their payroll and benefits fully covered by SLFRF) if the



employee, or his or her operating unit or division, is “primarily dedicated” to responding to COVID-19. Primarily dedicated means that more than half of the employee, unit, or division’s time is dedicated to responding to COVID-19.

Recipients must periodically reassess their determination and maintain records to support their assessment, although recipients do not need to track staff hours.

3. **Use SLFRF funding for payroll and covered benefits for the portion of eligible staff time spent on COVID-19 response.** SLFRF funding may be used for payroll and covered benefits for the portion of the employees’ time spent on COVID-19 response, as calculated above, through the period of performance.

Government Employment and Rehiring Public Sector Staff

Under the increased flexibility of the final rule, SLFRF funding may be used to support a broader set of uses to restore and support public sector employment. Eligible uses include hiring up to a pre-pandemic baseline that is adjusted for historic underinvestment in the public sector, providing additional funds for employees who experienced pay cuts or were furloughed, avoiding layoffs, providing worker retention incentives, and paying for ancillary administrative costs related to hiring, support, and retention.

- **Restoring pre-pandemic employment.** Recipients have two options to restore pre-pandemic employment, depending on the recipient’s needs.
 - *If the recipient simply wants to hire back employees for pre-pandemic positions:* Recipients may use SLFRF funds to hire employees for the same positions that existed on January 27, 2020 but that were unfilled or eliminated as of March 3, 2021. Recipients may use SLFRF funds to cover payroll and covered benefits for such positions through the period of performance.
 - *If the recipient wants to hire above the pre-pandemic baseline and/or would like to have flexibility in positions:* Recipients may use SLFRF funds to pay for payroll and covered benefits associated with the recipient increasing its number of budgeted FTEs up to 7.5 percent above its pre-pandemic baseline. Specifically, recipients should undergo the following steps:
 - a. Identify the recipient’s budgeted FTE level on January 27, 2020. This includes all budgeted positions, filled and unfilled. This is called the *pre-pandemic baseline*.
 - b. Multiply the pre-pandemic baseline by 1.075. This is called the *adjusted pre-pandemic baseline*.
 - c. Identify the recipient’s budgeted FTE level on March 3, 2021, which is the beginning of the period of performance for SLFRF funds. Recipients may, but are not required to, exclude the number of FTEs dedicated to responding to the COVID-19 public health emergency. This is called the *actual number of FTEs*.
 - d. Subtract the *actual number of FTEs* from the *adjusted pre-pandemic baseline* to calculate the number of FTEs that can be covered by SLFRF funds. Recipients do not have to hire for the same roles that existed pre-pandemic.

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Recipients may use SLFRF funds to cover payroll and covered benefits through the period of performance; these employees must have begun their employment on or after March 3, 2021. Recipients may only use SLFRF funds for additional FTEs hired over the March 3, 2021 level (i.e., the *actual number of FTEs*).

- **Supporting and retaining public sector workers.** Recipients can also use funds in other ways that support the public sector workforce.¹⁰ These include:
 - **Providing additional funding for employees who experienced pay reductions or were furloughed** since the onset of the pandemic, up to the difference in the employee's pay, taking into account unemployment benefits received.
 - **Maintaining current compensation levels to prevent layoffs.** SLFRF funds may be used to maintain current compensation levels, with adjustments for inflation, in order to prevent layoffs that would otherwise be necessary.
 - **Providing worker retention incentives, including reasonable increases in compensation** to persuade employees to remain with the employer as compared to other employment options. Retention incentives must be entirely additive to an employee's regular compensation, narrowly tailored to need, and should not exceed incentives traditionally offered by the recipient or compensation that alternative employers may offer to compete for the employees. Treasury presumes that retention incentives that are less than 25 percent of the rate of base pay for an individual employee or 10 percent for a group or category of employees are reasonably proportional to the need to retain employees, as long as other requirements are met.
- **Covering administrative costs associated with administering the hiring, support, and retention programs above.**

Effective Service Delivery

SLFRF funding may be used to improve the efficacy of public health and economic programs through tools like program evaluation, data, and outreach, as well as to address administrative needs caused or exacerbated by the pandemic. Eligible uses include:

- **Supporting program evaluation, data, and outreach through:**

¹⁰ Recipients should be able to substantiate that these uses of funds are substantially due to the public health emergency or its negative economic impacts (e.g., fiscal pressures on state and local budgets) and respond to its impacts. See the final rule for details on these uses.



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- ✓ Program evaluation and evidence resources
 - ✓ Data analysis resources to gather, assess, share, and use data
 - ✓ Technology infrastructure to improve access to and the user experience of government IT systems, as well as technology improvements to increase public access and delivery of government programs and services
 - ✓ Community outreach and engagement activities
 - ✓ Capacity building resources to support using data and evidence, including hiring staff, consultants, or technical assistance support
- **Addressing administrative needs, including:**
 - ✓ Administrative costs for programs responding to the public health emergency and its economic impacts, including non-SLFRF and non-federally funded programs
 - ✓ Address administrative needs caused or exacerbated by the pandemic, including addressing backlogs caused by shutdowns, increased repair or maintenance needs, and technology infrastructure to adapt government operations to the pandemic (e.g., video-conferencing software, data and case management systems)

**CAPITAL EXPENDITURES**

As described above, the final rule clarifies that recipients may use funds for programs, services, and capital expenditures that respond to the public health and negative economic impacts of the pandemic. Any use of funds in this category for a capital expenditure must comply with the capital expenditure requirements, in addition to other standards for uses of funds.

Capital expenditures are subject to the same eligibility standard as other eligible uses to respond to the pandemic's public health and economic impacts; specifically, they must be related and reasonably proportional to the pandemic impact identified and reasonably designed to benefit the impacted population or class.

For ease of administration, the final rule identifies enumerated types of capital expenditures that Treasury has identified as responding to the pandemic's impacts; these are listed in the applicable sub-category of eligible uses (e.g., public health, assistance to households, etc.). Recipients may also identify other responsive capital expenditures. Similar to other eligible uses in the SLFRF program, no pre-approval is required for capital expenditures.

To guide recipients' analysis of whether a capital expenditure meets the eligibility standard, recipients (with the exception of Tribal governments) must complete and meet the requirements of a written justification for capital expenditures equal to or greater than \$1 million. For large-scale capital expenditures, which have high costs and may require an extended length of time to complete, as well as most capital expenditures for non-enumerated uses of funds, Treasury requires recipients to submit their written justification as part of regular reporting. Specifically:

If a project has total capital expenditures of	and the use is enumerated by Treasury as eligible, then	and the use is beyond those enumerated by Treasury as eligible, then
Less than \$1 million	No Written Justification required	No Written Justification required
Greater than or equal to \$1 million, but less than \$10 million	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury	Written Justification required and recipients must submit as part of regular reporting to Treasury
\$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury	

A Written Justification includes:

- *Description of the harm or need to be addressed.* Recipients should provide a description of the specific harm or need to be addressed and why the harm was exacerbated or caused by the public health emergency. Recipients may provide quantitative information on the extent and the type of harm, such as the number of individuals or entities affected.



- *Explanation of why a capital expenditure is appropriate.* For example, recipients should include an explanation of why existing equipment and facilities, or policy changes or additional funding to pertinent programs or services, would be inadequate.
- *Comparison of proposed capital project against at least two alternative capital expenditures and demonstration of why the proposed capital expenditure is superior.* Recipients should consider the effectiveness of the capital expenditure in addressing the harm identified and the expected total cost (including pre-development costs) against at least two alternative capital expenditures.

Where relevant, recipients should consider the alternatives of improving existing capital assets already owned or leasing other capital assets.

Treasury presumes that the following capital projects are generally ineligible:

- | | |
|---|---|
| ✖ Construction of new correctional facilities as a response to an increase in rate of crime | ✖ Construction of convention centers, stadiums, or other large capital projects intended for general economic development or to aid impacted industries |
| ✖ Construction of new congregate facilities to decrease spread of COVID-19 in the facility | |

In undertaking capital expenditures, Treasury encourages recipients to adhere to strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also encourages recipients to prioritize in their procurements employers with high labor standards and to prioritize employers without recent violations of federal and state labor and employment laws.

**FRAMEWORK FOR ELIGIBLE USES BEYOND THOSE ENUMERATED**

As described above, recipients have broad flexibility to identify and respond to other pandemic impacts and serve other populations that experienced pandemic impacts, beyond the enumerated uses and presumed eligible populations. Recipients should undergo the following steps to decide whether their project is eligible:

Step	1. Identify COVID-19 public health or economic impact	2. Design a response that addresses or responds to the impact
Analysis	- Can identify impact to a specific household, business or nonprofit or to a class of households, businesses or nonprofits (i.e., group) - Can also identify disproportionate impacts, or more severe impacts, to a specific beneficiary or to a class	- Types of responses can include a program, service, or capital expenditure - Response should be related and reasonably proportional to the harm - Response should also be reasonably designed to benefit impacted individual or class

1. Identify a COVID-19 public health or negative economic impact on an individual or a class.

Recipients should identify an individual or class that is “impacted” or “disproportionately impacted” by the COVID-19 public health emergency or its negative economic impacts as well as the specific impact itself.

- “Impacted” entities are those impacted by the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID-19 public health emergency. For example, an individual who lost their job or a small business that saw lower revenue during a period of closure would both have experienced impacts of the pandemic.
- “Disproportionately impacted” entities are those that experienced disproportionate public health or economic outcomes from the pandemic; Treasury recognizes that pre-existing disparities, in many cases, amplified the impacts of the pandemic, causing more severe impacts in underserved communities. For example, a household living in a neighborhood with limited access to medical care and healthy foods may have faced health disparities before the pandemic, like a higher rate of chronic health conditions, that contributed to more severe health outcomes during the COVID-19 pandemic.

The recipient may choose to identify these impacts at either the individual level or at a class level. If the recipient is identifying impacts at the individual level, they should retain documentation supporting the impact the individual experienced (e.g., documentation of lost revenues from a small business). Such documentation can be streamlined in many cases (e.g., self-attestation that a household requires food assistance).

Recipients also have broad flexibility to identify a “class” – or a group of households, small businesses, or nonprofits – that experienced an impact. In these cases, the recipients should



first identify the class and the impact that it faced. Then, recipients only need to document that the individuals served fall within that class; recipients do not need to document a specific impact to each individual served. For example, a recipient could identify that restaurants in the downtown area faced substantial declines in revenue due to decreased foot traffic from workers; the recipient could develop a program to respond to the impact on that class and only needs to document that the businesses being served are restaurants in the downtown area.

Recipients should keep the following considerations in mind when designating a class:

- **There should be a relationship between the definition of the class and the proposed response.** Larger and less-specific classes are less likely to have experienced similar harms, which may make it more difficult to design a response that appropriately responds to those harms.
- **Classes may be determined on a population basis or on a geographic basis,** and the response should be appropriately matched. For example, a response might be designed to provide childcare to single parents, regardless of which neighborhood they live in, or a response might provide a park to improve the health of a disproportionately impacted neighborhood.
- **Recipients may designate classes that experienced disproportionate impact,** by assessing the impacts of the pandemic and finding that some populations experienced meaningfully more severe impacts than the general public. To determine these disproportionate impacts, recipients:
 - May designate classes based on academic research or government research publications (such as the citations provided in the supplementary information in the final rule), through analysis of their own data, or through analysis of other existing data sources.
 - May also consider qualitative research and sources to augment their analysis, or when quantitative data is not readily available. Such sources might include resident interviews or feedback from relevant state and local agencies, such as public health departments or social services departments.
 - Should consider the quality of the research, data, and applicability of analysis to their determination in all cases.
- **Some of the enumerated uses may also be appropriate responses to the impacts experienced by other classes of beneficiaries.** It is permissible for recipients to provide these services to other classes, so long as the recipient determines that the response is also appropriate for those groups.
- **Recipients may designate a class based on income level, including at levels higher than the final rule definition of "low- and moderate-income."** For example, a recipient may identify that households in their community with incomes above the final rule threshold for low-income nevertheless experienced disproportionate impacts from the pandemic and provide responsive services.

2. **Design a response that addresses or responds to the impact.** Programs, services, and other interventions must be reasonably designed to benefit the individual or class that experienced



the impact. They must also be related and reasonably proportional to the extent and type of impact experienced. For example, uses that bear no relation or are grossly disproportionate to the type or extent of the impact would not be eligible.

“Reasonably proportional” refers to the scale of the response compared to the scale of the harm, as well as the targeting of the response to beneficiaries compared to the amount of harm they experienced; for example, it may not be reasonably proportional for a cash assistance program to provide a very small amount of aid to a group that experienced severe harm and a much larger amount to a group that experienced relatively little harm. Recipients should consider relevant factors about the harm identified and the response to evaluate whether the response is reasonably proportional. For example, recipients may consider the size of the population impacted and the severity, type, and duration of the impact. Recipients may also consider the efficacy, cost, cost-effectiveness, and time to delivery of the response.

For disproportionately impacted communities, recipients may design interventions that address broader pre-existing disparities that contributed to more severe health and economic outcomes during the pandemic, such as disproportionate gaps in access to health care or pre-existing disparities in educational outcomes that have been exacerbated by the pandemic.



Premium Pay

The Coronavirus State and Local Fiscal Recovery Funds may be used to provide premium pay to eligible workers performing essential work during the pandemic. Premium pay may be awarded to eligible workers up to \$13 per hour. Premium pay must be in addition to wages or remuneration (i.e., compensation) the eligible worker otherwise receives. Premium pay may not exceed \$25,000 for any single worker during the program.

Recipients should undergo the following steps to provide premium pay to eligible workers.

1. **Identify an “eligible” worker.** Eligible workers include workers “needed to maintain continuity of operations of essential critical infrastructure sectors.” These sectors and occupations are eligible:

- | | |
|--|---|
| ✓ Health care | ✓ State, local, or Tribal government workforce |
| ✓ Emergency response | ✓ Workers providing vital services to Tribes |
| ✓ Sanitation, disinfection & cleaning | ✓ Educational, school nutrition, and other work required to operate a school facility |
| ✓ Maintenance | ✓ Laundry |
| ✓ Grocery stores, restaurants, food production, and food delivery | ✓ Elections |
| ✓ Pharmacy | ✓ Solid waste or hazardous materials management, response, and cleanup |
| ✓ Biomedical research | ✓ Work requiring physical interaction with patients |
| ✓ Behavioral health | ✓ Dental care |
| ✓ Medical testing and diagnostics | ✓ Transportation and warehousing |
| ✓ Home and community-based health care or assistance with activities of daily living | ✓ Hotel and commercial lodging facilities that are used for COVID-19 mitigation and containment |
| ✓ Family or child care | |
| ✓ Social services | |
| ✓ Public health | |
| ✓ Mortuary | |
| ✓ Critical clinical research, development, and testing necessary for COVID-19 response | |

Beyond this list, the chief executive (or equivalent) of a recipient government may designate additional non-public sectors as critical so long as doing so is necessary to protecting the health and wellbeing of the residents of such jurisdictions.

2. **Verify that the eligible worker performs “essential work,”** meaning work that:

- Is not performed while teleworking from a residence; and
- Involves either:
 - a. regular, in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or
 - b. regular physical handling of items that were handled by, or are to be handled by, patients, the public, or coworkers of the individual that is performing the work.



3. Confirm that the premium pay “responds to” workers performing essential work during the COVID-19 public health emergency. Under the final rule, which broadened the share of eligible workers who can receive premium pay without a written justification, recipients may meet this requirement in one of three ways:

- Eligible worker receiving premium pay is earning (with the premium included) at or below 150 percent of their residing state or county’s average annual wage for all occupations, as defined by the Bureau of Labor Statistics’ [Occupational Employment and Wage Statistics](#), whichever is higher, on an annual basis; or
- Eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions; or
- If a worker does not meet either of the above requirements, the recipient must submit written justification to Treasury detailing how the premium pay is otherwise responsive to workers performing essential work during the public health emergency. This may include a description of the essential worker’s duties, health, or financial risks faced due to COVID-19, and why the recipient determined that the premium pay was responsive. Treasury anticipates that recipients will easily be able to satisfy the justification requirement for front-line workers, like nurses and hospital staff.

Premium pay may be awarded in installments or lump sums (e.g., monthly, quarterly, etc.) and may be awarded to hourly, part-time, or salaried or non-hourly workers. Premium pay must be paid in addition to wages already received and may be paid retrospectively. A recipient may not use SLFRF to merely reimburse itself for premium pay or hazard pay already received by the worker, and premium pay may not be paid to volunteers.



Water & Sewer Infrastructure

The Coronavirus State and Local Fiscal Recovery Funds may be used to make necessary investments in water and sewer infrastructure. State, local, and Tribal governments have a tremendous need to address the consequences of deferred maintenance in drinking water systems and removal, management, and treatment of sewage and stormwater, along with additional resiliency measures needed to adapt to climate change.

Recipients may undertake the eligible projects below:

PROJECTS ELIGIBLE UNDER EPA'S CLEAN WATER STATE REVOLVING FUND (CWSRF)

Eligible projects under the CWSRF, and the final rule, include:

- ✓ Construction of publicly owned treatment works
- ✓ Projects pursuant to implementation of a nonpoint source pollution management program established under the Clean Water Act (CWA)
- ✓ Decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage
- ✓ Management and treatment of stormwater or subsurface drainage water
- ✓ Water conservation, efficiency, or reuse measures
- ✓ Development and implementation of a conservation and management plan under the CWA
- ✓ Watershed projects meeting the criteria set forth in the CWA
- ✓ Energy consumption reduction for publicly owned treatment works
- ✓ Reuse or recycling of wastewater, stormwater, or subsurface drainage water
- ✓ Security of publicly owned treatment works

Treasury encourages recipients to review the EPA handbook for the [CWSRF](#) for a full list of eligibilities.

PROJECTS ELIGIBLE UNDER EPA'S DRINKING WATER STATE REVOLVING FUND (DWSRF)

Eligible drinking water projects under the DWSRF, and the final rule, include:

- ✓ Facilities to improve drinking water quality
- ✓ Transmission and distribution, including improvements of water pressure or prevention of contamination in infrastructure and lead service line replacements
- ✓ New sources to replace contaminated drinking water or increase drought resilience, including aquifer storage and recovery system for water storage
- ✓ Green infrastructure, including green roofs, rainwater harvesting collection, permeable pavement
- ✓ Storage of drinking water, such as to prevent contaminants or equalize water demands
- ✓ Purchase of water systems and interconnection of systems
- ✓ New community water systems

Treasury encourages recipients to review the EPA handbook for the [DWSRF](#) for a full list of eligibilities.

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**ADDITIONAL ELIGIBLE PROJECTS**

With broadened eligibility under the final rule, SLFRF funds may be used to fund additional types of projects— such as additional stormwater infrastructure, residential wells, lead remediation, and certain rehabilitations of dams and reservoirs — beyond the CWSRF and DWSRF, if they are found to be “necessary” according to the definition provided in the final rule and outlined below.

- ✓ Culvert repair, resizing, and removal, replacement of storm sewers, and additional types of stormwater infrastructure
- ✓ Infrastructure to improve access to safe drinking water for individual served by residential wells, including testing initiatives, and treatment/remediation strategies that address contamination
- ✓ Dam and reservoir rehabilitation if primary purpose of dam or reservoir is for drinking water supply and project is necessary for provision of drinking water
- ✓ Broad set of lead remediation projects eligible under EPA grant programs authorized by the Water Infrastructure Improvements for the Nation (WIIN) Act, such as lead testing, installation of corrosion control treatment, lead service line replacement, as well as water quality testing, compliance monitoring, and remediation activities, including replacement of internal plumbing and faucets and fixtures in schools and childcare facilities

A “necessary” investment in infrastructure must be:

- (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which may include a reasonable projection of increased need, whether due to population growth or otherwise,
- (2) a cost-effective means for meeting that need, taking into account available alternatives, and
- (3) for investments in infrastructure that supply drinking water in order to meet projected population growth, projected to be sustainable over its estimated useful life.

Please note that DWSRF and CWSRF-eligible projects are generally presumed to be necessary investments. Additional eligible projects generally must be responsive to an identified need to achieve or maintain an adequate minimum level of service. Recipients are only required to assess cost-effectiveness of projects for the creation of new drinking water systems, dam and reservoir rehabilitation projects, or projects for the extension of drinking water service to meet population growth needs. Recipients should review the supplementary information to the final rule for more details on requirements applicable to each type of investment.

APPLICABLE STANDARDS & REQUIREMENTS

Treasury encourages recipients to adhere to strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also encourages recipients to prioritize in their procurements employers with high labor standards and to prioritize employers without recent violations of federal and state labor and employment laws.

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Broadband Infrastructure

The Coronavirus State and Local Fiscal Recovery Funds may be used to make necessary investments in broadband infrastructure, which has been shown to be critical for work, education, healthcare, and civic participation during the public health emergency. The final rule broadens the set of eligible broadband infrastructure investments that recipients may undertake.

Recipients may pursue investments in broadband infrastructure meeting technical standards detailed below, as well as an expanded set of cybersecurity investments.

BROADBAND INFRASTRUCTURE INVESTMENTS

Recipients should adhere to the following requirements when designing a broadband infrastructure project:

1. **Identify an eligible area for investment.** Recipients are encouraged to prioritize projects that are designed to serve locations without access to reliable wireline 100/20 Mbps broadband service (meaning service that reliably provides 100 Mbps download speed and 20 Mbps upload speed through a wireline connection), but are broadly able to invest in projects designed to provide service to locations with an identified need for additional broadband investment. Recipients have broad flexibility to define need in their community. Examples of need could include:
 - ✓ Lack of access to a reliable high-speed broadband connection
 - ✓ Lack of affordable broadband
 - ✓ Lack of reliable service

If recipients are considering deploying broadband to locations where there are existing and enforceable federal or state funding commitments for reliable service of at least 100/20 Mbps, recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investment that is not met by existing federal or state funding commitments. Recipients must also ensure that SLFRF funds will not be used for costs that will be reimbursed by the other federal or state funding streams.

2. **Design project to meet high-speed technical standards.** Recipients are required to design projects to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds. In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, eligible projects may be designed to reliably meet or exceed 100/20 Mbps and be scalable to a minimum of symmetrical 100 Mbps download and upload speeds.

Treasury encourages recipients to prioritize investments in fiber-optic infrastructure wherever feasible and to focus on projects that will achieve last-mile connections. Further, Treasury encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and co-operatives.



3. **Require enrollment in a low-income subsidy program.** Recipients must require the service provider for a broadband project that provides service to households to either:

- ✓ Participate in the FCC's Affordable Connectivity Program (ACP)
- ✓ Provide access to a broad-based affordability program to low-income consumers that provides benefits commensurate to ACP

Treasury encourages broadband services to also include at least one low-cost option offered without data usage caps at speeds sufficient for a household with multiple users to simultaneously telework and engage in remote learning. Recipients are also encouraged to consult with the community on affordability needs.

CYBERSECURITY INVESTMENTS

SLFRF may be used for modernization of cybersecurity for existing and new broadband infrastructure, regardless of their speed delivery standards. This includes modernization of hardware and software.

APPLICABLE STANDARDS & REQUIREMENTS

Treasury encourages recipients to adhere to strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also encourages recipients to prioritize in their procurements employers with high labor standards and to prioritize employers without recent violations of federal and state labor and employment laws.



Restrictions on Use

While recipients have considerable flexibility to use Coronavirus State and Local Fiscal Recovery Funds to address the diverse needs of their communities, some restrictions on use of funds apply.

OFFSET A REDUCTION IN NET TAX REVENUE

- **States and territories may not use this funding to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation beginning on March 3, 2021, through the last day of the fiscal year in which the funds provided have been spent.** If a state or territory cuts taxes during this period, it must demonstrate how it paid for the tax cuts from sources other than SLFRF, such as by enacting policies to raise other sources of revenue, by cutting spending, or through higher revenue due to economic growth. If the funds provided have been used to offset tax cuts, the amount used for this purpose must be repaid to the Treasury.

DEPOSITS INTO PENSION FUNDS

- **No recipients except Tribal governments may use this funding to make a deposit to a pension fund.** Treasury defines a “deposit” as an extraordinary contribution to a pension fund for the purpose of reducing an accrued, unfunded liability. While pension deposits are prohibited, recipients may use funds for routine payroll contributions connected to an eligible use of funds (e.g., for public health and safety staff). Examples of extraordinary payments include ones that:
 - ✗ Reduce a liability incurred prior to the start of the COVID-19 public health emergency and occur outside the recipient's regular timing for making the payment
 - ✗ Occur at the regular time for pension contributions but is larger than a regular payment would have been

ADDITIONAL RESTRICTIONS AND REQUIREMENTS

Additional restrictions and requirements that apply across all eligible use categories include:

- **No debt service or replenishing financial reserves.** Since SLFRF funds are intended to be used prospectively, recipients may not use SLFRF funds for debt service or replenishing financial reserves (e.g., rainy day funds).
- **No satisfaction of settlements and judgments.** Satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding is itself not an eligible use. However, if a settlement requires the recipient to provide services or incur other costs that are an eligible use of SLFRF funds, SLFRF may be used for those costs.
- **Additional general restrictions.** SLFRF funds may not be used for a project that conflicts with or contravenes the purpose of the American Rescue Plan Act statute (e.g., uses of funds that

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U.S. DEPARTMENT OF THE TREASURY

undermine COVID-19 mitigation practices in line with CDC guidance and recommendations) and may not be used in violation of the Award Terms and Conditions or conflict of interest requirements under the Uniform Guidance. Other applicable laws and regulations, outside of SLFRF program requirements, may also apply (e.g., laws around procurement, contracting, conflicts-of-interest, environmental standards, or civil rights).



Program Administration

The Coronavirus State and Local Fiscal Recovery Funds final rule details a number of administrative processes and requirements, including on distribution of funds, timeline for use of funds, transfer of funds, treatment of loans, use of funds to meet non-federal match or cost-share requirements, administrative expenses, reporting on use of funds, and remediation and recoupment of funds used for ineligible purposes. This section provides a summary for the most frequently asked questions.

TIMELINE FOR USE OF FUNDS

Under the SLFRF, funds must be used for costs incurred on or after March 3, 2021. Further, costs must be obligated by December 31, 2024, and expended by December 31, 2026.

TRANSFERS

Recipients may undertake projects on their own or through subrecipients, which carry out eligible uses on behalf of a recipient, including pooling funds with other recipients or blending and braiding SLFRF funds with other sources of funds. Localities may also transfer their funds to the state through section 603(c)(4), which will decrease the locality's award and increase the state award amounts.

LOANS

Recipients may generally use SLFRF funds to provide loans for uses that are otherwise eligible, although there are special rules about how recipients should track program income depending on the length of the loan. Recipients should consult the final rule if they seek to utilize these provisions.

NON-FEDERAL MATCH OR COST-SHARE REQUIREMENTS

Funds available under the "revenue loss" eligible use category (sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act) generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. However, note that SLFRF funds may not be used as the non-federal share for purposes of a state's Medicaid and CHIP programs because the Office of Management and Budget has approved a waiver as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations.

SLFRF funds beyond those that are available under the revenue loss eligible use category may not be used to meet the non-federal match or cost-share requirements of other federal programs, other than as specifically provided for by statute. As an example, the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-federal match requirements of authorized Bureau of Reclamation projects and certain broadband deployment projects. Recipients should consult the final rule for further details if they seek to utilize SLFRF funds as a match for these projects.

ADMINISTRATIVE EXPENSES

SLFRF funds may be used for direct and indirect administrative expenses involved in administering the program. For details on permissible direct and indirect administrative costs, recipients should refer to Treasury's [Compliance and Reporting Guidance](#). Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect costs.

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REPORTING, COMPLIANCE & RECOUPMENT

Recipients are required to comply with Treasury's [Compliance and Reporting Guidance](#), which includes submitting mandatory periodic reports to Treasury.

Funds used in violation of the final rule are subject to remediation and recoupment. As outlined in the final rule, Treasury may identify funds used in violation through reporting or other sources. Recipients will be provided with an initial written notice of recoupment with an opportunity to submit a request for reconsideration before Treasury provides a final notice of recoupment. If the recipient receives an initial notice of recoupment and does not submit a request for reconsideration, the initial notice will be deemed the final notice. Treasury may pursue other forms of remediation and monitoring in conjunction with, or as an alternative to, recoupment.

REVISIONS TO THE OVERVIEW OF THE FINAL RULE:

- January 18, 2022 (p. 4, p. 16): Clarification that the revenue loss standard allowance is “up to” \$10 million under the Replacing Lost Public Sector Revenue eligible use category; addition of further information on the eligibility of general infrastructure, general economic development, and worker development projects under the Public Health and Negative Economic Impacts eligible use category.
- March 17, 2022 (p. 18): Specified that provision of child nutrition programs is available to respond to impacts of the pandemic on households and communities.

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505-AC77

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Secretary of the Treasury (Treasury) is adopting as final the interim final rule published on May 17, 2021, with amendments. This rule implements the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act.

DATES: The provisions in this final rule are effective April 1, 2022.

FOR FURTHER INFORMATION CONTACT:

Katharine Richards, Director, Coronavirus State and Local Fiscal Recovery Funds, Office of Recovery Programs, Department of the Treasury, (844) 529-9527.

SUPPLEMENTARY INFORMATION:

I. Introduction

Overview

Since the first case of coronavirus disease 2019 (COVID-19) was discovered in the United States in January 2020, the pandemic has caused severe, intertwined public health and economic crises. In March 2021, as these crises continued, the American Rescue Plan Act of 2021 (ARPA)¹ established the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) to provide state, local, and Tribal governments² with the resources needed to respond to the pandemic and its economic effects and to build a stronger, more equitable economy during the recovery. The U.S. Department of the Treasury (Treasury) issued an interim final rule implementing the SLFRF program on May 10, 2021³ and has since disbursed over \$240 billion to state, local, and Tribal governments and received over 1,500 public comments on the interim final rule. Treasury is now issuing this final rule which responds to public comments, implements the ARPA statutory provisions on eligible and ineligible uses of SLFRF funds, and

makes several changes to the provisions of the interim final rule, summarized below in the section Executive Summary of Major Changes.

Since Treasury issued the interim final rule in May 2021, both the public health and economic situations facing the country have evolved. On the public health front, the United States has made tremendous progress in the fight against COVID-19, including a historic vaccination campaign that has reached over 80 percent of adults with at least one dose and is reaching millions of children as well.⁴ However, the disease continues to present an imminent threat to public health, especially among unvaccinated individuals. As the Delta variant spread across the country this summer and fall, the United States faced another severe wave of cases, deaths, and strain on the healthcare system, with the risk of hospitalization and mortality exponentially greater to unvaccinated Americans. COVID-19 has now infected over 50 million and killed over 800,000 Americans since January 2020; tens of thousands of Americans continue to be infected each day.⁵ Even as the nation recovers, new and emerging COVID-19 variants may continue to pose threats to both public health and the economy. Moving forward, state, local, and Tribal governments will continue to play a major role in responding through vaccination campaigns, testing, and other services.

The economic recovery similarly has made tremendous progress but faces continued risks from the disease and the disruptions it has caused. In the early months of the pandemic, the United States experienced the sharpest economic downturn on record, with unemployment spiking to 14.8 percent in April 2020.⁶ The economy has gradually added back jobs, with growth accelerating in the first half of 2021.⁷ However, as the Delta variant spread, the intensified health risks and renewed disruptions slowed growth, demonstrating the continued risks from the virus. By fall 2021, the economy had

exceeded its pre-pandemic size⁸ and unemployment had fallen below 5 percent,⁹ but despite this progress, too many Americans remain unemployed, out of the labor force, or unable to pay their bills, with this pain particularly acute among lower-income Americans and communities of color. Again, moving forward, state, local, and Tribal governments will remain on the frontlines of the economic response and rebuilding a stronger economy in the aftermath of the pandemic.

However, as state, local, and Tribal governments continue to face substantial needs to respond to public health and economic conditions, they have also experienced severe impacts from the pandemic and resulting recession. State, local, and Tribal governments cut over 1.5 million jobs in the early months of the pandemic amid sharp declines in revenue and remain over 950,000 jobs below their pre-pandemic levels.¹⁰ As the Great Recession demonstrated, austerity among state, local, and Tribal governments can hamper overall economic growth and severely curtail the ability of governments to serve their constituents.

Recognizing these imperatives, the SLFRF program provides vital resources for state, local, and Tribal governments to respond to the pandemic and its economic effects and to replace revenue lost due to the public health emergency, preventing cuts to government services. Specifically, the ARPA provides that SLFRF funds¹¹ may be used:

- (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

¹ U.S. Bureau of Economic Analysis, Real Gross Domestic Product (GDP), retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/GDP> (last visited December 7, 2021).

² U.S. Bureau of Labor Statistics, *supra* note 6.

³ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited December 7, 2021).

⁴ The ARPA adds section 602 of the Social Security Act, which creates the State Fiscal Recovery Fund, and section 603 of the Social Security Act, which creates the Local Fiscal Recovery Fund (together, SLFRF). Sections 602 and 603 contain substantially similar eligible uses; the primary difference between the two sections is that section 602 establishes a fund for states, territories, and Tribal governments and section 603 establishes a fund for metropolitan cities, nonentitlement units of local government, and counties.

¹ Public Law 117-2. <https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf>.

² Throughout this Supplementary Information, Treasury uses “state, local, and Tribal governments” or “recipients” to refer generally to governments receiving SLFRF funds; this includes states, territories, Tribal governments, counties, metropolitan cities, and nonentitlement units of local government.

³ 86 FR 26786 (May 17, 2021).

⁴ Centers for Disease Control and Prevention, COVID Data Tracker: COVID-19 Vaccinations in the United States, <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last visited December 31, 2021).

⁵ Centers for Disease Control and Prevention, COVID Data Tracker, <http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited December 7, 2021).

⁶ U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/UNRATE> (last visited December 7, 2021).

⁷ *Id.*

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.

In addition, Congress specified two types of ineligible uses of funds: funds may not be used for deposit into any pension fund or, for states and territories only, to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation.

Issued May 10, 2021, Treasury's interim final rule provided further detail on eligible uses of funds within the four statutory categories, ineligible uses of funds, and administration of the program. The interim final rule provided state, local, and Tribal governments substantial flexibility to determine how best to use payments from the SLFRF program to meet the needs of their communities. The interim final rule aimed to facilitate swift and effective implementation by establishing a framework for determining the types of programs and services that are eligible under the ARPA along with examples of eligible uses of funds that state, local, and Tribal governments may consider.

State, local, and Tribal governments are already deploying SLFRF funds to make an impact in their communities. The SLFRF program ensures that state, local, and Tribal governments have the resources needed to fight the pandemic, sustain and strengthen the economic recovery, maintain vital public services, and make investments that support long-term growth, opportunity, and equity. Treasury looks forward to supporting and engaging with state, local, and Tribal governments as they use these funds to make transformative investments in their communities. Finally, with so many pressing and effective ways to use SLFRF funds, there is no excuse for waste, fraud, or abuse of these funds.

Treasury received over 1,500 comments spanning nearly all aspects of the interim final rule. The final rule considers and responds to comments, provides clarification to many aspects of the interim final rule, and makes several changes to eligible uses under the program, summarized immediately below.

Executive Summary of Major Changes and Clarifications

The final rule provides broader flexibility and greater simplicity in the program, in response to public comments. Among other clarifications and changes, the final rule provides for the following:

- **Public Health and Negative Economic Impacts:** In addition to programs and services, the final rule clarifies that recipients may use funds for capital expenditures that support an eligible COVID-19 public health or economic response. For example, recipients may build certain affordable housing, childcare facilities, schools, hospitals, and other projects consistent with the requirements in this final rule and the Supplementary Information.

In addition, the final rule presumes that an expanded set of households and communities are "impacted" or "disproportionately impacted" by the pandemic, thereby allowing recipients to provide responses to a broad set of households and entities without requiring additional analysis. Further, the final rule provides a broader set of enumerated eligible uses available for these communities as part of COVID-19 public health and economic response, including making affordable housing, childcare, and early learning services eligible in all impacted communities and making certain community development and neighborhood revitalization activities eligible for disproportionately impacted communities.

Further, the final rule allows for a broader set of uses to restore and support government employment, including hiring above a recipient's pre-pandemic baseline, providing funds to employees that experienced pay cuts or furloughs, avoiding layoffs, and providing retention incentives.

- **Premium Pay:** The final rule offers more streamlined options to provide premium pay, by broadening the share of essential workers who can receive premium pay without a written justification while maintaining a focus on lower-income and frontline essential workers.

- **Revenue Loss:** The final rule offers a standard allowance for revenue loss of up to \$10 million, not to exceed a recipient's SLFRF award amount, allowing recipients to select between a standard amount of revenue loss or complete a full revenue loss calculation. Recipients that select the standard allowance may use that amount for government services.

- **Water, Sewer, and Broadband Infrastructure:** The final rule

significantly broadens eligible broadband infrastructure investments to address challenges with broadband access, affordability, and reliability, and adds additional eligible water and sewer infrastructure investments, including a broad range of lead remediation and stormwater management projects.

Structure of the Supplementary Information

In addition to this Introduction, this Supplementary Information is organized into four sections: (1) Eligible Uses, (2) Restrictions on Use, (3) Program Administration Provisions, and (4) Regulatory Analyses.

The Eligible Uses section describes the standards to determine eligible uses of funds in each of the four eligible use categories:

- (1) Responding to the public health and negative economic impacts of the pandemic (which includes several sub-categories)

- (2) Providing premium pay to essential workers

- (3) Providing government services to the extent of revenue loss due to the pandemic, and

- (4) Making necessary investments in water, sewer, and broadband infrastructure.

Each eligible use category has separate and distinct standards for assessing whether a use of funds is eligible. Standards, restrictions, or other provisions in one eligible use category do not apply to the others. Therefore, recipients should first determine which eligible use category a potential use of funds fits within, then assess whether the potential use of funds meets the eligibility standard or criteria for that category. In the case of uses to respond to the public health and negative economic impacts of the pandemic, recipients should also determine which sub-category the eligible use fits within (i.e., public health, assistance to households, assistance to small businesses, assistance to nonprofits, aid to impacted industries, or public sector capacity and workforce), then assess whether the potential use of funds meets the eligibility standard for that sub-category. Treasury does not pre-approve uses of funds; recipients are advised to review the final rule and may pursue eligible projects under it.

In some sections of the rule, Treasury identifies specific uses of funds that are eligible, called "enumerated eligible uses"; for example, Treasury provides many enumerated eligible uses of funds to respond to the public health and negative economic impacts of the pandemic. Uses of funds that are not specifically named as eligible in this

final rule may still be eligible in two ways. First, under the revenue loss eligible use category, recipients have broad latitude to use funds for government services up to their amount of revenue loss due to the pandemic. A potential use of funds that does not fit within the other three eligible use categories may be permissible as a government service, which recipients can fund up to their amount of revenue loss. For example, transportation infrastructure projects are generally ineligible as a response to the public health and negative economic impacts of the pandemic; however, a recipient could fund these projects as a government service up to its amount of revenue loss, provided that other restrictions on use do not apply. See sections Revenue Loss and Restrictions on Use for further information. Second, the eligible use category for responding to the public health and negative economic impacts of the pandemic provides a non-exhaustive list of enumerated eligible uses, which means that the listed eligible uses include some, but not all, of the uses of funds that could be eligible. The Eligible Uses section provides a standard for determining if other uses of funds, beyond those specifically enumerated, are eligible. If a recipient would like to pursue a use of funds that is not specifically enumerated, the recipient should use the standard and other guidance provided in the section Public Health and Negative Economic Impacts to assess whether the use of funds is eligible.

Next, the Restrictions on Use section describes limitations on how funds may be used. Treasury has divided the Restriction on Use section into (A) statutory restrictions under the ARPA, which include (1) offsetting a reduction in net tax revenue, and (2) deposits into pension funds, and (B) other restrictions on use, which include (1) debt service and replenishing reserves, (2) settlements and judgments, and (3) general restrictions. These restrictions apply to all eligible use categories; however, some restrictions apply only to certain types of recipient governments, and recipients are advised to review the final rule to determine which restrictions apply to their type of government (e.g., state, territory, Tribal government, county, metropolitan city, or nonentitlement unit of government). To reiterate, for recipient governments covered by a specific restriction, that restriction applies to all eligible use categories and any use of funds under the SLFRF program. Specifically:

- For states and territories only, funds may not be used to offset directly or

indirectly a reduction in net tax revenue resulting from a change in state or territory law.

- For all recipients except Tribal governments, funds may not be used for deposits into a pension fund.
- For all recipients, funds may not be used for debt service or replenishing financial reserves.
- All recipients must also comply with three general restrictions. First, a recipient may not use SLFRF funds for a program, service, or capital expenditure that conflicts with or contravenes the statutory purpose of ARPA, including a program, service, or capital expenditure that includes a term or condition that undermines efforts to stop the spread of COVID-19. Second, recipients may not use SLFRF funds in violation of the conflict-of-interest requirements contained in the Award Terms and Conditions, including any self-dealing or violation of ethics rules. Lastly, recipients should be aware that federal, state, and local laws and regulations, outside of SLFRF program requirements, also apply, including for example, environmental laws and federal civil rights and nondiscrimination requirements, which include prohibitions on discrimination on the basis of race, color, national origin, sex (including sexual orientation and gender identity), religion, disability, age, or familial status (having children under the age of 18).

The Program Administration Provisions section describes the processes and requirements for administering the program on an ongoing basis, specifically as relates to the following: Distribution of funds, timeline for using funds, transfer of funds from a recipient to different organizations, use of funds for program administration, reporting on use of funds, and remediation and recoupment of funds used for ineligible purposes. Of note, SLFRF funds may only be used for costs incurred within a specific time period, beginning March 3, 2021, with all funds obligated by December 31, 2024 and all funds spent by December 31, 2026. Recipients are advised to also consult Treasury's Reporting and Compliance Guidance for additional information on program administration processes and requirements, including applicability of the Uniform Guidance.

Finally, the section Regulatory Analyses provides Treasury's analysis of the impacts of this rulemaking, as required by several laws, regulations, and Executive Orders.

Throughout this Supplementary Information, statements using the terms "should" or "must" refer to requirements, except when used in

summarizing opinions expressed in public comments. Statements using the term "encourage" refer to recommendations, not requirements.

II. Eligible Uses

A. Public Health and Negative Economic Impacts

Background

Since the first case of COVID-19 was discovered in the United States in January 2020, the disease has infected over 50 million and killed over 800,000 Americans.¹² The disease—and necessary measures to respond—have had an immense public health and economic impact on millions of Americans across many areas of life, as detailed below in the respective sections on Public Health and Negative Economic Impacts. Since the release of the interim final rule in May 2021, the country has made major progress in fighting the disease and rebuilding the economy but faces continued risks, as illustrated by the spread of the Delta variant and the resulting slowdown in the economic recovery. The SLFRF program, and Treasury's interim final rule, provide substantial flexibility to recipients to respond to pandemic impacts in their local community; this flexibility is designed to help state, local, and Tribal governments adapt to the evolving public health emergency and tailor their response as needs evolve and to the particular local needs of their communities.

Indeed, state, local, and Tribal governments face continued needs to respond at scale to the public health emergency. This includes continued public health efforts to slow the spread of the disease, to increase vaccination rates and provide vaccinations to new populations as they become eligible, to protect individuals living in congregate facilities, and to address the broader impacts of the pandemic on public health. Similarly, while a strong economic recovery is underway, the economy remains 3.9 million jobs below its pre-pandemic level, pointing to the continued need for response efforts, with low-income workers and communities of color facing elevated rates of unemployment and economic hardship.¹³ Long-standing disparities in health and economic outcomes in

¹² Centers for Disease Control and Prevention, COVID Data Tracker, <http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited December 31, 2021).

¹³ U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm (PAYEMS) <https://fred.stlouisfed.org/series/PAYEMS> (last visited December 7, 2021).

underserved¹⁴ communities, that amplified and exacerbated the impacts of the pandemic, also present continued barriers to full and equitable recovery.

As state, local, and Tribal governments work to meet the public health and economic needs of their communities, these governments are also confronting the need to rebuild their own capacity. Facing severe budget challenges during the pandemic, many state, local, and Tribal governments have been forced to make cuts to services or their workforces, including cutting over 1.5 million jobs from February to May 2020, or delay critical investments. As of fall 2021, state, local, and Tribal government employment remained over 950,000 jobs below pre-pandemic levels.¹⁵ In the recovery from the Great Recession, cuts to state, local, and Tribal governments became a meaningful drag on economic growth for several years, and the SLFRF program provides the resources needed to re-invest in vital public services and workers to avoid this outcome.¹⁶

1. General Provisions: Structure and Standards

Background: Sections 602(c)(1)(A) and 603(c)(1)(A) of the Social Security Act establish that recipients may use funds “to respond to the public health emergency with respect to COVID–19 or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality.” The interim final rule established three categories within this eligible use: (1) Public health responses for those impacted by the pandemic, including the general public; (2) responses to the negative economic impacts that were experienced by those impacted as a result of the pandemic; and (3) additional services, either as a public health response or a response to the negative economic impacts of the

pandemic, for disproportionately impacted communities.

The interim final rule established the method to determine which specific programs or services may be eligible to respond to the public health emergency or to respond to the negative economic impacts of the public health emergency within this framework. The interim final rule included multiple enumerated uses that are eligible within each of these categories when provided to eligible populations, including populations that the interim final rule presumed to have been *impacted* (in the case of public health responses and responses to negative economic impacts) or *disproportionately impacted* (in the case of disproportionately impacted communities). Finally, the interim final rule also allowed recipients to designate additional individuals or classes as impacted or disproportionately impacted. The standards for each of these criteria under the interim final rule are discussed below.

To assess whether a program or service would be eligible to respond to the public health emergency or its negative economic impacts, the interim final rule stated that, “the recipient [is required] to, first, identify a need or negative impact of the COVID–19 public health emergency and, second, identify how the program, service, or other intervention addresses the identified need or impact [. . .] [E]ligible uses under this category must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID–19 public health emergency.” The enumerated eligible uses were presumed to meet this criterion.

With respect to uses not specifically enumerated in the interim final rule as eligible public health responses, the interim final rule stated that, “[t]o assess whether additional uses would be eligible under this category, recipients should identify an effect of COVID–19 on public health, including either or both of immediate effects or effects that may manifest over months or years, and assess how the use would respond to or address the identified need.”

With respect to uses not specifically enumerated in the interim final rule as eligible responses to a negative economic impact of the public health emergency, the interim final rule stated that “[e]ligible uses that respond to the negative economic impacts of the public health emergency must be designed to address an economic harm resulting from or exacerbated by the public health emergency. In considering whether a program or service would be eligible

under this category, the recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID–19 public health emergency and whether, and the extent to which, the use would respond to or address this harm.¹⁷ A recipient should first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID–19 public health emergency.” The interim final rule went on to say that: “In addition, the eligible use must ‘respond to’ the identified negative economic impact. Responses must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses.”

Throughout this final rule, Treasury refers to households, communities, small businesses, nonprofits, and industries that experienced public health or negative economic impacts of the pandemic as “impacted.” The first section in the interim final rule under this eligible use category included public health responses for these impacted classes. The second category in the interim final rule under this eligible use category included responses to the negative economic impacts that were experienced by these impacted classes as a result of the pandemic.

The interim final rule further recognized that certain populations have experienced disproportionate health or negative economic impacts during the pandemic, as pre-existing disparities in these communities amplified the impacts of the pandemic. For example, the interim final rule recognized that the negative economic effects of the pandemic were particularly pronounced among lower-income families, who were more likely to experience income loss and more likely to have a job that required in-person work. The interim final rule recognized the role of pre-existing social vulnerabilities and disparities in driving the disparate health and economic outcomes and presumed that programs designed to address these health or economic disparities are responsive to the public health or negative economic impacts of the COVID–19 public health emergency, when provided in disproportionately impacted communities. In addition to identifying certain populations and communities

¹⁴ Treasury uses “underserved” to refer to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life. In the interim final rule, Treasury generally used the term “disadvantaged” to refer to these same populations and communities.

¹⁵ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited December 7, 2021).

¹⁶ Tracy Gordon, State and Local Budgets and the Great Recession, Brookings Institution (Dec. 31, 2012), <http://www.brookings.edu/articles/state-and-local-budgets-and-the-great-recession>.

¹⁷ In some cases, a use may be permissible under another eligible use category even if it falls outside the scope of section (c)(1)(A) of section 602 and 603 of the Social Security Act.

presumed to be disproportionately impacted, it also empowered recipients to identify other disproportionately impacted households, populations, communities, or small businesses. The interim final rule provided that, in identifying these disproportionately impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served.

Throughout this final rule, Treasury refers to those households, communities, small businesses, and nonprofits that experienced disproportionate public health or negative economic impacts of the pandemic as “disproportionately impacted.” The third category in the interim final rule under this eligible use included public health responses and responses to the negative economic impacts for these disproportionately impacted classes.

The interim final rule provided significant flexibility for recipients to determine which households, populations, communities, or small businesses have been impacted and/or disproportionately impacted by the pandemic and to identify appropriate responses. The interim final rule included several provisions to provide simple methods for recipients to identify impacts and design programs to address those impacts. First, the interim final rule allowed recipients to demonstrate a negative economic impact on a population or class and provide assistance to households or small businesses that fall within that population or class. In such cases, the recipient need only demonstrate that an individual household or business is within the class that experienced a negative economic impact, rather than requiring a recipient to demonstrate that each individual household or small business experienced a negative economic impact, because the impact was already identified for the class.

Second, in the interim final rule, Treasury presumed that certain populations have been impacted or disproportionately impacted and are thus eligible for services that respond to these impacts or disproportionate impacts. Specifically, the interim final rule permitted recipients to presume that households that experienced unemployment, increased food or housing insecurity, or are low- or moderate-income experienced a negative economic impact from the pandemic. The interim final rule also permitted recipients to presume that

certain services provided in Qualified Census Tracts (QCTs), to individuals living in QCTs, or by Tribal governments are responsive to disproportionate impacts of the pandemic. In addition to the populations presumed to be impacted or disproportionately impacted, under the interim final rule, recipients could identify other impacted households or classes, as described above, as well as other populations, households, or geographic areas that are disproportionately impacted by the pandemic.

Third, as mentioned previously, the interim final rule included a non-exhaustive list of uses of funds that Treasury identified as responsive to the impacts or disproportionate impacts of the pandemic. Treasury refers to these as “enumerated eligible uses.”

To summarize, the interim final rule identified certain populations that are presumed to be impacted by the pandemic (and specific enumerated uses of funds that are responsive to that impact) and populations that are presumed to be *disproportionately impacted* by the pandemic (and specific enumerated uses of funds that are responsive to those disproportionate impacts). In addition, the interim final rule provided standards for recipients to assess whether additional uses of funds, beyond the enumerated eligible uses, are eligible for impacted and disproportionately impacted populations and permitted recipients to identify other households or classes that experienced impacts of the pandemic or disproportionate impacts of the pandemic.

Rule Structure

Public Comment: Many commenters expressed concern regarding the structure of the eligible uses, indicating they found the structure of the public health and negative economic impacts section of the interim final rule to be confusing or difficult to navigate. Other commenters indicated that they understood the enumerated uses to be the only eligible uses and/or the presumed eligible populations to be the only eligible populations. Several commenters expressed frustration about the number of eligible uses specifically enumerated in the interim final rule, which they considered too few, and commenters proposed a wide range of additional enumerated eligible uses (for further discussion, see the section Public Health and section Negative Economic Impacts). Commenters expressed concern with pursuing uses of funds not explicitly enumerated in the eligible use section or uncertainty

regarding the broad flexibility provided under the interim final rule to pursue additional programs that respond to the public health or negative economic impacts of the pandemic or the process for doing so.

Treasury Response: Treasury recognizes that many commenters felt the structure of the interim final rule could be clarified. These comments are consistent with many of the questions that Treasury has received from recipients, which requested clarification regarding the category their desired response fits into. Treasury observes that these comments and questions generally fall into four categories: (1) How to identify the correct public health or negative economic impact category for a particular response, (2) how to identify whether a particular use is eligible, (3) how to identify an impacted or disproportionately impacted class, and (4) whether an enumerated use can be provided to a class other than those presumed impacted or disproportionately impacted. In response to comments, Treasury is adjusting the structure of the public health and negative economic impacts eligible use section of the final rule to improve clarity and make it easier for recipients to interpret and apply the final rule.

Specifically, Treasury is restructuring the rule to aid recipients in determining whether a particular response is eligible and how the particular response might be eligible under a particular category. This restructuring reinforces the fundamental criteria that a use of funds is eligible based on its responsiveness to a public health or negative economic impact experienced by individuals, households, small businesses, nonprofits, or impacted industries (together “beneficiaries”).¹⁸ This restructuring is intended to make the rule easier to navigate and to implement, including any criteria or conditions on particular uses of funds.

The reorganization of the public health and negative economic impacts section of the final rule is also intended to clarify the enumerated eligible uses described in the interim final rule. The reorganization itself is not intended to change the scope of the enumerated uses that were included in the interim final rule or that were allowable under the interim final rule. In some cases, specific enumerated uses are being altered, and those changes are discussed

¹⁸ Note that small businesses, nonprofits, and industries may also function as subrecipients. For additional information on these distinctions see section Distinguishing Subrecipients versus Beneficiaries.

as changes within the section on that enumerated use.

The final rule streamlines and aligns services and standards that are generally applicable or are provided for public health purposes. Under this approach, eligible uses to respond to the public health emergency are organized based on the type of public health problem: (1) COVID-19 mitigation and prevention, (2) medical expenses, (3) behavioral health care, and (4) preventing and responding to violence. Under this approach, eligible uses to respond to the negative economic impacts of the public health emergency are organized based on the type of beneficiary: (1) Assistance to households, (2) assistance to small businesses, and (3) assistance to nonprofits, alongside a fourth standalone eligibility category for aid to travel, tourism, hospitality, and other impacted industries. The first three categories, assistance to households, small businesses, and nonprofits, include enumerated eligible uses for impacted and disproportionately impacted beneficiaries. This change in structure is intended to provide a framework that clearly identifies the intended beneficiaries of uses of funds and provides clarity about what types of assistance are “responsive to the pandemic or its negative economic impacts” for these beneficiaries.

a. Standards for Identifying a Public Health or Negative Economic Impact

Standards: Designating a Public Health Impact

Public Comment: Many commenters expressed uncertainty about how to determine whether a use of funds, beyond those specifically enumerated as eligible, might be an eligible public health response. For example, many commenters submitted questions asking whether specific uses of funds would be eligible. Others described what they considered to be impacts of the pandemic and argued that uses of funds to respond to these issues should be eligible. Some commenters requested that Treasury provide additional detail to guide their assessments of eligible uses of funds. For example, a commenter requested more clarification around exactly what and whose medical expenses can be covered. These comments ranged in their specificity and covered the full range of the enumerated eligible uses.

Treasury Response: Treasury is clarifying that when assessing whether a program or service is an eligible use to respond to the public health impacts of the COVID-19 public health emergency, the Department will

consider the two eligibility requirements discussed below. These standards apply to all proposed public health uses.

First, there must be a negative public health impact or harm experienced by an individual or a class. For ease of administration, the interim final rule allowed, and the final rule maintains the ability for, recipients to identify a public health impact on a population or group of individuals, referred to as a “class,” and to provide assistance to that class. In determining whether an individual is eligible for a program designed to address a harm experienced by a class, the recipient need only document that the individual is within the class that experienced a public health impact, see section Standards: Designating Other Impacted Classes. In the case of some impacts, for example impacts of COVID-19 itself that are addressed by providing prevention and mitigation services, such a class could reasonably include the general public.

Second, the program, service, or other intervention must address or respond to the identified impact or harm. The final rule maintains the interim final rule requirement that eligible uses under this category must be in response to the disease itself or other public health harms that it caused.¹⁹

Responses must be reasonably designed to benefit the individual or class that experienced the public health impact or harm. Uses of funds should be assessed based on their responsiveness to their intended beneficiaries and the ability of the response to address the impact or harm experienced by those beneficiaries.

Responses must also be related and reasonably proportional to the extent and type of public health impact or harm experienced. Uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Reasonably proportional refers to the scale of the response compared to the scale of the harm. It also refers to the targeting of the response to beneficiaries compared to the amount of harm they experienced. In evaluating whether a

use is reasonably proportional, recipients should consider relevant factors about the harm identified and the response. For example, recipients may consider the size of the population impacted and the severity, type, and duration of the impact. Recipients may also consider the efficacy, cost, cost-effectiveness, and time to delivery of the response.

If a recipient intends to fund capital expenditures in response to the public health impacts of the pandemic, recipients should refer to the section Capital Expenditures for details about the eligibility of capital expenditures.

Standards: Designating a Negative Economic Impact

Public Comment: Many commenters expressed uncertainty about how to determine whether uses of funds, beyond those specifically enumerated as eligible, might be eligible responses to negative economic impacts. For example, many commenters submitted questions asking whether specific uses of funds would be eligible. Others described what they considered to be impacts of the pandemic and argued that uses of funds to respond to these issues should be eligible. Some commenters requested that Treasury provide additional detail to guide their assessments of eligible uses of funds. These comments ranged in their specificity and covered the full range of eligible uses to respond to negative economic impacts. Several commenters asked for clarification about what types of food assistance would be considered eligible. Another commenter requested that the establishment of outdoor dining be eligible. Many commenters inquired about homeless shelters as an eligible use of SLFRF funds.

Commenters also expressed uncertainty about the ability to establish classes, including geographic areas, that experienced a negative economic impact or disagreed with the requirement that an individual entity be impacted by the pandemic in order to receive assistance. For example, a commenter argued that interventions should not be limited to individuals or businesses that experienced an economic impact and should instead be used broadly to support economic growth. These commenters argued that an expenditure that supports a more robust economy may help combat the pandemic's negative economic impacts, and it can do so even if funding is provided to individuals or entities that did not themselves experience a negative economic impact during the pandemic.

Treasury Response: The final rule maintains the standard articulated in

¹⁹ In designing an intervention to mitigate COVID-19, the recipient should consider guidance from public health authorities, particularly the Centers for Disease Control and Prevention (CDC), in assessing appropriate COVID-19 mitigation and prevention strategies (see Centers for Disease Control and Prevention, COVID-19, <https://www.cdc.gov/coronavirus/2019-ncov/index.html>). A program or service that imposes conditions on participation in or acceptance of the service that would undermine efforts to stop the spread of COVID-19 or discourage compliance with practices in line with CDC guidance for stopping the spread of COVID-19 is not a permissible use of funds.

the interim final rule. For clarity, the final rule re-articulates that when assessing whether a program or service is an eligible use to respond to the negative economic impacts of the COVID-19 public health emergency, Treasury will consider the two eligibility requirements discussed below.

First, there must be a negative economic impact, or an economic harm, experienced by an individual or a class. The recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID-19 public health emergency. A recipient should first consider whether an economic harm exists and then whether this harm was caused or made worse by the COVID-19 public health emergency. This approach is consistent with the text of the statute, which provides that funds in this category must be used to “respond to the public health emergency with respect to . . . its negative economic impacts.”

While economic impacts may either be immediate or delayed, individuals or classes that did not experience a negative economic impact from the public health emergency would not be eligible beneficiaries under this category. As noted above, the interim final rule permitted recipients to presume that households that experienced unemployment, increased food or housing insecurity, or are low- or moderate-income experienced a negative economic impact from the pandemic. For discussion of the final rule’s approach to this presumption, see section Populations Presumed Eligible.

The final rule also maintains several provisions included in the interim final rule and subsequent guidance that are intended to ease administration of identifying that the beneficiary experienced a negative economic impact or harm. For example, the interim final rule allowed, and the final rule maintains the ability for, recipients to demonstrate a negative economic impact on a population or group, referred to as a “class,” and to provide assistance to households, small businesses, or nonprofits that fall within that class. In such cases, the recipient need only demonstrate that the household, small business, or nonprofit is within the class that experienced a negative economic impact, see section Standards: Designating Other Impacted Classes. This would allow, for example, an internet access assistance program for all households with children to support those households’ ability to participate in healthcare, work, and

educational activities like extending learning opportunities, among other critical activities. In that case, the recipient would only need to identify a negative economic impact to the class of “households with children” and would not need to document or otherwise demonstrate that each individual household served experienced a negative economic impact.

Second, the response must be designed to address the identified economic harm or impact resulting from or exacerbated by the public health emergency. In selecting responses, the recipient must assess whether, and the extent to which, the use would respond to or address this harm or impact. This approach is consistent with the text of the statute, which provides that funds may be used to “respond to” the “negative economic impacts” of the public health emergency “including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality.” The list of potential responses (“assistance” or “aid”) suggests that responses should address the “negative economic impacts” of particular types of beneficiaries (e.g., households or small businesses).

Responses must be reasonably designed to benefit the individual or class that experienced the negative economic impact or harm. Uses of funds should be assessed based on their responsiveness to their intended beneficiary and the ability of the response to address the impact or harm experienced by that beneficiary.²⁰

Responses must also be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses.²¹ Reasonably proportional refers to the scale of the response compared to the scale of the harm. It also refers to the targeting of the response to beneficiaries compared to the amount of harm they experienced; for example, it may not be reasonably proportional for a cash assistance program to provide assistance in a very small amount to a group that

experienced severe harm and in a much larger amount to a group that experienced relatively little harm. In evaluating whether a use is reasonably proportional, recipients should consider relevant factors about the harm identified and the response. For example, recipients may consider the size of the population impacted and the severity, type, and duration of the impact. Recipients may also consider the efficacy, cost, cost-effectiveness, and time to delivery of the response.

Finally, recipients should be aware of the distinction between beneficiaries of funds and subrecipients; a recipient may provide services to beneficiaries through subrecipients that did not experience a negative economic impact, see section Distinguishing Subrecipients versus Beneficiaries. That is, a recipient may award SLFRF funds to an entity that did not experience a negative economic impact in order to implement a program or provide a service to beneficiaries on its behalf. Such transfers, when implementing a public health or negative economic impact response, should be responsive to and designed to benefit individuals, households, small businesses, nonprofits, or impacted industries that did experience a public health or negative economic impact.

Determining the Appropriate Eligible Use Category

Public Comment: Some commenters expressed uncertainty about how to analyze negative economic impacts to different entities (e.g., households, small businesses, nonprofits). For example, commenters asked whether a nonprofit, which did not experience a negative economic impact itself, could be granted funds to provide services to individuals experiencing homelessness, who did experience negative economic impacts. Other commenters proposed providing assistance to support the expansion of small businesses, under the theory that this would create more job opportunities for unemployed workers who experienced negative economic impacts.

Treasury Response: In the final rule, Treasury is clarifying that recipients should assess a potential use of funds based on which beneficiary experienced the negative economic impact, in other words, the households, small businesses, nonprofits, or impacted industries that experienced the negative economic impact.

Treasury notes that recipients may award SLFRF funds to many different types of organizations to carry out eligible uses of funds and serve beneficiaries on behalf of a recipient.

²⁰ For example, expenses such as excessive compensation to employees or expenses which have already been reimbursed through another federal program, are not reasonably designed to address a negative economic impact to a beneficiary.

²¹ For example, a program or service that imposes conditions on participation in or acceptance of the service that would undermine efforts to stop the spread of COVID-19 or discourage compliance with practices in line with CDC guidance for stopping the spread of COVID-19 is not a permissible use of funds.

When a recipient provides funds to another entity to carry out eligible uses of funds and serve beneficiaries the entity becomes a subrecipient (see section Distinguishing a Subrecipient versus a Beneficiary). For example, a recipient may grant funds to a nonprofit organization to provide food assistance (an eligible use) to low-income households (the beneficiaries). Recipients only need to assess whether the beneficiaries experienced a negative economic impact and whether the eligible use responds to that impact, consistent with the two-part framework described above; the organization carrying out the eligible use does not need to have experienced a negative economic impact if it is serving as the vehicle for reaching the beneficiaries. When making determinations about how to implement a program, recipients should consider whether that method of program implementation is an effective and efficient method to implement the program and do so in accordance with the Uniform Guidance provisions that govern procurements and sub-granting of federal funds, as applicable.

As noted above, recipients should analyze eligible uses based on the beneficiary of the assistance or the entity that experienced a negative economic impact. Assistance to a small business or to an impacted industry must respond to a negative economic impact experienced by that small business or industry. Recipients may not provide assistance to small businesses or impacted industries that did not experience a negative economic impact, although recipients can identify negative economic impacts for classes, rather than individual businesses, and may also presume that small businesses in certain areas experienced impacts; see section General Provisions: Structure and Standards and section Assistance to Small Businesses for details.

Several examples illustrate the application of these concepts. For example, a recipient could provide assistance to households via a contract with a business to create subsidized jobs for the long-term unemployed; in this case the business is a subrecipient and need not have experienced a negative economic impact, but the recipient would need to identify a specific connection between the assistance provided and addressing the negative economic impact experienced by the unemployed households. The recipient could, for instance, document the subsidized jobs created under the contract and their reservation for long-term unemployed individuals. Similarly, a recipient might provide

assistance to a small business that experienced a pandemic-related loss of revenue. This small business is a beneficiary and may use those funds in many ways, potentially including hiring or retaining staff. However, general assistance to a business that did not experience a negative economic impact under the theory that this assistance generally grows the economy and therefore enhances opportunities for unemployed workers would not be an eligible use, because such assistance is not reasonably designed to impact the individuals or classes that experienced a negative economic impact. In other words, there is not a reasonable connection between the assistance provided and an impact on the beneficiaries. Such an activity would be attenuated from and thus not reasonably designed to benefit the households that experienced the negative economic impact.

b. Populations Presumed Eligible Presumed Eligibility: Impacted and Disproportionately Impacted Households and Communities

Background: As noted above, the interim final rule allowed recipients to presume that certain households were impacted or disproportionately impacted by the pandemic and thus eligible for responsive programs or services. Specifically, under the interim final rule, recipients could presume that a household or population that experienced unemployment, experienced increased food or housing insecurity, or is low- or moderate-income experienced negative economic impacts resulting from the pandemic, and recipients may provide services that respond to these impacts.

The interim final rule also recognized that pre-existing health, economic, and social disparities contributed to disproportionate pandemic impacts in certain communities and allowed for a broader list of enumerated eligible uses to respond to the pandemic in disproportionately impacted communities. Under the interim final rule, recipients were allowed to presume that families residing in QCTs or receiving services provided by Tribal governments were disproportionately impacted by the pandemic.

Definition of Low- and Moderate-Income

Public Comment: As noted earlier, many commenters sought a definition for “low- and moderate-income” to provide recipients greater clarity on which specific households could be

presumed to be impacted by the pandemic.

Treasury Response: The final rule maintains the presumptions identified in the interim final rule and defines low- and moderate-income for the purposes of determining which households and populations recipients may presume to have been impacted. To simplify the administration of this presumption, the final rule adopts a definition of low- and moderate-income based on thresholds established and used in other federal programs.

Definitions. The 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).²²

The final rule defines 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.²³

Recipients may determine whether to measure income levels for specific households or for a geographic area based on the type of service to be provided. For example, recipients developing a program that serves specific households (e.g., a subsidy for internet access, a childcare program) may measure income at the household level. Recipients providing a service that reaches a general geographic area (e.g., a park) may measure median income of that area.

Further, recipients should generally use the income threshold for the size of the household to be served (e.g., when providing childcare to a household of five, recipients should reference the income threshold for a household of five); however, recipients may use the income threshold for a default household size of three if providing

²² AMI is also often referred to as median family income for the area. Since AMI is synonymous with this term and used more generally, the final rule refers to AMI.

²³ For the six New England states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, HUD provides AMI for towns rather than counties. Recipients in these states should use the AMI corresponding to their town when determining thresholds for both low and moderate income.

services that reach a general geographic area or if doing so would simplify administration of the program to be provided (e.g., when developing a park, recipients should use the income threshold for a household size of three and compare it to median income of the geographic area to be served).

Note that recipients can also identify and serve other classes of households that experienced negative economic impacts or disproportionate impacts from the pandemic; recipients can identify these classes based on their income levels, including above the levels defined as low- and moderate-income in the final rule. For example, a recipient may identify that households in their community with incomes above the final rule threshold for low-income

nevertheless experienced disproportionate impacts from the pandemic and provide responsive services. See section General Provisions: Standards for Identifying Other Eligible Populations for details on applicable standards.

Applicable levels. For reference, the FPG is commonly referred to as the federal poverty level (FPL) and is related to—although distinct from—the U.S. Census Bureau’s poverty threshold. The final rule uses the FPG when referring specifically to the HHS guidelines, as these are the quantitative metrics used for determining low- and moderate-income households.

The FPG by household size for 2021 is included in the table below. Recipients should refer to HHS Poverty

Guidelines for this information, which is updated annually and available on the HHS website.²⁴ For calculating the thresholds of 40 percent and 65 percent of AMI, recipients should refer to the annual HUD Section 8 50 percent income limits by county and household size published by HUD and available on the HUD website; in particular, recipients should calculate the 40 percent threshold as 0.8 times the 50 percent income limit, and recipients should calculate the 65 percent threshold as 1.3 times the 50 percent income limit.²⁵ Finally, for median income of Census Tracts and other geographic areas, recipients should refer to the most recent American Community Survey 5-year estimates available through the Census website.²⁶

2021 FEDERAL POVERTY GUIDELINES

Household size	48 contiguous states and the District of Columbia	Alaska	Hawaii
1	\$12,880	\$16,090	\$14,820
2	17,420	21,770	20,040
3	21,960	27,450	25,260
4	26,500	33,130	30,480
5	31,040	38,810	35,700
6	35,580	44,490	40,920
7	40,120	50,170	46,140
8	44,660	55,850	51,360

For families/households with more than 8 persons, add the following amounts for each additional person:

48 Contiguous States and the District of Columbia: \$4,540.

Alaska: \$5,680.

Hawaii: \$5,220.

Source: “HHS Poverty Guidelines for 2021,” available at <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

Rationale. In defining low income, the final rule uses both the FPG and AMI to account for national trends and regional differences. The metric of 185 percent of FPG aligns with some other programs; for instance, under the National School Lunch Program, students with household incomes under 185 percent of FPG qualify for free or reduced-price lunch, and schools often use eligibility for free or reduced-price lunch as an indicator of low-income status under Title 1–A of the Elementary and Secondary Education Act. Eligibility for other programs, such as the Federal Communications Commission’s e-Rate

program and the Special Supplemental Nutrition Program for Women, Infants and Children employ this metric as well. In addition, 185 percent of the FPG for a family of four is \$49,025, which is approximately the wage earnings for a two-earner household in which both earners receive the median wage in occupations, such as waiters and waitresses and hotel clerks, that were heavily impacted by COVID-19.²⁷ This measure is targeted toward those at the bottom of the income distribution and thus helps to promote use of SLFRF funds towards populations with the greatest needs. At the same time, with

approximately one-quarter of Americans below 185 percent of the poverty threshold, this approach is broad enough to facilitate use of SLFRF funds across many jurisdictions.²⁸ Because regions have different cost and income levels, this definition also allows for upward adjustment based on AMI for those regions where 40 percent of AMI exceeds 185 percent of FPG. The metric of 40 percent of AMI is based on the midpoint of values often used to designate certain categories of low-income households; specifically, it is the midpoint of the 30 percent income limit and the 50 percent income limit

²⁴ U.S. Department of Health and Human Service, HHS Poverty Guidelines for 2021, available at <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

²⁵ U.S. Department of Housing and Urban Development, FY 2021 Section 8 Income Limits, available at <https://www.huduser.gov/portal/datasets/il/il21/Section8-FY21.xlsx>. Recipients may refer to the list of counties (and New England towns) identified by state and metropolitan area for identifying the appropriate area. U.S. Department of Housing and Urban Development, FY 2021 List of Counties (and New England Towns) Identified by

State and Metropolitan Area, available at <https://www.huduser.gov/portal/datasets/il/il21/area-definitions-FY21.pdf>.

²⁶ The U.S. Census Bureau provides an interactive map: U.S. Census Bureau, Median Household Income State Selection Map, available at https://data.census.gov/cedsci/map?q=Median%20Household%20Income&g=0100000US%2404000%24001&tid=ACST5Y2019.S1901&cid=S1901_C01_012E&vintage=2019. The U.S. Census Bureau also provides an interactive table: U.S. Census Bureau, Median Household Income In The Past 12 Months (In 2019 Inflation-Adjusted Dollars),

available at <https://data.census.gov/cedsci/table?q=b19013&tid=ACSDT5Y2019.B19013&hidePreview=true>.

²⁷ See U.S. Bureau of Labor Statistics, Occupational Employment and Wage Estimates, https://www.bls.gov/oes/current/oes_nat.htm (last visited December 7, 2021).

²⁸ U.S. Census Bureau, Poverty Status by State, <https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pov/pov-46.html> (last visited December 7, 2021).

used in programs such as the Community Development Block Grant (CDBG) Program.

In defining moderate income, the final rule uses both the FPG and AMI to account for national trends and regional differences. While there are different definitions of moderate income, 300 percent of FPG falls within the range commonly used by researchers.²⁹ Analysis of median wages among a sample of occupations likely impacted by the pandemic also suggests that an income cutoff of 300 percent of FPG would include many households with workers in such occupations.³⁰ Moreover, the metric of 300 percent of FPG covers households that, while above the poverty line, often lack economic security.³¹ Treasury determined the AMI threshold for moderate income by maintaining the same ratio of FPG multiplier to AMI multiplier as in the definition of low income. This anchors the threshold to the existing definitions of moderate income from the literature while taking into account geographical variation in income and expenses in the same manner as the definition of low income.

Eligibility Presumptions

Public Comment: Many commenters believed that a broader range of groups should be considered presumptively impacted and disproportionately impacted, arguing that many households had been affected by the pandemic and that broader presumed eligibility would help recipients provide assistance quickly and effectively.

Treasury also received many comments on the presumption that

families living in QCTs or receiving services from Tribal governments were disproportionately impacted by the pandemic. While many commenters supported the interim final rule's recognition of disproportionate impacts of the pandemic on low-income communities, many commenters disagreed with treating QCTs as the only presumed eligible group of disproportionately impacted households, apart from households served by Tribal governments. While acknowledging a potential increase in administrative burden, commenters recommended that Treasury presume other households or geographic areas, in addition to QCTs, were disproportionately impacted; suggestions included all low- and moderate-income households, geographic areas designated as Opportunity Zones, Difficult Development Areas (DDAs), areas with a certain amount of Real Estate Advantage Program (REAP) recipients, or use of eligibility criteria from the Community Reinvestment Act. One commenter generally recommended that a clearer definition of "disproportionately impacted" should be provided and that any definition should include communities of color and people of limited means. Another recommended specific eligibility for people that had recently interacted with the criminal justice system. Many commenters representing Tribal governments and groups recommended a presumption of eligibility for all Tribal uses of funds, clarification that off reservation members remained eligible, and broad flexibility on use of funds.

Additionally, commenters noted that some areas are technically eligible to be QCTs but fall short because of the aggregate population of eligible tracts. One commenter noted that these areas should be considered the same as QCTs for the purpose of SLFRF funds. Some commenters argued that rural counties typically have few QCTs despite high levels of poverty and disruption caused by the COVID-19 pandemic. Other rural commenters recommended that the designation be by county rather than at a more granular level, arguing that the QCT designation is biased towards urban areas and understates the harm done to rural America. Many commenters representing Tribal governments supported the presumption that services provided by Tribal governments respond to disproportionate impacts.

Treasury Response

Summary: While households residing in QCTs or served by Tribal

governments were presumed to be disproportionately impacted, Treasury emphasizes that under the interim final rule recipients could also identify other households, populations, or geographic areas that were disproportionately impacted by the pandemic and provide services to respond.

The final rule maintains the presumptions identified in the interim final rule, as well as recipients' ability to identify other impacted or disproportionately impacted classes. The final rule also allows recipients to presume that low-income households were disproportionately impacted, and as discussed above, defines low- and moderate-income. Finally, under the final rule recipients may also presume that households residing in the U.S. territories or receiving services from territorial governments were disproportionately impacted.

Households presumed to be impacted: Impacted households are those that experienced a public health or negative economic impact from the pandemic.

With regard to public health impacts, recipients may presume that the general public experienced public health impacts from the pandemic for the purposes of providing services for COVID-19 mitigation and behavioral health. In other words, recipients may provide a wide range of enumerated eligible uses in these categories to the general public without further analysis. As discussed in the introduction, COVID-19 as a disease has directly affected the health of tens of millions of Americans, and efforts to prevent and mitigate the spread of the disease are needed and in use across the country. Further, the stress of the pandemic and resulting recession have affected nearly all Americans. Accordingly, the final rule presumes that the general public are impacted by and eligible for services to respond to COVID-19 mitigation and prevention needs, as well as behavioral health needs.

With regard to negative economic impacts, as with the interim final rule, under the final rule recipients may presume that a household or population that experienced unemployment, experienced increased food or housing insecurity, or is low- or moderate-income experienced negative economic impacts resulting from the pandemic. The final rule's definition of low- and moderate-income, by providing standard metrics based on widely available data, is intended to simplify administration for recipients.

Households presumed to be disproportionately impacted: Disproportionately impacted households are those that experienced a

²⁹ For instance, Melissa Kearney et al. (2013) cap the "struggling lower middle-income class" at 250 percent of the federal poverty level, while Isabel Sawhill and Edward Rodrigue (2015) define the "middle class" as those with incomes of at least 300 percent of the poverty line. Melissa Kearney et al., "A Dozen Facts about America's Struggling Lower-Middle Class," The Hamilton Project (December 2013), https://www.hamiltonproject.org/assets/legacy/files/downloads_and_links/THP_12LowIncomeFacts_Final.pdf; Isabel Sawhill and Edward Rodrigue, "An Agenda for Reducing Poverty and Improving Opportunity," Brookings Institution, https://www.brookings.edu/wp-content/uploads/2016/07/Sowhill_FINAL.pdf.

³⁰ Data on median annual wages from: U.S. Bureau of Labor and Statistics, Occupational Employment and Wage Statistics, available at https://www.bls.gov/oes/current/oes_nat.htm (last visited December 7, 2021).

³¹ For instance, households earning between 200 and 300 percent of the FPG have significantly higher rates of food and housing insecurity than those earning above 300 percent of the FPG. Table 1, Kyle J. Caswell and Stephen Zuckerman, Food Insecurity, Housing Hardship, and Medical Care Utilization, Urban Institute (June 2018), https://www.urban.org/sites/default/files/publication/98701/2001896_foodinsecurity_housinghardship_medicalcareutilization_finalized.pdf.

disproportionate, or meaningfully more severe, impact from the pandemic. As discussed in the interim final rule, pre-existing disparities in health and economic outcomes magnified the impact of the COVID-19 public health emergency on certain households and communities. As with the interim final rule, under the final rule recipients may presume that households residing in QCTs or receiving services provided by Tribal governments were disproportionately impacted by the pandemic. In addition, under the final rule recipients may presume that low-income households were disproportionately impacted by the pandemic. Finally, under the final rule recipients may also presume that households residing in the U.S. territories or receiving services from territorial governments were disproportionately impacted.

Treasury notes that households presumed to be disproportionately impacted would also be presumptively impacted, as these households have not only experienced pandemic impacts but have experienced disproportionate pandemic impacts; as a result, these households are presumptively eligible for responsive services for both impacted and disproportionately impacted households.

Many different geographic, income-based, or poverty-based presumptions could be used to designate disproportionately impacted populations. The combination of permitting recipients to use QCTs, low-income households, and services provided by Tribal or territorial governments as presumptions balances these varying methods. Specifically, QCTs are a commonly used designation of geographic areas based on low incomes or high poverty rates of households in the community; for recipients providing geographically targeted services, QCTs may provide a simple metric with readily available maps for use. However, Treasury recognizes that QCTs do not capture all underserved populations, including for reasons noted by commenters. By allowing recipients to also presume that low-income households were disproportionately impacted, the final rule provides greater flexibility to serve underserved households or communities. Data on household incomes is also readily available at varying levels of geographic granularity (e.g., Census Tracts, counties), again permitting flexibility to adapt to local circumstances and needs. Finally, Treasury notes that, as discussed further below, recipients may also identify other households, populations, and

communities disproportionately impacted by the pandemic, in addition to those presumed to be disproportionately impacted.

Additionally, Tribal and territorial governments may face both disproportionate impacts of the pandemic and administrability challenges with operationalizing the income-based standard; therefore, Treasury has presumed that services provided by these governments respond to disproportionate pandemic impacts. Given a lack of regularly published data on household incomes in most territories,³² as well as a lack of poverty guidelines developed for these jurisdictions,³³ it may be highly challenging to assess disproportionate impact in these communities according to an income- or poverty-based standard. Similarly, data on incomes in Tribal communities are not readily available.³⁴ Finally, as described in the sections on Public Health and Negative Economic Impacts, Tribal communities have faced particularly severe health and economic impacts of the pandemic. Similarly, available research suggests that preexisting health and economic disparities in the territories amplified the impact of the pandemic on these communities.³⁵

Categorical Eligibility

Public Comment: Several commenters suggested that the final rule permit recipients to rely on a beneficiary's eligibility for other federal benefits programs as an easily administrable proxy for identifying a group or population that experienced a negative economic impact as a result of the COVID-19 public health emergency (i.e., categorical eligibility). In other words, a recipient would determine that individuals or households are eligible for an SLFRF-funded program based on the individual or household's eligibility in another program, typically another federal benefit program. Commenters noted that categorical eligibility is a common policy in program

administration that can significantly ease administrative burden on both program administrators and beneficiaries.

Treasury Response: Treasury agrees that allowing recipients to identify impacted and disproportionately impacted beneficiaries based on their eligibility for other programs with similar income tests would ease administrative burden. To the extent that the other program's eligibility criteria align with a population or class that experienced a negative economic impact of the pandemic, this approach is also consistent with the process allowed under the final rule for recipients to determine that a class has experienced a negative economic impact, and then document that an individual receiving services is a member of the class. For these reasons, the final rule recognizes categorical eligibility for the following programs and populations:

- **Impacted households.** Treasury will recognize a household as impacted if it otherwise qualifies for any of the following programs:
 - Children's Health Insurance Program (CHIP)
 - Childcare Subsidies through the Child Care and Development Fund (CCDF) Program
 - Medicaid
 - National Housing Trust Fund (HTF), for affordable housing programs only
 - Home Investment Partnerships Program (HOME), for affordable housing programs only
- **Disproportionately impacted households.** Treasury will recognize a household as disproportionately impacted if it otherwise qualifies for any of the following programs:
 - Temporary Assistance for Needy Families (TANF)
 - Supplemental Nutrition Assistance Program (SNAP)
 - Free and Reduced-Price Lunch (NSLP) and/or School Breakfast (SBP) programs
 - Medicare Part D Low-income Subsidies
 - Supplemental Security Income (SSI)
 - Head Start and/or Early Head Start
 - Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
 - Section 8 Vouchers
 - Low-Income Home Energy Assistance Program (LIHEAP)
 - Pell Grants
 - For services to address educational disparities, Treasury will recognize Title

³² For instance, the American Community Survey does not include all territories. U.S. Census Bureau, Areas Published, <https://www.census.gov/programs-surveys/acs/geography-acs/areas-published.html> (last visited November 9, 2021).

³³ U.S. Department of Health and Human Services, *supra* note 24.

³⁴ For instance, data from the American Community Survey is based on geographical location rather than Tribal membership. U.S. Census Bureau, My Tribal Area, https://www.census.gov/Tribal/Tribal_glossary.php.

³⁵ Lina Stoylar et. al., Challenges in the U.S. Territories: COVID-19 and the Medicaid Financing Cliff, Kaiser Family Foundation (May 18, 2021), <https://www.kff.org/coronavirus-covid-19/issue-brief/challenges-in-the-u-s-territories-covid-19-and-the-medicaid-financing-cliff/>.

Eligible schools³⁶ as disproportionately impacted and responsive services that support the school generally or support the whole school as eligible

c. Standards for Identifying Other Eligible Populations

Standards: Designating Other Impacted Classes

Public Comment: Treasury received multiple comments requesting additional clarification about how classes of impacted individuals may be designated, as well as questions asking whether recipients must demonstrate a specific public health or negative economic impact to each entity served (e.g., each household receiving assistance under a program). There were several comments requesting that specific geographic designations, like a county or Impact Zone, be eligible to use as a determining boundary.

Treasury Response: The interim final rule allowed, and the final rule maintains, the ability for recipients to demonstrate a public health or negative economic impact on a class and to provide assistance to beneficiaries that fall within that class. Consistent with the scope of beneficiaries included in sections 602(c)(1)(A) and 603(c)(1)(A) of the Social Security Act, Treasury is clarifying that a recipient may identify such impacts for a class of households, small businesses, or nonprofits. In such cases, the recipient need only demonstrate that the household, small business, or nonprofit is within the relevant class. For example, a recipient could determine that restaurants in the downtown area had generally experienced a negative economic impact and provide assistance to those small businesses to respond. When providing this assistance, the recipient would only need to demonstrate that the small businesses receiving assistance were restaurants in the downtown area. The recipient would not need to demonstrate that each restaurant served experienced its own negative economic impact.

In identifying an impacted class and responsive program, service, or capital expenditure, recipients should consider the relationship between the definition of the class and proposed response. Larger and less-specific classes are less likely to have experienced similar harms and thus the responses are less

likely to be responsive to the harms identified. That is, as the group of entities being served by a program has a wider set of fact patterns, or the type of entities, their circumstances, or their pandemic experiences differ more substantially, it may be more difficult to determine that the class has actually experienced the same or similar negative economic impact and that the response is appropriately tailored to address that impact.

Standard: Designating Other Disproportionately Impacted Classes

Summary of Interim Final Rule: As noted above, the interim final rule provided a broad set of enumerated eligible uses of funds in disproportionately impacted communities, including to address pre-existing disparities that contributed to more severe pandemic impacts in these communities. The interim final rule presumed that these services are eligible uses when provided in a QCT, to families and individuals living in QCTs, or when these services are provided by Tribal governments. Recipients may also provide these services to “other populations, households, or geographic areas disproportionately impacted by the pandemic” and, in identifying these disproportionately impacted communities, should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the group identified.

Public Comment: A significant number of commenters expressed uncertainty regarding the process for determining eligibility for disproportionately impacted communities beyond QCTs. A commenter noted that a clearer definition of “disproportionately impacted” should be delineated and that any definition should include communities of color and people of limited means. Some commenters suggested a template or checklist to see if an area meets the standard for disproportionately impacted communities outside of QCTs. Some commenters stated that QCT and non-QCT beneficiaries should be treated the same.

Treasury Response: Under the interim final rule, presuming eligibility for services in QCTs, for populations living in QCTs, and for Tribal governments was intended to ease administrative burden, providing a simple path for recipients to offer services in underserved communities, and is not an exhaustive list of disproportionately impacted communities. To further clarify, the final rule codifies the

interpretive framework discussed above, including presumptions of groups disproportionately impacted, as well as the ability to identify other disproportionately impacted populations, households, or geographies (referred to here as disproportionately impacted classes).

As discussed in the interim final rule, in identifying other disproportionately impacted classes, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served. For example, the interim final rule considered data regarding the rate of COVID-19 infections and deaths in low-income and socially vulnerable communities, noting that these communities have experienced the most severe health impacts, compared to national averages. Similarly, the interim final rule considered the high concentration of low-income workers performing essential work, the reduced ability to socially distance, and other pre-existing public health challenges, all of which correlate with more severe COVID-19 outcomes. The interim final rule also considered the disproportionate economic impacts of the pandemic, citing, for example, the rate of job losses among low-income persons as compared to the general population. The interim final rule then identified QCTs, a common, readily accessible, and geographically granular method of identifying communities with a large proportion of low-income residents, as presumed to be disproportionately impacted by the pandemic.

In other words, the interim final rule identified disproportionately impacted populations by assessing the impacts of the pandemic and finding that some populations experienced meaningfully more severe impacts than the general public. Similarly, to identify disproportionately impacted classes, recipients should compare the impacts experienced by that class to the typical or average impacts of the pandemic in their local area, state, or nationally.

Recipients may identify classes of households, communities, small businesses, nonprofits, or populations that have experienced a disproportionate impact based on academic research or government research publications, through analysis of their own data, or through analysis of other existing data sources. To augment their analysis, or when quantitative data is not readily available, recipients may also consider qualitative research and sources like resident interviews or

³⁶ Title I eligible schools means schools eligible to receive services under section 1113 of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6313), including schools served under section 1113(b)(1)(C) of that Act.

feedback from relevant state and local agencies, such as public health departments or social services departments. In both cases, recipients should consider the quality of the research, data, and applicability of analysis to their determination.

In designing a program or service that responds to a disproportionately impacted class, a recipient must first identify the impact and then identify an appropriate response. To assess disproportionate impact, recipients should rely on data or research that measures the public health or negative economic impact. An assessment of the effects of a response (e.g., survey data on levels of resident support for various potential responses) is not a substitute for an assessment of the impact experienced by a particular class. Data about the appropriateness or desirability of a response may be used to assess the reasonableness of a response, once an impact or disproportionate impact has been identified but should not be the basis for assessing impact.

2. Public Health

Background

On January 21, 2020, the Centers for Disease Control and Prevention (CDC) identified the first case of novel coronavirus in the United States.³⁷ Since that time, and through present day, the United States has faced numerous waves of the virus that have brought acute strain on health care and public health systems. At various points in the pandemic, hospitals and emergency medical services have seen significant influxes of patients; response personnel have faced shortages of personal protective equipment; testing for the virus has been scarce; and congregate living facilities like nursing homes have seen rapid spread.

Since the initial wave of the COVID-19 pandemic, the United States has faced several additional major waves that continued to impact communities and stretch public health services. The summer 2020 wave impacted communities in the south and southwest. As the weather turned colder and people spent more time indoors, a wave throughout fall and winter 2020 impacted communities in almost every region of the country as the virus reached a point of uncontrolled spread and over 3,000 people died per day due to COVID-19.³⁸

³⁷ Press Release, Centers for Disease Control and Prevention, First Travel-related Case of 2019 Novel Coronavirus Detected in United States (Jan. 21, 2020), <https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>.

³⁸ Centers for Disease Control and Prevention, COVID Data Tracker: Trends in Number of COVID-

In December 2020, the Food and Drug Administration (FDA) authorized COVID-19 vaccines for emergency use, and soon thereafter, mass vaccination in the United States began. At the time of the interim final rule publication in May 2021, the number of daily new infections was steeply declining as rapid vaccination campaigns progressed across the country. By summer 2021, COVID-19 cases had fallen to their lowest level since early months of the pandemic, when testing was scarce. However, throughout late summer and early fall, the Delta variant, a more infectious and transmissible variant of the SARS-CoV-2 virus, sparked yet another surge. From June to early September, the seven-day moving average of reported cases rose from 12,000 to 165,000.³⁹

As of December 2021, COVID-19 in total has infected over 50 million and killed over 800,000 Americans.⁴⁰ Preventing and mitigating the spread of COVID-19 continues to require a major public health response from federal, state, local, and Tribal governments.

First, state, local, and Tribal governments across the country have mobilized to support the national vaccination campaign. As of December 2021, more than 80 percent of adults have received at least one dose, with more than 470 million total doses administered.⁴¹ Additionally, more than 15 million children over the age of 12 have received at least one dose of the vaccine and over 47 million people have received a booster dose.⁴² Vaccines for younger children, ages 5 through 11, have been approved and are reaching communities and families across the country. As new variants continue to emerge globally, the national effort to administer vaccinations and other COVID-19 mitigation strategies will be a critical component of the public health response.

In early reporting on uses of SLFRF funds, recipients have indicated that they plan to put funds to immediate use to support continued vaccination campaigns. For example, one recipient has indicated that it plans to use SLFRF

19 Cases and Deaths in the US Reported to CDC, by State/Territory, https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases (last visited December 7, 2021).

³⁹ *Id.*

⁴⁰ Centers for Disease Control and Prevention, COVID Data Tracker, <http://www.covid.cdc.gov/covid-data-tracker/#data-tracker-home> (last visited December 31, 2021).

⁴¹ Centers for Disease Control and Prevention, COVID Data Tracker: COVID-19 Vaccinations in the United States, <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last visited December 7, 2021).

⁴² *Id.*

funds to support a vaccine incentive program, providing \$100 gift cards to residents at community vaccination clinics. The program aimed to target communities with high public health needs.⁴³ Another recipient reported that it is partnering with multiple agencies, organizations, and providers to distribute COVID-19 vaccinations to homebound residents in assisted living facilities.⁴⁴

State, local, and Tribal governments have also continued to execute other aspects of a wide-ranging public health response, including increasing access to COVID-19 testing and rapid at-home tests, contact tracing, support for individuals in isolation or quarantine, enforcement of public health orders, new public communication efforts, public health surveillance (e.g., monitoring case trends and genomic sequencing for variants), enhancement to health care capacity through alternative care facilities, and enhancement of public health data systems to meet new demands or scaling needs.

State, local, and Tribal governments have also supported major efforts to prevent COVID-19 spread through safety measures at key settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and in other public facilities. This has included, for example, implementing infection prevention measures or making ventilation improvements.

In particular, state, local, and Tribal governments have mounted significant efforts to safely reopen schools. A key factor in school reopening is the ability to implement COVID-19 mitigation strategies such as providing masks and other hygiene resources, improving air-quality and ventilation, increasing outdoor learning and eating spaces, testing and contact tracing protocols, and a number of other measures.⁴⁵ For example, one recipient described plans to use SLFRF funds to further invest in school health resources that were critical components of school reopening and reducing the spread of COVID-19 in schools. Those investments include the increasing school nurses and social

⁴³ Columbus, Ohio Recovery Plan, <https://www.columbus.gov/recovery/>.

⁴⁴ Luzerne County, Pennsylvania Recovery Plan, <https://www.luzernecounty.org/DocumentCenter/View/26304/Final-Interim-Recovery-Plan-Performance-Report-83121>.

⁴⁵ This includes implementing mitigation strategies consistent with the Centers for Disease Control and Prevention's (CDC) Guidance for COVID-19 Prevention in K-12 Schools (November 5, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>.

workers, improved ventilation systems, and other health and safety measures.

The need for public health measures to respond to COVID-19 will continue moving forward. This includes the continuation of vaccination campaigns for the general public, booster doses, and children. This also includes monitoring the spread of COVID-19 variants, understanding the impact of these variants, developing approaches to respond, and monitoring global COVID-19 trends. Finally, the long-term health impacts of COVID-19 will continue to require a public health response, including medical services for individuals with “long COVID,” and research to understand how COVID-19 impacts future health needs and raises risks for the tens of millions of Americans who have been infected.

The COVID-19 pandemic also negatively impacted other areas of public health, particularly mental health and substance use. In January 2021, over 40 percent of American adults reported symptoms of depression or anxiety, up from 11 percent in the first half of 2019.⁴⁶ The mental health impacts of the pandemic have been particularly acute for adults ages 18 to 24, racial and ethnic minorities, caregivers for adults, and essential workers, with all reporting significantly higher rates of considering suicide.⁴⁷ The proportion of children’s emergency department visits related to mental health has also risen noticeably.⁴⁸ Similarly, rates of substance use and overdose deaths have spiked: Preliminary data from the CDC show a nearly 30 percent increase in drug overdose mortality from April 2020 to April 2021, bringing the estimated overdose death toll for a 12-month period over 100,000 for the first time ever.⁴⁹ The CDC also found that 13 percent of adults started or increased

substance use to cope with stress related to COVID-19 and 26 percent reported having symptoms of trauma- and stressor-related disorder (TRSD) related to the pandemic.⁵⁰

Another public health challenge exacerbated by the pandemic was violent crime and gun violence, which increased during the pandemic and has disproportionately impacted low-income communities.⁵¹ According to the Federal Bureau of Investigation (FBI), although the property crime rate fell 8 percent in 2020, the violent crime rate increased 6 percent in 2020 compared to 2019 data.⁵² In particular, the estimated number of aggravated assault offenses rose 12 percent, while murder and manslaughter increased 30 percent from 2019 to 2020.⁵³ The proportion of homicides committed with firearms rose from 73 percent in 2019 to 76 percent in 2020.⁵⁴ Exposure to violence can create serious short-term and long-term harmful effects to health and development, and repeated exposure to violence may be connected to negative health outcomes.⁵⁵ Addressing community violence as a public health issue may help prevent and even reduce additional harm to individuals, households, and communities.⁵⁶

Many communities are using SLFRF funds to invest in holistic approaches in violence prevention that are rooted in targeted outreach and addressing root causes. For example, the City of St. Louis is planning to invest in expanding a “community responder” model designed to provide clinical help and to divert non-violent calls away from the police department. Additionally, the city will expand access to mental health services, allowing residents to seek support at city recreation centers,

libraries, and other public spaces.⁵⁷ Similarly, Los Angeles County will further invest in its “Care First, Jails Last” program which seeks to replace “arrest and incarceration” responses with health interventions.⁵⁸

While the pandemic affected communities across the country, it disproportionately impacted some demographic groups and exacerbated health inequities along racial, ethnic, and socioeconomic lines.⁵⁹ The CDC has found that racial and ethnic minorities are at increased risk for infection, hospitalization, and death from COVID-19, with Hispanic or Latino and Native American or Alaska Native patients at highest risk.⁶⁰

Similarly, low-income and socially vulnerable communities have seen the most severe health impacts. For example, counties with high poverty rates also have the highest rates of infections and deaths, with 308 deaths per 100,000 compared to the U.S. average of 238 deaths per 100,000, as of December 2021.⁶¹ Counties with high social vulnerability, as measured by factors such as poverty and educational attainment, have also fared more poorly than the national average, with 325 deaths per 100,000 as of December 2021.⁶² Over the course of the

⁵⁷ St. Louis, MO Recovery Plan, <https://www.stlouis-mo.gov/government/recovery/covid-19/arpa/plan/>.

⁵⁸ Los Angeles County, CA Recovery Plan, <http://file.lacounty.gov/SDSInter/bos/supdocs/160391.pdf>.

⁵⁹ Office of the White House, National Strategy for the COVID-19 Response and Pandemic Preparedness (Jan. 21, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf>.

⁶⁰ In a study of 13 states from October to December 2020, the CDC found that Hispanic or Latino and Native American or Alaska Native individuals were 1.7 times more likely to visit an emergency room for COVID-19 than White individuals, and Black individuals were 1.4 times more likely to do so than White individuals. See Sebastian D. Romano et al., Trends in Racial and Ethnic Disparities in COVID-19 Hospitalizations, by Region—United States, March–December 2020, *MMWR Morb Mortal Wkly Rep* 2021, 70:560–565 (Apr. 16, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7015e2.htm?s_cid=mm7015e2_w.

⁶¹ Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID-19 Cases and Deaths in the United States, by County-level Population Factors, https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths (last visited December 7, 2021).

⁶² The CDC’s Social Vulnerability Index includes fifteen variables measuring social vulnerability, including unemployment, poverty, education levels, single-parent households, disability status, non-English speaking households, crowded housing, and transportation access.

Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID-19 Cases and Deaths in the United States, by Social

⁴⁶ Nirmita Panchal et al., The Implications of COVID-19 for Mental Health and Substance Abuse (Feb. 10, 2021), [https://www.kff.org/coronavirus/covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/#:-text=Older%20adults%20are%20also%20more,prior%20to%20the%20current%20crisis;Mark%20Czeisler%20et%20al.,Mental%20Health,%20Substance%20Abuse,%20and%20Suicidal%20Ideation%20During%20COVID-19%20Pandemic—United%20States,June%2024–30%2020,Morb.Mortal.Wkly.Rep.69\(32\):1049–57\(Aug.14,2020\),https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm](https://www.kff.org/coronavirus/covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/#:-text=Older%20adults%20are%20also%20more,prior%20to%20the%20current%20crisis;Mark%20Czeisler%20et%20al.,Mental%20Health,%20Substance%20Abuse,%20and%20Suicidal%20Ideation%20During%20COVID-19%20Pandemic—United%20States,June%2024–30%2020,Morb.Mortal.Wkly.Rep.69(32):1049–57(Aug.14,2020),https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm).

⁴⁷ *Id.*

⁴⁸ Rebecca T. Leeb et al., Mental Health-Related Emergency Department Visits Among Children Aged <18 Years During the COVID Pandemic—United States, January 1–October 17, 2020, *Morb. Mortal. Wkly. Rep.* 69(45):1675–80 (Nov. 13, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm>.

⁴⁹ Centers for Disease Prevention and Control, National Center for Health Statistics, Provisional Drug Overdose Death Counts, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm> (last visited May 8 December 6, 2021).

⁵⁰ Panchal, *supra* note 46; Mark É. Czeisler et al., *supra* note 46.

⁵¹ The White House, FACT SHEET: More Details on the Biden-Harris Administration’s Investments in Community Violence Interventions (April 7, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/07/fact-sheet-more-details-on-the-biden-harris-administrations-investments-in-community-violence-interventions/>.

⁵² Federal Bureau of Investigation, FBI Releases 2020 Crime Statistics (September 27, 2021), <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2020-crime-statistics>.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ The Educational Fund to Stop Gun Violence, Community Gun Violence, <https://efsgv.org/learn/type-of-gun-violence/community-gun-violence/> (last visited November 9, 2021).

⁵⁶ Giffords Law Center, Healing Communities in Crisis: Lifesaving Solutions to the Urban Gun Violence Epidemic (March 2016), <https://giffords.org/wp-content/uploads/2019/01/Healing-Communities-in-Crisis.pdf>.

pandemic, Native Americans have experienced more than one and a half times the rate of COVID-19 infections, more than triple the rate of hospitalizations, and more than double the death rate compared to White Americans.⁶³ Low-income and minority communities also exhibit higher rates of pre-existing conditions that may contribute to an increased risk of COVID-19 mortality.⁶⁴ In addition, individuals living in low-income communities may have had more limited ability to socially distance or to self-isolate when ill, resulting in faster spread of the virus, and were over-represented among essential workers, who face greater risk of exposure.⁶⁵

Social distancing measures in response to the pandemic may have also exacerbated pre-existing public health challenges. For example, for children living in homes with lead paint, spending substantially more time at home raises the risk of developing elevated blood lead levels, while screenings for elevated blood lead levels declined during the pandemic.⁶⁶ The combination of these underlying social and health vulnerabilities may have contributed to more severe public health outcomes of the pandemic within these communities, resulting in an exacerbation of pre-existing disparities in health outcomes.⁶⁷

Vulnerability Index, https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths (last visited December 7, 2021).

⁶³ Centers for Disease Control and Prevention, Risk for COVID-19 Infection, Hospitalization, and Death By Race/Ethnicity, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html> (last visited December 7, 2021).

⁶⁴ See, e.g., Centers for Disease Control and Prevention, Risk of Severe Illness or Death from COVID-19 (Dec. 10, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-illness.html> (last visited December 7, 2021).

⁶⁵ Milena Almagro et al., Racial Disparities in Frontline Workers and Housing Crowding During COVID-19: Evidence from Geolocation Data (Sept. 22, 2020), NYU Stern School of Business (forthcoming), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3695249; Grace McCormack et al., Economic Vulnerability of Households with Essential Workers, JAMA 324(4):388–90 (2020), available at <https://jamanetwork.com/journals/jama/fullarticle/2767630>.

⁶⁶ See, e.g., Joseph G. Courtney et al., Decreases in Young Children Who Received Blood Lead Level Testing During COVID-19—34 Jurisdictions, January–May 2020, Morb. Mort. Wkly. Rep. 70(5):155–61 (Feb. 5, 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a2.htm>; Emily A. Benfer & Lindsay F. Wiley, Health Justice Strategies to Combat COVID-19: Protecting Vulnerable Communities During a Pandemic, Health Affairs Blog (Mar. 19, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200319.757883/full/>.

⁶⁷ See, e.g., Centers for Disease Control and Prevention, *supra* note 62; Benfer & Wiley, *supra* note 66; Nathaniel M. Lewis et al., Disparities in COVID-19 Incidence, Hospitalizations, and Testing,

Summary of the Interim Final Rule Approach to Public Health

Summary: As discussed above, the interim final rule provided flexibility for recipients to pursue a wide range of eligible uses to “respond to” the COVID-19 public health emergency. Uses of funds to “respond to” the public health emergency address the SARS-CoV-2 virus itself, support efforts to prevent or decrease spread of the virus, and address other impacts of the pandemic on public health. The interim final rule implemented these provisions by identifying a non-exhaustive list of programs or services that may be funded as responding to COVID-19 (“enumerated eligible uses”), along with considerations for evaluating other potential uses of funds not explicitly listed. Enumerated eligible uses are discussed below. For guidance on how to determine whether a particular use is allowable, beyond those enumerated, see section Standards: Identifying a Public Health Impact.

Enumerated eligible uses under this section built and expanded upon permissible expenditures under the Coronavirus Relief Fund; for clarity, the interim final rule expressly listed as eligible uses the uses permissible under the Coronavirus Relief Fund, with minor exceptions.⁶⁸ The interim final rule also recognized that the nature of the COVID-19 public health emergency, and responsive policy measures, programs, and services, had changed over time and is expected to continue evolving.

The interim final rule categorized enumerated eligible uses to respond to the public health emergency into several categories: (1) COVID-19 mitigation and prevention, (2) medical expenses, (3) behavioral health care, (4) public health and safety staff, (5) expenses to improve the design and execution of health and public health programs, and (6) eligible uses to address disparities in public health outcomes. For each category in turn, this section describes public comments received and Treasury’s responses, as well as comments received

by Area-Level Deprivation—Utah, March 3–July 9, 2020, Morb. Mort. Wkly. Rep. 69(38):1369–73 (Sept. 25, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6938a4.htm>.

⁶⁸ Generally, funding uses eligible under CRF as a response to the direct public health impacts of COVID-19 will continue to be eligible under the ARPA, including those not explicitly listed in the final rule, with the following two exceptions: (1) The standard for eligibility of public health and safety payrolls has been updated (see section Public Sector Capacity and Workforce in General Provisions: Other) and (2) expenses related to the issuance of tax-anticipation notes are no longer an eligible funding use (see section Restrictions on Use: Debt Service).

proposing additional enumerated eligible uses.

Reorganizations and Cross-References: In some cases, enumerated eligible uses included in the interim final rule under responding to the public health emergency have been re-categorized in the organization of the final rule to enhance clarity. For discussion of eligible uses for public health and safety staff and to improve the design and execution of public health programs, please see section Public Sector Capacity and Workforce in General Provisions: Other. For discussion of eligible uses to address disparities in public health outcomes, please see section Assistance to Households in Negative Economic Impacts.

Conversely, discussion of eligible assistance to small businesses and nonprofits to respond to public health impacts has been moved from Assistance to Small Businesses and Assistance to Nonprofits in Negative Economic Impacts to this section. This change is consistent with the interim final rule, which provides that appropriate responses to address the public health impacts of COVID-19 may be provided to any type of entity.

a. COVID-19 Mitigation and Prevention

COVID-19 public health response and mitigation tactics. Recognizing the broad range of services and programming needed to contain COVID-19, the interim final rule provided an extensive list of enumerated eligible uses to prevent and mitigate COVID-19 and made clear that the public health response to the virus is expected to continue to evolve over time, necessitating different uses of funds.

Enumerated eligible uses of funds in this category included: Vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (e.g., monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (e.g., nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools; ventilation improvements in congregate settings, health care settings, or other key locations; enhancement of

public health data systems; other public health responses; and capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics. These enumerated uses are consistent with guidance from public health authorities, including the CDC.

Public Comment: Many commenters were supportive of expansive enumerated eligible uses for mitigating and preventing COVID-19, noting the wide range of activities that governments may undertake and the continued changing landscape of pandemic response. Some commenters requested that Treasury engage in ongoing consideration of and consultation on evolving public health needs and resulting eligible expenses. Some commenters noted that their jurisdiction does not have an official public health program, for example smaller jurisdictions or those that do not have a health department, and requested clarification on whether their public health expenses would still be eligible in compliance with program rules.

Treasury Response: In the final rule, Treasury is maintaining an expansive list of enumerated eligible uses to mitigate and prevent COVID-19, given the wide-ranging activities that governments may take to further these goals, including “other public health responses.” Note that the final rule discusses several of these enumerated uses in more detail below.

Treasury is further clarifying that when providing COVID-19 prevention and mitigation services, recipients can identify the impacted population as the general public. Treasury presumes that all enumerated eligible uses for programs and services, including COVID-19 mitigation and prevention programs and services, are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. Note that capital expenditures are not considered “programs and services” and are not presumed to be reasonably proportional responses to an identified harm except as provided in section Capital Expenditures in General Provisions: Other. In other words, recipients can provide any COVID-19 prevention or mitigation service to members of the general public without any further analysis of impacts of the pandemic on those individuals and whether the service is responsive.

This approach gives recipient governments an extensive set of eligible

uses that can adapt to local needs, as well as evolving response needs and developments in understanding of transmission of COVID-19. Treasury emphasizes how the enumerated eligible uses can adapt to changing circumstances. For example, when the interim final rule was released, national daily COVID-19 cases were at relatively low levels and declining;⁶⁹ as the Delta variant spread and cases peaked in many areas of the country, particularly those with low vaccination rates, government response needs and tactics evolved, and the SLFRF funds provided the ability to quickly and nimbly adapt to new public health needs. Treasury also notes that funds may be used to support compliance with and implementation of COVID-19 safety requirements, including vaccination requirements, testing programs, or other required practices.

Recipient governments do not need to have an official health or public health program in order to utilize these eligible uses; any recipient can pursue these eligible uses, though Treasury recommends consulting with health and public health professionals to support effective implementation.

The CDC has provided recommendations and guidelines to help mitigate and prevent COVID-19. The interim final rule and final rule help support recipients in stopping the spread of COVID-19 through these recommendations and guidelines.⁷⁰ The final rule reflects changing circumstances of COVID-19 and provides a broad range of permissible uses for mitigating and preventing the spread of the disease, in a manner consistent with CDC guidelines and recommendations.

The purpose of the SLFRF funds is to mitigate the fiscal effects stemming from the COVID-19 public health emergency, including by supporting efforts to stop the spread of the virus. The interim final rule and final rule implement this objective by, in part, providing that recipients may use SLFRF funds for COVID-19 mitigation and prevention.⁷¹ A program or service that imposes conditions on participation in or acceptance of the service that would undermine efforts to stop the spread of COVID-19 or discourage compliance with recommendations and guidelines

in CDC guidance for stopping the spread of COVID-19 is not a permissible use of funds. In other words, recipients may not use funds for a program that undermines practices included in the CDC’s guidelines and recommendations for stopping the spread of COVID-19. This includes programs that impose a condition to discourage compliance with practices in line with CDC guidance (e.g., paying off fines to businesses incurred for violation of COVID-19 vaccination or safety requirements), as well as programs that require households, businesses, nonprofits, or other entities not to use practices in line with CDC guidance as a condition of receiving funds (e.g., requiring that businesses abstain from requiring mask use or employee vaccination as a condition of receiving SLFRF funds).

Vaccination programs and vaccine incentives. At the time of the interim final rule release, many vaccination programs were using mass vaccination tactics to rapidly reach Americans en masse for first vaccine doses.⁷² Since that time, the FDA has authorized booster vaccine doses for certain groups and certain vaccines and has also authorized vaccines for youths.^{73 74} The inclusion of “vaccination programs” as an eligible use allows for adaptation as the needs of programs change or new groups become eligible for different types of vaccinations.

Public Comment: Since the release of the interim final rule, many recipient governments have also requested clarification on whether vaccine incentives are a permissible use of funds.

Treasury Response: Treasury issued guidance clarifying that “[vaccine] programs that provide incentives reasonably expected to increase the number of people who choose to get vaccinated, or that motivate people to get vaccinated sooner than they otherwise would have, are an allowable

⁶⁹ See Centers for Disease Control and Prevention, COVID Data Tracker, https://covid.cdc.gov/covid-data-tracker/#trends_dailycases (last visited December 7, 2021).

⁷⁰ See Centers for Disease Control and Prevention, COVID-19, <https://www.cdc.gov/coronavirus/2019-ncov/index.html> (last visited November 8, 2021).

⁷¹ See § 35.6(b); Coronavirus State and Local Fiscal Recovery Funds, 86 FR at 26786.

⁷² Centers for Disease Control and Prevention, COVID Data Tracker: COVID-19 Vaccinations in the United States, <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last visited October 18, 2021).

⁷³ U.S. Food and Drug Administration, Coronavirus (COVID-19) Update: FDA Takes Additional Actions on the Use of a Booster Dose for COVID-19 Vaccines, <https://www.fda.gov/news-events/press-announcements/fda-authorizes-pfizer-biontech-covid-19-vaccine-emergency-use-children-5-through-11-years-age> (last visited November 8, 2021).

⁷⁴ U.S. Food and Drug Administration, FDA Authorizes Pfizer-BioNTech COVID-19 Vaccine for Emergency Use in Children 5 through 11 Years of Age, <https://www.fda.gov/news-events/press-announcements/fda-authorizes-pfizer-biontech-covid-19-vaccine-emergency-use-children-5-through-11-years-age> (last visited November 8, 2021).

use of funds so long as such costs are reasonably proportional to the expected public health benefit.”⁷⁵ This use of funds remains permissible under the final rule.

Capital Expenditures

Public Comment: Many commenters requested clarification around the types and scope of permissible capital investments in public facilities to meet pandemic operational needs; ventilation improvements in congregate settings, health care settings, or other key locations; and whether support for prevention and mitigation in congregate facilities could include facilities renovations, improvements, or construction of new facilities, or if the facilities must solely be used for COVID-19 response.

Treasury Response: For clarity, Treasury has addressed the eligibility standard for capital expenditures, or investments in property, facilities, or equipment, in one section of this Supplementary Information; see section Capital Expenditures in General Provisions: Other. In recognition of the importance of capital expenditures in the COVID-19 public health response, Treasury enumerates that the following projects are examples of eligible capital expenditures, as long as they meet the standards for capital expenditures in section Capital Expenditures in General Provisions: Other:

- Improvements or construction of COVID-19 testing sites and laboratories, and acquisition of related equipment;
- Improvements or construction of COVID-19 vaccination sites;
- Improvements or construction of medical facilities generally dedicated to COVID-19 treatment and mitigation (e.g., emergency rooms, intensive care units, telemedicine capabilities for COVID-19 related treatment);
- Expenses of establishing temporary medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs;
- Acquisition of equipment for COVID-19 prevention and treatment, including ventilators, ambulances, and other medical or emergency services equipment;
- Improvements to or construction of emergency operations centers and acquisition of emergency response

equipment (e.g., emergency response radio systems);

- Installation and improvements of ventilation systems;
- Costs of establishing public health data systems, including technology infrastructure;
- Adaptations to congregate living facilities, including skilled nursing facilities, other long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities, as well as public facilities and schools (excluding construction of new facilities for the purpose of mitigating spread of COVID-19 in the facility); and
- Mitigation measures in small businesses, nonprofits, and impacted industries (e.g., developing outdoor spaces).

Other clarifications on COVID-19 mitigation: Medical care, supports for vulnerable populations, data systems, carceral settings. Based on public comments and questions received from recipients following the interim final rule, Treasury is making several further clarifications on enumerated eligible uses in this category.

Public Comment: Several commenters requested clarification on eligible uses of funds for medical care; Treasury addresses those comments in the section Medical Expenses below.

Public Comment: Recipients posed questions on the type and scope of activities eligible as “supports for vulnerable populations to access medical or public health services.”

Treasury Response: Enumerated eligible uses should be considered in the context of the eligible use category or section where they appear; in this case, “supports for vulnerable populations to access medical or public health services” appears in the section COVID-19 Mitigation and Prevention. As such, these eligible uses should help vulnerable or high-risk populations access services that mitigate COVID-19, for example, transportation assistance to reach vaccination sites, mobile vaccination or testing programs, or on-site vaccination or testing services for homebound individuals, those in group homes, or similar settings.

Public Comment: Some commenters asked whether “enhancement of public health data systems” could include investments in software, databases, and other information technology resources that support responses to the COVID-19 public health emergency but also provide benefits for other use cases and long-term capacity of public health departments and systems.

Treasury Response: These are permissible uses of funds under the interim final rule and remain eligible under the final rule.

Assistance to Businesses and Nonprofits To Implement COVID-19 Mitigation Strategies

Background: As detailed above, Treasury received many public comments describing uncertainty about which eligible use category should be used to assess different potential uses of funds. As a result, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity, consistent with the principle that uses of funds should be assessed based on their intended beneficiary. For example, COVID-19 mitigation and prevention serves the general public or specific populations within the public. However, in the interim final rule, assistance to small businesses, nonprofits, and impacted industries to implement COVID-19 mitigation and prevention strategies was categorized in the respective sections within Negative Economic Impacts. The final rule consolidates all COVID-19 mitigation and prevention within Public Health.

Public Comment: Treasury has received multiple comments and questions about which eligible use permits the recipient to provide assistance to businesses and nonprofits to address the public health impacts of COVID-19.

Treasury Response: In the final rule, these services have been re-categorized under COVID-19 mitigation and prevention to reflect the fact that this assistance responds to public health impacts of the pandemic rather than the negative economic impacts to a small business, nonprofit, or impacted industry. When providing COVID-19 mitigation and prevention services, recipients can identify the impacted entity as small businesses, nonprofits, or businesses in impacted industries in general. As with all enumerated eligible uses, recipients may presume that all COVID-19 mitigation and prevention programs and services are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. Note that capital expenditures are not considered “programs and services” and are not presumed to be reasonably proportional responses to an identified harm except as provided in section Capital Expenditures in General Provisions: Other. In other words, recipients can provide any COVID-19 prevention or mitigation service to small businesses, nonprofits, and businesses in impacted

⁷⁵ Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRFAQ.pdf>. Note that programs may provide incentives to individuals who have already received a vaccination if the incentive is reasonably expected to increase the number of people who choose to get vaccinated or motivate people to get vaccinated sooner and the costs are reasonably proportional to the expected public health benefit.

industries without any further analysis of impacts of the pandemic on those entities and whether the service is responsive.

In some cases, this means that an entity not otherwise eligible to receive assistance to respond to negative economic impacts of the pandemic, for example an entity that did not experience a negative economic impact, may still be eligible to receive assistance under this category for COVID-19 mitigation and prevention services.

Uses of funds can include loans, grants, or in-kind assistance to small businesses, nonprofits, or other entities to implement COVID-19 prevention or mitigation tactics, such as vaccination; testing; contact tracing programs; physical plant changes to enable greater use of outdoor spaces or ventilation improvements; enhanced cleaning efforts; and barriers or partitions. For example, this would include assistance to a restaurant to establish an outdoor patio, given evidence showing much lower risk of COVID-19 transmission outdoors.⁷⁶ Uses of funds can also include aid to travel, tourism, hospitality, and other impacted industries to implement COVID-19 mitigation and prevention measures to enable safe reopening, for example, vaccination or testing programs, improvements to ventilation, physical barriers or partitions, signage to facilitate social distancing, provision of masks or personal protective equipment, or consultation with infection prevention professionals to develop safe reopening plans.

Recipients providing assistance to small businesses, nonprofits, or impacted industries that includes capital expenditures (*i.e.*, expenditures on property, facilities, or equipment) should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards for these expenditures. Recipients providing assistances in the form of loans should review the section Treatment of Loans Made with SLFRF Funds in General Provisions: Other.

Recipients should also be aware of the difference between beneficiaries of assistance and subrecipients when working with small businesses, nonprofits, or impacted industries. As noted above, Treasury presumes that the general public, as well as small businesses, nonprofits, and impacted industries in general, has been impacted by the COVID-19 disease itself and is

eligible for services that mitigate or prevent COVID-19 spread. As such, a small business, nonprofit, or impacted industry receiving assistance to implement COVID-19 mitigation measures is a beneficiary of assistance (*e.g.*, granting funds to a small business to develop an outdoor patio to reduce transmission). In contrast, if a recipient contracts with, or grants funds to, a small business, nonprofit, or impacted industry to carry out an eligible use for COVID-19 mitigation on behalf of the recipient, the entity is a subrecipient (*e.g.*, contracting with a small business to operate COVID-19 vaccination sites). For further information on distinguishing between beneficiaries and subrecipients, as well as the impacts of the distinction on reporting and other requirements, see section Distinguishing Subrecipients versus Beneficiaries.

b. Medical Expenses

Background: The interim final rule also included as an enumerated eligible use medical expenses, including medical care and services to address the near-term and potential longer-term impacts of the disease on individuals infected.

Public Comment: Some commenters sought clarification on the types of medical expenses eligible and for whom, including whether funds could be used under this category for expanding health insurance coverage (*e.g.*, subsidies for premiums, expanding a group health plan), improvements to healthcare facilities or establishment of new medical facilities, direct costs of medical services, and costs to a self-funded health insurance plan (*e.g.*, a county government health plan) for COVID-19 medical care.

Treasury Response: In the final rule, Treasury is maintaining this enumerated eligible use category and clarifying that it covers costs related to medical care provided directly to an individual due to COVID-19 infection (*e.g.*, treatment) or a potential infection (*e.g.*, testing). This can include medical costs to uninsured individuals; deductibles, co-pays, or other costs not covered by insurance; costs for uncompensated care at a health provider; emergency medical response costs; and, for recipients with a self-funded health insurance plan, excess health insurance costs due to COVID-19 medical care. These are medical expenses due to COVID-19 and distinguish this category of eligible uses from other related eligible uses, like COVID-19 mitigation and prevention and health insurance expenses to households, to provide greater clarity for recipients in determining which

category of eligible uses they should review to assess a potential use of funds. For discussion of eligibility for programs to expand health insurance coverage, see section Assistance to Households.

c. Behavioral Health Care

Background: Recognizing that the public health emergency, necessary mitigation measures like social distancing, and the economic downturn have exacerbated mental health and substance use challenges for many Americans, the interim final rule included an enumerated eligible use for mental health treatment, substance use treatment, and other behavioral health services, including a non-exhaustive list of specific services that would be eligible under this category.

Public Comment: Many commenters expressed support for the interim final rule's recognition of behavioral health impacts of the pandemic and eligible uses under this category. Several commenters requested clarification on the types of eligible services under this category, specifically whether both acute and chronic care are included as well as services that often do not directly accept insurance payments, like peer support groups. Some commenters highlighted the importance of cultural competence in providing effective behavioral health services. Some commenters suggested that funding should be available broadly and quickly for this purpose, recommending that funding available for behavioral health not be tied to the amount of revenue loss experienced by the recipient.

Treasury Response: In the final rule, Treasury is maintaining this enumerated eligible use category and clarifying that it covers an expansive array of services for prevention, treatment, recovery, and harm reduction for mental health, substance use, and other behavioral health challenges caused or exacerbated by the public health emergency. The specific services listed in the interim final rule also remain eligible.⁷⁷

Treasury is further clarifying that when providing behavioral health services, recipients can identify the impacted population as the general public and, as with all enumerated eligible uses, presume that all programs and services are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. In contrast, capital expenditures are not

⁷⁶ See Centers for Disease Control and Prevention, Participate in Outdoor and Indoor Activities, <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/outdoor-activities.html> (last visited November 8, 2021).

⁷⁷ Hotlines or warmlines, crisis intervention, overdose prevention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.

considered “programs and services” and are not presumed to be reasonably proportional responses to an identified harm except as provided in section Capital Expenditures in General Provisions: Other.

In other words, recipients can provide behavioral health services to members of the general public without any further analysis of impacts of the pandemic on those individuals and whether the service is responsive. Recipients may also use this eligible use category to respond to increased rates of behavioral health challenges at a population level or, at an individual level, new behavioral health challenges or exacerbation of pre-existing challenges, including new barriers to accessing treatment.

Services that respond to these impacts of the public health emergency may include services across the continuum of care, including both acute and chronic care, such as prevention, outpatient treatment, inpatient treatment, crisis care, diversion programs (e.g., from emergency departments or criminal justice system involvement), outreach to individuals not yet engaged in treatment, harm reduction, and supports for long-term recovery (e.g., peer support or recovery coaching, housing, transportation, employment services).

Recipients may also provide services for special populations, for example, enhanced services in schools to address increased rates of behavioral health challenges for youths, mental health first responder or law enforcement-mental health co-responder programs to divert individuals experiencing mental illness from the criminal justice system, or services for pregnant women with substance use disorders or infants born with neonatal abstinence syndrome. Finally, recipients may use funds for programs or services to support equitable access to services and reduce racial, ethnic, or socioeconomic disparities in access to high-quality treatment.

Eligible uses of funds may include services typically billable to insurance⁷⁸ or services not typically billable to insurance, such as peer support groups, costs for residence in supportive housing or recovery housing, and the 988 National Suicide Prevention Lifeline or other hotline services. Recipients may also use funds in conjunction with other federal grants or programs (see section Program Administration Provisions), though

eligible services under SLFRF are not limited to those eligible under existing federal programs.

Given the public health emergency’s exacerbation of the ongoing opioid and overdose crisis, Treasury highlights several ways that funds may be used to respond to opioid use disorder and prevent overdose mortality.⁷⁹ Specifically, eligible uses of funds include programs to expand access to evidence-based treatment like medications to treat opioid use disorder (e.g., direct costs or incentives for emergency departments, prisons, jails, and outpatient providers to offer medications and low-barrier treatment), naloxone distribution, syringe service programs, outreach to individuals in active use, post-overdose follow up programs, programs for diversion from the criminal justice system, and contingency management interventions.

Finally, for clarity, Treasury has addressed the eligibility standard for capital expenditures, or investments in property, facilities, or equipment, in one section of this Supplementary Information; see section Capital Expenditures in General Provisions: Other. Examples of capital expenditures related to behavioral health that Treasury recognizes as eligible include behavioral health facilities and equipment (e.g., inpatient or outpatient mental health or substance use treatment facilities, crisis centers, diversion centers), as long as they adhere to the standards detailed in the Capital Expenditures section.

d. Preventing and Responding to Violence

Background: The interim final rule highlighted that some types of violence had increased during the pandemic and that the ability of victims to access services had decreased, noting as an example the challenges that individuals affected by domestic violence face in accessing services. Accordingly, the interim final rule enumerated as an eligible use, in disproportionately impacted communities, evidence-based community violence intervention programs. Following the release of the interim final rule, Treasury received several recipient questions regarding whether and how funds may be used to respond to an increase in crime,

violence, or gun violence in some communities during the pandemic. Treasury released further guidance identifying how enumerated eligible uses and eligible use categories under the interim final rule could support violence reduction efforts, including rehiring public sector staff, behavioral health services, and services to address negative economic impacts of the pandemic that may aid victims of crime. The guidance also identified an expanded set of enumerated eligible uses to address increased gun violence.

Public Comment: Several commenters expressed support for this use of funds.

Treasury Response: In the final rule, Treasury is maintaining enumerated eligible uses in this area and clarifying how to apply eligibility standards. Throughout the final rule, enumerated eligible uses should respond to an identified impact of the COVID-19 public health emergency in a reasonably proportional manner to the extent and type of harm experienced. Many of the enumerated eligible uses—like behavioral health services, services to improve employment opportunities, and services to address educational disparities in disproportionately impacted communities—that respond to the public health and negative economic impacts of the pandemic may also have benefits for reducing crime or aiding victims of crime. For example, the pandemic exacerbated the impact of domestic violence, sexual assault, and human trafficking; enumerated eligible uses like emergency housing assistance, cash assistance, or assistance with food, childcare, and other needs could be used to support survivors of domestic violence, sexual assault, or human trafficking who experienced public health or economic impacts due to the pandemic.

Public Comment: Several commenters expressed support for community violence intervention programs or argued that traditional public safety approaches had negatively impacted the social determinants of health in their communities. Several commenters recommended inclusion of approaches like mental health or substance use diversion programs.

Treasury Response: Treasury recognizes the importance of comprehensive approaches to challenges like violence. The final rule includes an enumerated eligible use for community violence intervention programs in all communities, not just the disproportionately impacted communities eligible under the interim final rule. Given the increased rate of violence during the pandemic, Treasury has determined that this enumerated

⁷⁸ However, SLFRF funds may not be used to reimburse a service that was also billed to insurance.

⁷⁹ In line with the Department of Health and Human Services, Overdose Prevention Strategy, <https://www.hhs.gov/overdose-prevention/>, and the Office of National Drug Control Policy, Administration’s Statement on Drug Policy Priorities for Year One (April 1, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/03/BidenHarris-Statement-of-Drug-Policy-Priorities-April-1.pdf>.

eligible use is responsive to the impacts of the pandemic in all communities. The final rule incorporates guidance issued after the interim final rule on specifically types of services eligible, including:

- Evidence-based practices like focused deterrence, street outreach, violence interrupters, and hospital-based violence intervention models, complete with wraparound services such as behavioral therapy, trauma recovery, job training, education, housing and relocation services, and financial assistance; and
- Capacity-building efforts at community violence intervention programs like funding more intervention workers, increasing their pay, providing training and professional development for intervention workers, and hiring and training workers to administer the programs.

Public Comment: Some commenters sought further clarification on whether some of the enumerated eligible uses are considered responsive to all crime, violent crime, or gun violence.

Treasury Response: Enumerated eligible uses that respond to an increase in gun violence may be pursued in communities experiencing an increase in gun violence associated with the pandemic, specifically: (1) Hiring law enforcement officials—even above pre-pandemic levels—or paying overtime where the funds are directly focused on advancing community policing strategies for gun violence, (2) additional enforcement efforts to reduce gun violence exacerbated by the pandemic, including prosecuting gun traffickers, dealers, and other parties contributing to the supply of crime guns, as well as collaborative federal, state, and local efforts to identify and address gun trafficking channels, and (3) investing in technology and equipment to allow law enforcement to more efficiently and effectively respond to the rise in gun violence resulting from the pandemic, for example technology to assist in the identification of guns whose serial numbers have been damaged.

3. Negative Economic Impacts

a. Assistance to Households Background

While the U.S. economy is now on the path to a strong recovery, the public health emergency, including the necessary measures taken to protect public health, resulted in significant economic and financial hardship for many Americans. As businesses closed, consumers stayed home, schools shifted to remote education, and travel declined

precipitously, over 22 million jobs were lost in March and April 2020.⁸⁰ One year later, in April 2021, the economy still remained over 8 million jobs below its pre-pandemic peak,⁸¹ and the unemployment rate hovered around 6 percent.⁸²

In the months since Treasury issued the interim final rule in May 2021, the economy has made large strides in its recovery. The economy gained over 4 million jobs in the seven months from May to November 2021;⁸³ the unemployment rate fell more than 1.5 percentage points to 4.2 percent, which is the lowest rate since February 2020;⁸⁴ and the size of the nation's economy surpassed the pre-pandemic peak in the second quarter of 2021.⁸⁵

While the economy has made immense progress in its recovery since May 2021, the economy has also faced setbacks that illustrate the continued risks to the recovery. As the Delta variant spread across the country this summer and fall, the United States faced another severe wave of cases, deaths, and strain on the healthcare system, which contributed to a slowdown in the pace of recovery in the third quarter.⁸⁶ Supply chain disruptions have also demonstrated the difficulties of restarting a global economy.⁸⁷ Moreover, although many Americans have returned to work as of November 2021, the economy remains 3.9 million jobs below its pre-pandemic peak,⁸⁸ and 2.4 million workers have dropped out of the labor market altogether relative to February 2020.⁸⁹ Thus, despite much

progress, there is a continued need to respond to the pandemic's economic effects to ensure a full, broad-based, and equitable recovery.

Indeed, the pandemic's economic impacts continue to affect some demographic groups more than others. Rates of unemployment remain particularly severe among workers of color and workers with lower levels of educational attainment; for example, the overall unemployment rate in the United States was 4.2 percent in November 2021, but certain groups saw much higher rates: 6.7 percent for Black workers, 5.2 percent for Hispanic or Latino workers, and 5.7 percent for workers without a high school diploma.⁹⁰ Job losses have also been particularly steep among low-wage workers, with these workers remaining furthest from recovery as of the end of 2020.⁹¹ A severe recession, and its concentrated impact among low-income workers, has amplified food and housing insecurity, with an estimated nearly 20 million adults living in households where there is sometimes or often not enough food to eat and an estimated 12 million adults living in households that were not current on rent.⁹²

While economic effects have been seen across many communities, there are additional disparities by race and income. For example, approximately

Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CLF16OV> (last visited December 7, 2021).

⁸⁰ U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian population by sex and age (December 6, 2021), <https://www.bls.gov/news.release/empsit.t01.htm> (last visited December 7, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population by race, Hispanic or Latino ethnicity, sex, and age (December 6, 2021), <https://www.bls.gov/web/empsit/cpseee04.htm> (last visited December 7, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population 25 years and over by educational attainment (December 6, 2021), <https://www.bls.gov/web/empsit/cpseee05.htm> (last visited December 7, 2021).

⁹¹ Elise Gould & Jori Kandra, Wages grew in 2020 because the bottom fell out of the low-wage labor market, Economic Policy Institute (Feb. 24, 2021), <https://files.epi.org/pdf/219418.pdf>. See also, Michael Dalton et al., The K-Shaped Recovery: Examining the Diverging Fortunes of Workers in the Recovery from the COVID-19 Pandemic using Business and Household Survey Microdata, U.S. Bureau of Labor Statistics Working Paper Series (July 2021), <https://www.bls.gov/osmr/research-papers/2021/pdf/ec210020.pdf>.

⁹² Center on Budget and Policy Priorities, Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economys-effects-on-food-housing-and> (last visited December 17, 2021).

⁸⁰ U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/PAYEMS> (last visited December 7, 2021).

⁸¹ *Id.*

⁸² U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/UNRATE> (last visited December 7, 2021).

⁸³ U.S. Bureau of Labor Statistics, *supra* note 80.

⁸⁴ U.S. Bureau of Labor Statistics, *supra* note 82.

⁸⁵ U.S. Bureau of Economic Analysis, Real Gross Domestic Product [GDP1], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/GDP1> (last visited December 7, 2021).

⁸⁶ U.S. Department of the Treasury, Economy Statement by Catherine Wolfram, Acting Assistant Secretary for Economy Policy, for the Treasury Borrowing Advisory Committee (November 1, 2021), available at <https://home.treasury.gov/news/press-releases/jy0453>.

⁸⁷ Yuka Hayashi, IMF Cuts Global Growth Forecast Amid Supply-Chain Disruptions, Pandemic Pressures, Wall Street Journal (October 12, 2021), available at <https://www.wsj.com/articles/imf-cuts-global-growth-forecast-amid-supply-chain-disruptions-warns-of-inflation-risks-11634043601>.

⁸⁸ U.S. Bureau of Labor Statistics, *supra* note 80.

⁸⁹ U.S. Bureau of Labor Statistics, Civilian Labor Force Level [CLF16OV], retrieved from FRED,

half of low-income, Black, and Hispanic parents reported difficulty covering costs related to food, housing, utility, or medical care.⁹³ Over the course of the pandemic, inequities also manifested along gender lines, as schools closed to in-person activities, leaving many working families without childcare during the day.⁹⁴ Women of color have been hit especially hard: The labor force participation rate for Black women has fallen by 3.6 percentage points⁹⁵ during the pandemic as compared to 1.3 percentage points for Black men⁹⁶ and 1.7 percentage points for White women.⁹⁷

As the economy recovers, the effects of the pandemic-related recession may continue to impact households, including a risk of longer-term effects on earnings and economic potential. For example, unemployed workers, especially those who have experienced longer periods of unemployment, earn lower wages over the long term once rehired.⁹⁸ In addition to the labor market consequences for unemployed workers, recessions can also cause longer-term economic challenges

through, among other factors, damaged consumer credit scores⁹⁹ and reduced familial and childhood wellbeing.¹⁰⁰ These potential long-term economic consequences underscore the continued need for robust policy support.

Low- and moderate-income households, those with income levels at or below 300 percent of the federal poverty level (FPL), face particular hardships and challenges. These households report much higher rates of food insecurity and housing hardships than households with higher incomes. For example, households with incomes at or below 300 percent FPL are several times more likely to have reported struggling with food insecurity compared to households with income above 300 percent FPL.¹⁰¹ Similarly, low- and moderate-income households reported being housing insecure¹⁰² at rates more than twice as high as higher-income households, and low- and moderate-income households reported housing quality hardship¹⁰³ at rates statistically significantly greater than the rate for higher-income households.¹⁰⁴ The economic crisis caused by the pandemic worsened economic outcomes for workers in many low- and moderate-income households. Industries that employed low-wage workers experienced a disproportionate level of job loss. For example, from February 2020 to February 2021, the hospitality and leisure industry lost nearly 3.5 million jobs.¹⁰⁵ While the

entire industry was impacted, 72 percent of the job losses occurred in the lowest wage service occupations compared to only a 6 percent rate of job loss in the highest wage management and finance jobs.¹⁰⁶ Similar trends exist in other heavily impacted industries. In public education, the lowest wage occupations, service and transportation jobs, saw a job loss rate of 20 and 26 percent, respectively.¹⁰⁷ During that same time period, the highest wage occupations in public education, management, actually saw jobs increase by 7 percent.¹⁰⁸

While many households suffered negative economic outcomes as a result of the COVID-19 pandemic and economic recession, households with low incomes were impacted in disproportionate and exceptional ways. From January 2020 to March 2021, low-wage workers experienced job loss at a rate five times higher than middle-wage workers, and high-wage workers actually experienced an increase in job opportunities.¹⁰⁹ Because workers in low-income households were more likely to lose their job or experience reductions in pay, those same households were also more likely to experience economic hardships like trouble paying utility bills, affording rent or mortgage payments, purchasing food, and paying for medical expenses.¹¹⁰ The disproportionate negative impacts the pandemic has had on low-income families extend beyond financial insecurity. For example, low-income families have reported higher levels of social isolation, stress, and other negative mental health outcomes during the pandemic. While over half of all U.S. adults report that their mental health was negatively affected by the pandemic, adults with low incomes reported major negative mental health impacts at a rate nearly twice that of adults with high incomes.¹¹¹

⁹³ Michael Karpman, Dulce Gonzalez, Genevieve M. Kenney, Parents Are Struggling to Provide for Their Families during the Pandemic, Urban Institute (May 2020), https://www.urban.org/research/publication/parents-are-struggling-provide-their-families-during-pandemic?utm_source=urban_researcher&utm_medium=email&utm_campaign=covid_parents&utm_term=hhp.

⁹⁴ Women have carried a larger share of childcare responsibilities than men during the COVID-19 crisis. See, e.g., Gema Zamarró & María J. Prados, Gender differences in couples' division of childcare, work and mental health during COVID-19, *Rev. Econ. Household* 19:11–40 (2021), available at <https://link.springer.com/article/10.1007/s11150-020-09534-7>; Titan Alon et al., The Impact of COVID-19 on Gender Equality, National Bureau of Economic Research Working Paper 26947 (April 2020), available at <https://www.nber.org/papers/w26947>.

⁹⁵ U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Women [LNS11300032], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300032> (last visited December 7, 2021).

⁹⁶ U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Men [LNS11300031], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300031> (last visited December 7, 2021).

⁹⁷ U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, White Women [LNS11300029], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300029> (last visited December 7, 2021).

⁹⁸ See, e.g., Michael Greenstone & Adam Looney, Unemployment and Earnings Losses: A Look at Long-Term Impacts of the Great Recession on American Workers, Brookings Institution (Nov. 4, 2011), <https://www.brookings.edu/blog/jobs/2011/11/04/unemployment-and-earnings-losses-a-look-at-long-term-impacts-of-the-great-recession-on-american-workers/>.

⁹⁹ Chi Chi Wu, Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession, National Consumer Law Center (Dec. 2013), https://www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.

¹⁰⁰ Irwin Garfinkel, Sara McLanahan, Christopher Wimer, eds., *Children of the Great Recession*, Russell Sage Foundation (Aug. 2016), available at <https://www.russellsage.org/publications/children-great-recession>.

¹⁰¹ Kyle J. Casewell and Stephen Zuckerman, Food Insecurity, Housing Hardship, and Medical Care Utilization, Urban Institute (June 2018), available at https://www.urban.org/sites/default/files/publication/98701/2001896_foodinsecurity_housinghardship_medicalcareutilization_finalized.pdf.

¹⁰² Housing insecurity is defined as not paying the full amount of rent or mortgage and/or utility bills (gas, oil, or electricity) sometime in the previous 12 months.

¹⁰³ Housing quality hardship is defined as an affirmative response to one or more questions related to problems with a respondent's physical dwelling: Pests and/or insects; leaking roof or ceiling; windows that are broken or cannot shut; exposed electrical wires; broken plumbing (toilet, hot water, other); holes in walls, ceiling, or floor; no appliances (refrigerator or stove); and no phone (of any kind).

¹⁰⁴ *Id.*

¹⁰⁵ Elise Gould and Melat Kassa, Low-wage, low-hours workers were hit hardest in the COVID-19 recession: The State of Working America 2020 employment report, Economic Policy Institute (May

2021), available at <https://www.epi.org/publication/swa-2020-employment-report/>.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ R. Chetty, J. Friedman, N. Hendren, M. Stepner, & Team, T. O. I., The Economic Impacts of COVID-19: Evidence from a New Public Database Built Using Private Sector Data (No. w27431; p. w27431) (2020), National Bureau of Economic Research, <https://doi.org/10.3386/w27431>.

¹¹⁰ M. Despard, Michal Grinstein-Weiss, Yung Chun, and Stephen Roll, COVID-19 job and income loss leading to more hunger and financial hardship, Brookings Institute (July 13, 2020), <https://www.brookings.edu/blog/upfront/2020/07/13/covid-19-job-and-income-loss-leading-to-more-hunger-and-financial-hardship/>.

¹¹¹ N. Panchal, R. Kamal, C. Muñana, & P. Chidambaram, The Implications of COVID-19 for Mental Health and Substance Use, Kaiser Family Foundation (February 10, 2021), <https://www.kff.org/coronavirus/covid-19/implications-of-covid-19-for-mental-health-and-substance-use/>.

Summary of Interim Final Rule and Final Rule Structure

Summary: The interim final rule provided a non-exhaustive list of enumerated eligible uses to respond to the negative economic impacts of the pandemic through assistance to households, as well as a standard for assessing whether uses of funds beyond those enumerated are eligible.

The interim final rule described enumerated eligible uses for assistance to households in several categories: (1) Assistance to unemployed workers, (2) state Unemployment Insurance Trust Funds, (3) assistance to households, and (4) expenses to improve the efficacy of economic relief. Note that the interim final rule posed several questions to the public on enumerated eligible uses for assistance to households; comments on these questions are addressed in the relevant subject matter section below.

In addition, in recognition that pre-existing health, economic, and social disparities contributed to disproportionate pandemic impacts in certain communities, the interim final rule also provided a broader list of enumerated eligible uses to respond to the pandemic in disproportionately impacted communities, specifically: (1) Building stronger communities through investments in housing and neighborhoods, (2) addressing educational disparities, and (3) promoting healthy childhood environments. In the interim final rule, under the Public Health section, recipients could also provide services to address health disparities and increase access to health and social services; these eligible uses have been re-organized into the Assistance to Households section to consolidate responses in disproportionately impacted communities and enhance clarity.

This section addresses enumerated eligible uses in the final rule to respond to negative economic impacts to households. As a reminder, recipients may presume that a household or population that experienced unemployment, experienced increased food or housing insecurity, or is low or moderate income experienced negative economic impacts resulting from the pandemic, and recipients may provide services to them that respond to these impacts, including these enumerated eligible uses.

For guidance on how to determine whether a particular use, beyond those enumerated, is eligible; further detail on

which households and communities are presumed eligible for services; and how to identify eligible households and communities beyond those presumed eligible, see section General Provisions: Structure and Standards.

Reorganizations and Cross-References: The final rule reorganizes all enumerated eligible uses for impacted and disproportionately impacted households into the section Assistance to Households, with the exception that expenses to improve the efficacy of economic relief has been re-categorized into a different section of the final rule for increased clarity; for discussion of that use category, see section General Provisions: Other.

Note that in conducting this reorganization, and based on further analysis and in response to comments, Treasury has determined that several enumerated uses included in the interim final rule for disproportionately impacted communities are directly responsive to negative economic impacts experienced by impacted households. In the final rule, these uses have been moved from “disproportionately impacted” to “impacted” households accordingly, making these services available to both disproportionately impacted and impacted households. These uses include assistance applying for public benefits or services; programs or services that address or mitigate the impacts of the COVID-19 public health emergency on childhood health or welfare, including childcare, early learning services, programs to provide home visits, and services for families involved in the child welfare system and foster youth; programs to address the impacts of lost instructional time for students;¹¹² and programs or services that address housing insecurity, lack of affordable housing, or homelessness.

The following activities remain enumerated eligible uses for disproportionately impacted households: Remediation of lead paint or other lead hazards; housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity; and programs or services that address educational disparities, including assistance to high-poverty school districts to advance equitable funding across districts and geographies and evidence-based services to address the academic, social, emotional, and mental health needs of students.

¹¹² For which recipients may presume that any student who did not have access to in-person instruction for a significant period of time was impacted by the pandemic.

Enumerated Eligible Uses for Impacted Households

The interim final rule included several enumerated eligible uses to provide assistance to households or populations facing negative economic impacts due to COVID-19. Enumerated eligible uses included: Food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; cash assistance; or job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training. It also posed a question as to what other types of services or costs Treasury should consider as eligible uses to respond to the negative economic impacts of COVID-19.

This section addresses each of these enumerated eligible uses in turn, with the exception of job training, which has been re-categorized for increased clarity to the eligible use for “assistance to unemployed and underemployed workers.” In general, commenters supported inclusion of these enumerated eligible uses to address key economic needs among households due to the pandemic, and Treasury is maintaining these eligible uses in the final rule, in line with commenters' recommendations.

1. Food assistance. The interim final rule included an enumerated eligible use for food assistance. Some commenters expressed support for this eligible use and emphasized the importance of aid to address food insecurity. Some commenters raised questions as to whether food assistance funds could be used to augment services provided through organizations like food banks, churches, and other food delivery services, or generally be sub-awarded to these organizations.

Treasury Response: Treasury is maintaining this enumerated eligible use without change. Recipients may, as was the case under the interim final rule, administer programs through a wide range of entities, including nonprofit and for-profit entities, to carry out eligible uses on behalf of the recipient government (see section Distinguishing Subrecipients versus Beneficiaries). Further, Treasury is clarifying that capital expenditures related to food banks and other facilities primarily dedicated to addressing food insecurity are eligible; recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General

www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/.

Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

2. *Emergency housing assistance.* The interim final rule included an enumerated eligible use for rent, mortgage, or utility assistance and counseling and legal aid to prevent eviction or homelessness.

Public Comment: Several commenters supported the inclusion of eviction prevention activities as an eligible use given the high number of households behind on rent and potentially at risk of eviction. Following release of the interim final rule, Treasury had also received requests for elaboration on the types of eligible services in this category. Some commenters also recommended including assistance to households for delinquent property taxes, for example to prevent tax foreclosures on homes, as an enumerated eligible use.

Treasury Response: In response to requests for elaboration on the types of eligible services for eviction prevention, Treasury has provided further guidance that these services include “housing stability services that enable eligible households to maintain or obtain housing, such as housing counseling, fair housing counseling, case management related to housing stability, outreach to households at risk of eviction or promotion of housing support programs, housing related services for survivors of domestic abuse or human trafficking, and specialized services for individuals with disabilities or seniors that support their ability to access or maintain housing,” as well as “legal aid such as legal services or attorney’s fees related to eviction proceedings and maintaining housing stability, court-based eviction prevention or eviction diversion programs, and other legal services that help households maintain or obtain housing.”¹¹³ Treasury also emphasized that recipients may work with court systems, nonprofits, and a wide range of other organizations to implement strategies to support housing stability and prevent evictions.

In the final rule, Treasury is maintaining these enumerated eligible uses, including those described in the interim final rule and later guidance, in line with commenters’ recommendations. To enhance clarity, Treasury is also elaborating on some types of services included under this eligible use category; this remains a

non-exhaustive list of eligible services. For example, eligible services under this use category include: Rent, rental arrears, utility costs or arrears (e.g., electricity, gas, water and sewer, trash removal, and energy costs, such as fuel oil), reasonable accrued late fees (if not included in rental or utility arrears), mortgage payment assistance, financial assistance to allow a homeowner to reinstate a mortgage or to pay other housing-related costs related to a period of forbearance, delinquency, or default, mortgage principal reduction, facilitating mortgage interest rate reductions, counseling to prevent foreclosure or displacement, relocation expenses following eviction or foreclosure (e.g., rental security deposits, application or screening fees). Treasury is clarifying that assistance to households for delinquent property taxes, for example to prevent tax foreclosures on homes, was permissible under the interim final rule and continues to be so under the final rule. In addition, Treasury is also clarifying that recipients may administer utility assistance or address arrears on behalf of households through direct or bulk payments to utility providers to facilitate utility assistance to multiple consumers at once, so long as the payments offset customer balances and therefore provide assistance to households.

This eligible use category also includes emergency assistance for individuals experiencing homelessness, either individual-level assistance (e.g., rapid rehousing services) or assistance for groups of individuals (e.g., master leases of hotels, motels, or similar facilities to expand available shelter).

Further, Treasury is clarifying that transitional shelters (e.g., temporary residences for people experiencing homelessness) are eligible capital expenditures. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

Note that this enumerated eligible use describes “emergency housing assistance,” or assistance for responses to the immediate or near-term negative economic impacts of the pandemic. The final rule also clarifies and expands the ability of recipients to use SLFRF funds to address the general lack of affordable housing and housing challenges underscored by the pandemic. For discussion of affordable housing eligible uses, including services that primarily increase access to affordable, high-quality housing and support stable

housing and homeownership over the long term, see the eligible use for “promoting long-term housing security: Affordable housing and homelessness.”

3. *Emergency assistance for pressing needs: Burials, home repairs, weatherization, or other needs.* The interim final rule included an enumerated eligible use for emergency assistance for burials, home repairs, weatherization, and other needs; these types of programs may provide emergency assistance for pressing and unavoidable household needs. Treasury did not receive comments on this eligible use and is maintaining it in the final rule.

Background on Home Repairs and Weatherization: The economic downturn has meant fewer households had the resources needed to make necessary home repairs and improvements. In May 2021, 28 percent of landlords reported deferring maintenance and 27 percent of tenants reported maintenance requests going unanswered.¹¹⁴ While small and cosmetic repairs can often wait, deferring major repairs, such as plumbing needs, can result in unsafe and unhealthy living environments and, eventually, the need for more expensive repairs and fixes.

In addition to repairs, many homes are in need of weatherization. Weatherization assistance helps low- and moderate-income Americans save energy, reduce their utility bills, and keeps them and their homes safe. One in three households is energy insecure,¹¹⁵ meaning they do not have the ability to meet their energy needs.¹¹⁶ Weatherization efforts are particularly important for low- and moderate-income households. Households of color, renters, and households with low or moderate incomes are all more likely to report energy insecurity.¹¹⁷ These

¹¹⁴ Jung Hyun Choi, Laurie Goodman, and Daniel Pang, *The Pandemic Is Making It Difficult for Mom-and-Pop Landlords to Maintain Their Properties*, Urban Institute (July 23, 2021), <https://www.urban.org/urban-wire/pandemic-making-it-difficult-mom-and-pop-landlords-maintain-their-properties>.

¹¹⁵ U.S. Energy Information Administration, *Residential Energy Consumption Survey (2017)*, Retrieved from <https://www.eia.gov/consumption/residential/data/2015/hc/php/hc11.1.php>.

D. Hernández, *Understanding ‘energy insecurity’ and why it matters to health*, *Social Science & Medicine*, 167, 1–10 (2016), <https://doi.org/10.1016/j.socscimed.2016.08.029>.

¹¹⁶ Hernández, D. (2016). *Understanding ‘energy insecurity’ and why it matters to health*. *Social Science & Medicine*, 167, 1–10. <https://doi.org/10.1016/j.socscimed.2016.08.029>.

¹¹⁷ U.S. Energy Information Administration, *Residential Energy Consumption Survey (RECS)* <https://www.eia.gov/consumption/residential/data/2015/hc/php/hc11.1.php>. (last visited November 9, 2021)

¹¹³ See FAQ 2.21. Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

disparities are partially a result of economic hardship but are also caused by inequitable access to housing with proper insulation, up to date heating, cooling, and ventilation systems, and functioning and up to date lighting and appliances.¹¹⁸ While programs that address the effects of energy hardships, like the Low-Income Home Energy Assistance Program (LIHEAP), are critical, weatherization attempts to address root causes by addressing issues that lead to energy insecurities.

4. *Internet access or digital literacy assistance.* The interim final rule included an enumerated eligible use for assistance to households for internet access or digital literacy assistance. This enumerated eligible use, which responds to the negative economic impacts of the pandemic on a household by providing assistance that helps them secure internet access or increase their ability to use computers and the internet, is separate from the eligible use category for investments in broadband infrastructure, under Sections 602(c)(1)(D) and 603(c)(1)(D), which is used to build new broadband networks through infrastructure construction or modernization. For discussion of broadband infrastructure investment in the final rule, see section Broadband Infrastructure in Infrastructure.

Background: The COVID-19 public health emergency has underscored the importance of universally available, high-speed, reliable, and affordable broadband coverage as millions of Americans rely on the internet to participate in, among other critical activities, school, healthcare, and work. Recognizing the need for such connectivity, SLFRF funds can be used to make necessary investments in broadband infrastructure that increase access over the long term, as well as the necessary supports to purchase internet access or gain digital literacy skills needed to complete activities of daily living during the pandemic.

The National Telecommunications and Information Administration (NTIA) highlighted the growing necessity of broadband in daily lives through its analysis of NTIA internet Use Survey data, noting that Americans turn to broadband internet service for every facet of daily life including work, study, and healthcare.¹¹⁹ With increased use of

technology for daily activities and the movement by many businesses and schools to operating remotely during the pandemic, broadband has become even more critical for people across the country to carry out their daily lives.

However, even in areas where broadband infrastructure exists, broadband access may be out of reach for millions of Americans because it is unaffordable, as the United States has some of the highest broadband prices in the Organisation for Economic Co-operation and Development (OECD).¹²⁰ According to a 2021 Pew Research Center study, 20 percent of non-broadband users say that the monthly cost of home broadband is the primary reason they do not have broadband at home, and 40 percent say that cost is one reason for their lack of home broadband.¹²¹ Further, according to another survey, 22 percent of parents with homebound schoolchildren during the COVID-19 pandemic say that it is very or somewhat likely that their children will have to rely on public wi-fi to finish their schoolwork because there is no reliable internet connection at home; this percentage nearly doubles for lower-income parents, 40 percent of whom noted that their children will have to rely on public wi-fi.¹²² The same survey showed that 36 percent of lower-income parents with homebound children say their child will not be able to complete their schoolwork because they do not have access to a computer at home.¹²³

Public Comment: Many commenters highlighted the importance of broadband access during the pandemic, including for remote work and

education, and argued that affordability presents a major barrier to broadband adoption by households; in other words, many households live in areas that have broadband infrastructure and service available but are unable to purchase service for their household due to the high cost. These commenters argued that broadband must be affordable to be accessible.

Commenters proposed several potential responses to affordability concerns. Some commenters recommended that building “gap networks,” or broadband networks built at low cost to provide affordable service in areas where it is lacking, be eligible as assistance to households to respond to the negative economic impacts of the pandemic, even if they do not meet the technical standards for eligibility under the eligible use category of broadband infrastructure investment, especially the required speed standards for new service. These commenters argued that the networks have shown promise as a timely means to expand access to affordable broadband internet during the pandemic, even if they may not provide service speeds needed for more intensive internet uses. Another commenter requested eligible uses include funding cellular towers to decrease costs. One commenter recommended that affordability should be addressed through other programs but not SLFRF given that affordability and availability may require nuanced solutions that would be complex to combine.

Treasury Response: The interpretive framework and enumerated eligible uses allow recipients flexibility to address identified pandemic impacts, including through solutions that take into account the particularized issues in their community. Given extensive commenter feedback on the importance of affordability to achieving broadband access, and the centrality of broadband to participating in work, education, healthcare, and other activities during the pandemic, affordability programs are an appropriate eligible use to respond to the negative economic impacts of the pandemic and Treasury is maintaining the enumerated eligible use for assistance to households for internet access and digital literacy programs in the final rule.

Building or constructing new broadband networks is an infrastructure investment and is governed by a separate clause in the statute. Treasury has addressed comments on “gap networks” that require infrastructure build-out in the section Broadband Infrastructure in Infrastructure.

American Households Used the Internet for Health-Related Activities in 2019, NTIA Data Show (December 7, 2020), <https://www.ntia.gov/blog/2020/more-half-american-households-used-internet-health-related-activities-2019-ntia-data-show>; Nation Telecommunications and Information Administration, Nearly a Third of American Employees Worked Remotely in 2019, NTIA Data Show (September 3, 2020) <https://www.ntia.gov/blog/2020/nearly-third-american-employees-worked-remotely-2019-ntia-data-show>; and generally, Nation Telecommunications and Information Administration, Digital Nation Data Explorer (June 10, 2020), <https://www.ntia.gov/data/digital-nation-data-explorer>.

¹²⁰ BroadbandSearch Blog Post, How Do U.S. Internet Costs Compare To The Rest Of The World?, available at <https://www.broadbandsearch.net/blog/internet-costs-compared-worldwide>.

¹²¹ Pew Research Center, Mobile Technology and Home Broadband 2021 (June 3, 2021), <https://www.pewresearch.org/internet/2021/06/03/mobile-technology-and-home-broadband-2021/>.

¹²² Pew Research Center, 53% of Americans Say the internet Has Been Essential During the COVID-19 Outbreak (April 30, 2020), <https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/>.

¹²³ *Id.*

¹¹⁸ A. Dreihobl, & L. Ross, Lifting the high energy burden in America's largest cities: How energy efficiency can improve low income and underserved communities, American Council for an Energy Efficient Economy (2016), <https://www.aceee.org/sites/default/files/publications/researchreports/u1602.pdf>.

¹¹⁹ See, e.g., Nation Telecommunications and Information Administration, More than Half of

Public Comment: Some commenters also use the term “gap networks” to refer to equipment installed as part of wi-fi systems, such as routers, repeaters, and access points; this equipment provides consumer access to an existing broadband network and does not require new network build-out or construction. These commenters recommended that Treasury permit, as assistance to households for internet access, investments in public wi-fi networks, free wi-fi in public housing communities, and other equipment that offers internet access to end users by utilizing existing broadband networks.

Other commenters recommended that eligible uses in this category include providing devices and equipment necessary to access the internet, like computers and routers, directly to low-income households.

Treasury Response: Treasury has determined that these services, which expand internet access without constructing new networks, are an appropriate enumerated eligible use as assistance to households to respond to a negative economic impact, and they are permitted under the final rule. Treasury is clarifying that eligible uses under this category can also include a wide range of programs and services to expand internet access and digital literacy, such as subsidies for the cost of internet service, other programs that support adoption of internet service where available, digital literacy programs, or programs that provide devices and equipment to access the internet (e.g., programs that provide equipment like tablets, computers, or routers) to households. Recipients seeking to use funds for equipment should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures (e.g., equipment, property, and facilities).

5. *Cash assistance.* The interim final rule included as an enumerated eligible use cash assistance and provided that cash transfers must be “reasonably proportional” to the negative economic impact they address and may not be “grossly in excess of the amount needed to address” the impact. In assessing whether a transfer is reasonably proportional, recipients may “consider and take guidance from the per person amounts previously provided by the Federal Government in response to the COVID-19 crisis,” and transfers “grossly in excess of such amounts” are not eligible.

Public Comment: Several commenters expressed support for this eligible use, noting that this is a common policy tool

for some governments to support the well-being of households and individuals in their communities. Some commenters requested that Treasury set a specific dollar amount for permissible cash transfers, and Treasury has also received recipient questions on whether specific types of transfers, such as those to a substantial share of the population in the jurisdiction, would be a permissible use of funds.

Treasury Response: Treasury is maintaining this enumerated eligible use in the final rule, in line with commenters’ recommendations. Because the final rule is intended to provide flexibility to recipients to respond to the particularized pandemic impacts in their communities, which may vary in type and intensity, setting a specific dollar threshold for eligible cash transfers would fail to recognize the particularized needs of communities and limit recipients’ flexibility to tailor their response to those needs.

To provide greater clarity, Treasury is elaborating on the analysis that recipients may undertake to assess the eligibility of specific cash assistance programs or transfers. Cash transfers, like all eligible uses in this category, must respond to the negative economic impacts of the pandemic on a household or class of households. For the reasons discussed above, recipients may presume that low- and moderate-income households (as defined in the final rule), as well as households that experienced unemployment, food insecurity, or housing insecurity, experienced a negative economic impact due to the pandemic.

Recipients may also identify other households or classes of households that experienced a negative economic impact of the pandemic and provide cash assistance that is reasonably proportional to, and not grossly in excess of, the amount needed to address the negative economic impact. For example, in the ARPA, Congress authorized Economic Impact Payments to households at certain income levels, identifying and responding to a negative economic impact of the pandemic on these households.

Finally, Treasury has reiterated in the final rule that responses to negative economic impacts should be reasonably proportional to the impact that they are intended to address. Uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Reasonably proportional refers to the scale of the response compared to the scale of the harm. It also refers to the targeting of the response to beneficiaries compared to the amount of harm they

experienced; for example, it may not be reasonably proportional for a cash assistance program to provide assistance in a very small amount to a group that experienced severe harm and in a much larger amount to a group that experienced relatively little harm.

6. *Survivor’s benefits.* The interim final rule included an enumerated eligible use for survivor’s benefits to surviving family members of individuals who have died from COVID-19, including cash assistance to widows, widowers, or dependents.

Public Comment: Treasury did not receive any comments on the inclusion of survivor’s benefits as an enumerated use for impacted households in the interim final rule.

Treasury Response: This use of funds remains eligible under the final rule. Consistent with the general reorganization noted above, the final rule organizes survivor’s benefits under assistance to households to clarify that households are the intended beneficiaries of survivor’s benefits.

7. *Assistance accessing or applying for public benefits or services.* Recognizing that eligible households often face barriers to accessing public benefits or services that improve health and economic outcomes, the interim final rule included as an enumerated eligible use in disproportionately impacted communities, public benefits navigators to assist community members with navigating and applying for available federal, state, and local public benefits or services. Treasury also clarified in subsequent guidance after the interim final rule that this eligible use category would include outreach efforts to increase uptake of the Child Tax Credit.

Background: The under-enrollment of eligible households in social assistance programs is a well-recognized and persistent challenge. There are many reasons why a household may not be receiving a particular benefit even though they are eligible. For many federal programs, enrollment processes vary from state-to-state. Sometimes, households are simply unaware that they are eligible for a particular benefit.¹²⁴ For example, despite having one of the highest rates of participation of any benefits program, nearly 20 percent of eligible individuals do not participate in the Supplementary Nutritional Assistance Program

¹²⁴ Amy Finkelstein & Matthew J Notowidigdo, Take-Up and Targeting: Experimental Evidence from SNAP, *The Quarterly Journal of Economics*, vol. 134(3), pages 1505–1556 (2019), <https://www.nber.org/papers/w24652>.

(SNAP).¹²⁵ In other cases, policies like public charge and asset testing can discourage otherwise eligible households.¹²⁶ While the gap between households that need assistance and the number of households participating in public benefit programs has always existed, narrowing that gap and ensuring households receive the support they need is critical in mitigating the negative economic impacts of the pandemic.

Public Comment: Treasury has also received feedback from recipients and stakeholders noting the need to increase awareness and uptake of assistance programs, including gaps that remain in enrollment of eligible households in programs to address the negative economic impacts of the pandemic.¹²⁷

Treasury Response: Treasury has determined that this impact of the pandemic is widely experienced across many jurisdictions and programs or services to increase awareness and uptake of assistance programs would respond to the pandemic's negative economic impact in all communities. As such, in the final rule, this use is eligible for any impacted household or class of households, not only in disproportionately impacted communities.

8. *Promoting healthy childhood environments.* The interim final rule included programs and services that promote healthy childhood environments as an enumerated eligible use for disproportionately impacted households. The interim final rule listed three programs or services included under this use: Childcare; programs to provide home visits by health professionals, parent educators, and social service professionals to individuals with young children to provide education and assistance for economic support, health needs, or child development; and services for child welfare-involved families and foster youth to provide support and

education on child development, positive parenting, coping skills, or recovery for mental health and substance use. The interim final rule also included an enumerated eligible use for early learning services in disproportionately impacted communities, to address disparities in education.

Public Comment: Childcare and Early Learning: Treasury received multiple comments that were supportive of the provision of childcare. Treasury has also received multiple comments and questions indicating that recipients have identified a need for childcare for a broader range of households and communities, for example those that may need childcare in order to return to work, in addition to households and communities disproportionately impacted by the pandemic. Several commenters expressed uncertainty about how childcare facilities should interact with the boundaries of a QCT. Finally, one commenter recommended that pre-K or early learning services encompass care for infants and toddlers, arguing that these types of care are often more expensive or challenging to access for families.

Background: Childcare and Early Learning: As daycares and schools closed in-person activities during the pandemic, many working families were left without childcare during the day.¹²⁸ Although daycare centers and schools have since reopened in many communities, there remains a persistent childcare shortage as childcare employment levels have not fully rebounded since the sharp decline in childcare employment at the beginning of the pandemic.¹²⁹ As a result, working parents in communities across the country, and more specifically women, may face challenges entering or reentering the labor force.¹³⁰

¹²⁸ Women have carried a larger share of childcare responsibilities than men during the COVID-19 crisis. See, e.g., Gema Zamarró & Mari'a J. Prados, Gender differences in couples' division of childcare, work and mental health during COVID-19, *Rev. Econ. Household* 19:11–40 (2021), available at <https://link.springer.com/article/10.1007/s11150-020-09534-7>; Titan Alon et al., The Impact of COVID-19 on Gender Equality, National Bureau of Economic Research Working Paper 26947 (April 2020), available at <https://www.nber.org/papers/w26947>.

¹²⁹ See, e.g., Center For The Study Of Child Care Employment (CSCCE), Child Care Sector Jobs: BLS Analysis (November 8, 2021), <https://cscce.berkeley.edu/child-care-sector-jobs-bls-analysis/>; Emma K. Lee, and Zachary Parolin, The Care Burden during COVID-19: A National Database of Child Care Closures in the United States, *Socius* (January 2021), doi:10.1177/23780231211032028.

¹³⁰ Jason Furman, Melissa Schettini Kearney, and Wilson Powell, The Role of Childcare Challenges in the US Jobs Market Recovery During the COVID-19 Pandemic, NBER Working Paper No. 28934 (June 2021), <https://www.nber.org/papers/w28934>.

Low-income households are also more likely to lose access to quality childcare.¹³¹ The widespread closure of childcare centers combined with a lack of access to paid family leave means parents in low-income households are more likely to experience a reduction of income or leave their jobs due to a lack of childcare options.¹³²

Additionally, childcare providers serving primarily low-income families were less likely to remain open during the pandemic because of tighter profit margins and general community financial insecurity, compared to childcare providers serving primarily high-income families.^{133 134}

In addition to disruptions to childcare, early learning services were also significantly impacted by the pandemic, and the disruption of these services had widespread ramifications for learning loss, parental support, and equity. Early learning centers have seen declined enrollment across the board, though there was a larger dip in enrollment for low-income households.¹³⁵ This lower enrollment coincides with a diminishing workforce, as similarly to childcare, early childhood educators have been leaving the profession due to long hours, low pay,¹³⁶ and health and safety concerns.¹³⁷ As a result, children's school readiness has suffered, leading to potential long-term impacts on life outcomes.¹³⁸ The impact also extended

¹³¹ U.S. Census Bureau, Phase 3.2 Household Pulse Survey: Table 2. Childcare Arrangements in the Last 4 Weeks for Children Under 5 Years Old, by Selected Characteristics, (Washington: 2021), available at <https://www.census.gov/programs-surveys/household-pulse-survey/data.html>.

¹³² *Id.*

¹³³ N. Kalluri, C. Kelly, & A. Garg, Child Care During the COVID-19 Pandemic: A Bad Situation Made Worse, *Pediatrics* (2021), <https://doi.org/10.1542/peds.2020-041525>.

¹³⁴ National Association for the Education of Young Children, Am I Next? Sacrificing to Stay Open, Child Care Providers Face a Bleak Future Without Relief (December 2020), <https://www.naeyc.org/sites/default/files/globally-shared/downloads/PDF>.

¹³⁵ G. G. Weisenfeld, Impacts of Covid-19 on Preschool Enrollment and Spending, New Brunswick, NJ: National Institute for Early Education Research (2021), https://nieer.org/wp-content/uploads/2021/03/NIEER_Policy_Brief_Impacts-of-Covid-19on_Preschool_Enrollment_and_Spending_3_16_21.pdf.

¹³⁶ Heather Long, 'The pay is absolute crap': Child-care workers are quitting rapidly, a red flag for the economy, *Washington Post* (September 19, 2021), <https://www.washingtonpost.com/business/2021/09/19/childcare-workers-quit/>.

¹³⁷ Monash University, The emotional toll of COVID-19 among early childhood educators (August 5, 2020) <https://lens.monash.edu/@education/2020/08/05/1381001/the-emotional-toll-of-covid-19-among-early-childhood-educators>.

¹³⁸ Daphna Bassok and Anna Shapiro, Understanding COVID-19-era enrollment drops

Continued

¹²⁵ United States Department of Agriculture, Trends in Supplemental Nutrition Assistance Program Participation Rates: Fiscal Year 2016 to Fiscal Year 2018 (May 2021), <https://fns-prod.azureedge.net/sites/default/files/resource-files/Trends2016-2018.pdf>.

¹²⁶ Jeremy Barofsky et al., Spreading Fear: The Announcement Of The Public Charge Rule Reduced Enrollment In Child Safety-Net Programs, *Health Affairs* (October 2020), <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.00763>.

¹²⁷ See, e.g., U.S. Department of the Treasury, By ZIP Code: Number of Children under Age 18 with a Social Security Number Who Are Not Found on a Tax Year 2019 or 2020 Tax Return but who Appear on a Tax Year 2019 Form 1095 and Associated Number of Policy Holders (June 2021), <https://home.treasury.gov/system/files/131/Estimated-Counts-of-Children-Unclaimed-for-CTC-by-ZIP-Code-2019.pdf>.

to parents. Parents, especially mothers, may face challenges reentering or remaining in the workforce if early learning services are unavailable.

Treasury Response: Childcare and Early Learning Services: Treasury agrees with commenters' analysis that challenges accessing or affording childcare have been widespread during the pandemic, affecting many jurisdictions and populations across the country. Disruptions to early care and learning services similarly have had broad impact and likely result in negative impacts for young children and their parents. As such, these enumerated eligible uses are generally responsive to the negative economic impacts of the pandemic in all communities, not just in disproportionately impacted communities. Under the final rule, childcare and early learning services are available to impacted households or classes of households, not just those disproportionately impacted. These eligible uses can include new or expanded services, increasing access to services, efforts to bolster, support, or preserve existing providers and services, and similar activities.

Further, Treasury is clarifying that improvements to or new construction of childcare, daycare, and early learning facilities are eligible capital expenditures. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

Public Comment: Home Visiting: Treasury has also received questions about whether the provision of home visiting services would be responsive to the health and mental health needs of impacted new mothers, citing the positive mental health impacts shown on the mother as well as improved outcomes for children.

Background: Home Visiting: Pregnant and recently pregnant individuals are at an increased risk for serious illness from COVID-19.¹³⁹ Furthermore, pregnant individuals with COVID-19 are more likely to experience preterm birth (delivering the baby earlier than 37

weeks).¹⁴⁰ In addition to heightened health risks from COVID-19, pregnant individuals may have experienced significant changes to their prenatal care during the pandemic¹⁴¹ or may also have experienced increased mental health challenges, including high levels of depression, anxiety, loneliness, and post-traumatic stress during the pandemic.¹⁴²

Home visiting services provided to families, particularly new mothers and newborns, feature regular home visits from trained nurses, social workers, and/or counselors who provide health care, mental health resources, positive parenting support, support in making personal health decisions, and awareness of other potentially helpful services. These functions have become even more essential at mitigating negative factors associated with the pandemic. Home visits give professionals a chance to flag potential domestic violence, which has risen worldwide over the course of the pandemic.¹⁴³ Racial health disparities can also be driven down by home visits. For example, Black women are more likely to avoid hospitals during the pandemic, and home visitors can help either assuage concerns around hospitals or give effective advice for alternative methods of childbirth.¹⁴⁴ Given the disproportionate effect of the pandemic on people of color, home visits are an essential equity tool that tackle major negative effects of the pandemic. These are just a few selections from the evidence that suggests many home visiting models can have a positive effect on maternal physical and mental health.¹⁴⁵

Treasury Response: Home Visiting: Given the widespread impact of

COVID-19 on pregnant and recently pregnant individuals, Treasury is re-categorizing home visiting services as an eligible use for impacted communities, not just disproportionately impacted communities. Under the final rule, these eligible uses are available to impacted households or classes of households.

Public Comment: Child Welfare:

While the interim final rule noted that certain types of assistance, particularly around child development and parenting, were eligible for child welfare-involved families, Treasury has received some recipient questions asking whether financial, educational, housing, or other supports and services are eligible uses for foster youth, including those aging out of the system, and child welfare-involved families. Other commenters asked about whether funding for kinship care would be eligible.

Background: Child Welfare: The COVID-19 pandemic placed meaningful strain on the child welfare and foster care system. Court hearings were delayed,¹⁴⁶ essential mental health care was shifted to a virtual environment, and attendance and performance in school among foster children dropped sharply.¹⁴⁷ Additionally, there was a nationwide rise of new children entering the foster care system and many states placed temporary moratoria on children aging out of the foster care system.¹⁴⁸ As these temporary moratoria expire, additional support will be needed to assist children exiting the system.

Additionally, financial and material hardship are causal factors in the increase of new children entering the foster care system, whether through loss of a caregiver, domestic violence,¹⁴⁹ or other associated costs of the pandemic. Therefore, support to decrease these hardships will support families and increase positive outcomes for youth

among early-grade public school students, Brookings Institution (February 22, 2021), <https://www.brookings.edu/blog/brown-center-chalkboard/2021/02/22/understanding-covid-19-era-enrollment-drops-among-early-grade-public-school-students/>.

¹³⁹ Centers for Disease Control and Prevention, Pregnant and Recently Pregnant People, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/pregnant-people.html> (last visited November 9, 2021).

¹⁴⁰ *Id.*

¹⁴¹ Sarah Javaid, Sarah Barringer, Sarah D. Compton, Elizabeth Kaselitz, Maria Muzik, Cheryl A. Moyer, The impact of COVID-19 on prenatal care in the United States: Qualitative analysis from a survey of 2519 pregnant women, *Midwifery*, Volume 98, 2021, 102991, ISSN 0266-6138, <https://doi.org/10.1016/j.midw.2021.102991>.

¹⁴² A. Basu, H.H. Kim, R. Basaldna, K.W. Choi, L. Charron, et al., A cross-national study of factors associated with women's perinatal mental health and wellbeing during the COVID-19 pandemic, *PLOS ONE* 16(4): e0249780, (2021), <https://doi.org/10.1371/journal.pone.0249780>.

¹⁴³ Amanda Taub, A New Covid-19 Crisis: Domestic Abuse Rises Worldwide, *New York Times* (April 6, 2020), <https://www.nytimes.com/2020/04/06/world/coronavirus-domestic-violence.html>.

¹⁴⁴ Xenia Shih Bion, Efforts to Reduce Black Maternal Mortality Complicated by COVID-19, California Health Care Foundation (April 20, 2020), <https://www.chcf.org/blog/efforts-reduce-black-maternal-mortality-complicated-covid-19/>.

¹⁴⁵ U.S. Department of Health and Human Services, Home Visiting Evidence of Effectiveness, <https://homvee.acf.hhs.gov/outcomes/maternal%20health/In%20Brief>.

¹⁴⁶ National Conference of State Legislatures, Criminal Justice System Responses to COVID-19 (November 16, 2020), <https://www.ncsl.org/research/civil-and-criminal-justice/criminal-justice-and-covid-19.aspx>.

¹⁴⁷ John Burton Advocates for Youth, The Cumulative Impact of the Pandemic on Youth Who Have Been in Foster Care or Homeless (May 2020) <https://jbyay.org/wp-content/uploads/2021/04/JBAY-COVID-19-Impact.pdf>.

¹⁴⁸ John Kelly, Next Week, Thousands of Foster Youth Will Age Out on the Same Day (September 21, 2021), <https://imprintnews.org/subscribe-content/thousands-of-foster-youth-will-age-out-on-the-same-day/59006>.

¹⁴⁹ Conrad-Hiebner, Aislinn, and Elizabeth Byram, The Temporal Impact of Economic Insecurity on Child Maltreatment: A Systematic Review. *Trauma, Violence, & Abuse*, vol. 21, no. 1, Jan. 2020, pp. 157-178, doi:10.1177/1524838018756122.

and families that may otherwise become involved in the child welfare system.

Treasury Response: In the final rule, Treasury is clarifying that services to foster youth, including those aging out of the system, and child welfare-involved families may encompass a wide array of financial, educational, child development, or health supports, or other supports necessary, including supports for kinship care.

9. Addressing the impacts of lost instructional time.

Public Comment: The interim final rule included an enumerated eligible use to address educational disparities in disproportionately impacted communities, recognizing that underserved students have been more severely impacted by the pandemic and including responsive services for early learning, enhance funding to high-poverty districts, and providing evidence-based services to address the academic, social, emotional, and mental health needs of students. Some commenters expressed concerns that learning loss or the negative impacts of lost instructional time due to school closures or remote education during the pandemic had affected a significant share of students in grades kindergarten through twelve (K–12), including students who may not fall within a disproportionately impacted group.

Background: The COVID–19 pandemic resulted in the widespread closure of schools across the nation. While many schools and districts reopened to in-person instruction or implemented remote learning, the shift was not immediate or without consequence. Children who received virtual only or combined remote and in-person instruction were more likely to report experiencing negative mental- and physical health outcomes than children who received in-person instruction.¹⁵⁰

Treasury Response: Under the final rule, addressing the impact of lost instructional time and/or learning loss is an enumerated eligible use for impacted households. When providing services to address lost instructional time, recipients may presume that any K–12 student who lost access to in-person instruction for a significant period of time has been impacted by the pandemic and is thus eligible for responsive services.

Interventions or services that address the impact of lost instructional time may include offering high-quality tutoring and other extended learning opportunities, providing differentiated instruction, implementing activities to meet the comprehensive needs of students, expanding and improving language access for parents and families, providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment, improving student engagement in distance education, and administering and using high-quality assessments to assess students' academic progress, among others. In designing services under this eligible use, recipients may wish to reference guidance from the Department of Education on strategies for addressing lost instructional time.¹⁵¹

The final rule also maintains a separate enumerated eligible use for addressing educational disparities in disproportionately impacted communities. This eligible use includes services to address disparities in educational outcomes that predate the pandemic and amplified its impact on underserved students; these include, for example, enhanced funding to high-poverty districts and providing evidence-based services to address the academic, social, emotional, and mental health needs of students.

Finally, as described in the section Public Health, recipients can provide a broad range of behavioral health services, including services for children and youth in schools, to respond to the impacts of the pandemic on mental health and other behavioral health issues. When providing behavioral health services, recipients may presume that the general public was impacted by the pandemic and provide behavioral health services to members of the general public, including children and youth in schools, without any further analysis of impacts of the pandemic on those individuals and whether the service is responsive.

10. Promoting long-term housing security: affordable housing and homelessness. Under the interim final rule, recipients may use SLFRF funds to provide a set of housing services to communities that have been disproportionately impacted by the pandemic. Specifically, the interim final rule provided that programs or services that address housing insecurity, lack of affordable housing, or homelessness,

were responsive to the negative economic impacts of the pandemic when provided to disproportionately impacted households and communities. The enumerated uses included supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless and development of affordable housing to increase supply of affordable and high-quality living units. Many recipients have already announced plans to use SLFRF funds for affordable housing interventions in all of these categories. Treasury received many comments asking for additional clarity or flexibility in these uses.

As detailed below, based on multiple public comments and questions and Treasury's subsequent analysis, Treasury has determined that supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless, and the development of affordable housing to increase supply of affordable and high-quality living units are responsive to the needs of impacted populations, not only disproportionately impacted populations. This final rule reflects this clarification and builds on the objectives stated in the interim final rule to improve access to stable, affordable housing, including through interventions that increase the supply of affordable and high-quality living units, improve housing security, and support durable and sustainable homeownership.

Finally, note that "emergency housing assistance," or assistance for responses to the immediate negative economic impacts of the pandemic through services like financial assistance for rental arrears or mortgage payments, is also an eligible use category for assistance to households under the final rule; see the eligible use for "emergency housing assistance" above. The provision of housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity remains an eligible use under assistance to disproportionately impacted households; for discussion, see the eligible use for "housing vouchers and assistance relocating" below.

Background: Affordable Housing: It is clear that the ongoing pandemic and resulting economic crisis are having a profound, long-term negative effect on the pre-existing affordable housing crisis facing low-income households.¹⁵²

¹⁵⁰ Verlenden JV, Pampati S, Rasberry CN, et al. Association of Children's Mode of School Instruction with Child and Parent Experiences and Well-Being During the COVID–19 Pandemic—COVID Experiences Survey, United States, October 8–November 13, 2020. *MMWR Morb Mortal Wkly Rep* 2021;70:369–376. DOI: <http://dx.doi.org/10.15585/mmwr.mm7011a1external icon>.

¹⁵¹ U.S. Department of Education, Strategies for Using American Rescue Plan Funding to Address the Impact of Lost Instructional Time, August 2021. Retrieved from <https://www2.ed.gov/documents/coronavirus/lost-instructional-time.pdf>.

¹⁵² Consumer Financial Protection Bureau, Housing Insecurity and the COVID–19 pandemic

Continued

The combination of a large number of higher-income households who have weathered the pandemic without significant income losses, low interest rates, and housing supply constraints exacerbated by the pandemic, have driven a sharp increase in the sale price of homes.¹⁵³ Meanwhile, many low-income renters and homeowners are struggling with lost employment and income and are behind on their housing payments.¹⁵⁴

Public Comment: Affordable Housing Outside of Low-Income Geographies: A major theme in comments was that affordable housing interventions, especially development of affordable housing, should be allowed outside of QCTs, as concentrating the supply of affordable housing in low-income geographies can have the effect of increasing both concentrated poverty and racial and economic segregation, while locking lower-income households in need of housing support out of high-opportunity neighborhoods with access to employment and amenities.

Treasury Response: Affordable Housing Outside Low-Income Geographies: As previously stated, affordable housing is not confined to low-income geographies under the interim final rule. As discussed elsewhere, the interim final rule presumed that QCTs, as well as communities served by Tribal governments, were disproportionately impacted for administrative convenience, but recipients may identify other populations, households, or geographic areas with disparate impacts of COVID-19 and provide affordable housing services to them. For example, under the interim final rule, a city could determine that its low-income residents faced disproportionate impacts of COVID-19 and develop affordable housing targeted to these households. Such a scenario could include, for example, affordable projects

in higher-income neighborhoods that would allow residents to live closer to jobs and well-resourced schools.

Additionally, as noted above, Treasury is finalizing the rule with some changes to the treatment of affordable housing development designed to clarify that permanent supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless, and the development of affordable housing to increase supply of affordable and high-quality living units, are responsive to individuals and households that were impacted by the pandemic in addition to those that were disproportionately impacted. This shift is in line with commenters' recommendations and consistent with the facts described above, which demonstrate that lack of supply of affordable housing units contributed to the pandemic's impact on housing insecurity and unsustainable housing cost burdens and that these impacts were experienced broadly across the country.

Public Comment: Eligible Activities: Many commenters asked for clarity on what types of activities (e.g., land acquisition, construction, pre-construction costs, operating costs, etc.) are eligible uses of SLFRF, and what affordability criteria must be applied to affordable housing development. Commenters encouraged Treasury to allow the full array of affordable housing activities, including particular requests for broad flexibility for Tribal communities, and to specify that "development" should include construction, preservation, rehabilitation, and operation. Other commenters requested clarification about permissible program administration approaches for affordable housing, such as contracting methods and distribution of funds.

Some commenters asked that Treasury require SLFRF funds to be focused on the lowest-income households, who suffer the most severe rent burdens and risks of housing instability, and whose housing situation has left them particularly vulnerable to COVID-19. For example, one commenter argued that SLFRF funds should only be used to support affordable housing for households making 50 percent of AMI or less and that recipients should be required to set aside significant portions of any developments for renters making 30 percent of AMI or less and persons with physical and sensory disabilities. Other commenters requested a more flexible approach to affordable housing definitions.

Treasury Response: Eligible Activities:

The final rule clarifies eligibility of affordable housing development for recipients; these uses were eligible under the interim final rule, but Treasury is providing further guidance to enhance clarity and respond to recipient and commenter questions.

As with all interventions to address the negative economic impacts of the pandemic, affordable housing projects must be responsive and proportional to the harm identified. This test may be met by affordable housing development projects—which may involve large expenditures and capital investments—if the developments increase the supply of long-term affordable housing for low-income households. While there may be less costly (or non-capital) alternatives to affordable housing development, a comprehensive response to the widespread housing challenges underscored by the pandemic will require the production of additional affordable homes, and targeted affordable housing development is a cost-effective and proportional response to this need.

For purposes of this test, Treasury will presume that any projects that would be eligible for funding under either the National Housing Trust Fund (HTF) or the Home Investment Partnerships Program (HOME) are eligible uses of SLFRF funds. Note that these programs use different income limits than the definition of low- and moderate-income adopted by Treasury. Given the severity of the affordable housing shortage, and the ways in which the pandemic has exacerbated the need for affordable, high-quality dwelling units, Treasury has determined that the households served by these federal housing programs have been impacted by the pandemic and its negative economic impacts and that development of affordable housing consistent with these programs is a related and reasonably proportional response to those impacts. Additionally, affordable housing projects provided by a Tribal government are eligible uses of SLFRF if they would be eligible for funding under the Indian Housing Block Grant program, the Indian Community Development Block Grant program, or the Bureau of Indian Affairs Housing Improvement Program. Alignment with these programs, which define "affordable housing" in a manner consistent with a proportionate response to the affordable housing challenges faced by low- and moderate-income households as a result of the negative economic impacts of the pandemic, is intended to give recipients comfort and clarity as they design a

(March 2020), https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf.

¹⁵³ Joint Center For Housing Studies Of Harvard University, "The State of the Nation's Housing (June 2021)," https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Notions_Housing_2021.pdf.

¹⁵⁴ Davin Reed and Eileen Divringi, "Household Rental Debt During COVID-19: Update for 2021," Federal Reserve Bank of Philadelphia (2020), available at: <https://www.philadelphiafed.org/community-development/housing-and-neighborhoods/household-rental-debt-during-covid-19-update-for-2021>. Further, some research suggests that liquidity may be a more important predictor of default than other factors, including income or equity. See Trading Equity for Liquidity (June 2019), available at <https://www.jpmmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/institute/pdf/institute-trading-equity-for-liquidity.pdf>.

wide variety of affordable housing interventions, including production, rehabilitation, and preservation of affordable rental housing and, in some cases, affordable homeownership units. These programs allow the financing of a wide range of affordable housing activities and set clear eligibility criteria that many recipients are already familiar with.

Finally, to further support sustainable and durable homeownership, recipients may consider offering down payment assistance, such as through contributions to a homeowner's equity at origination or that establish a post-closing, mortgage reserve account on behalf of the borrower that may be utilized to make a missed or partial mortgage payment at any point during the life of the loan (e.g., if the borrower faces financial stress). Homeownership assistance that would be eligible under the Community Development Block Grant (at 24 CFR 507.201(n)) is also an eligible use of SLFRF funds.

Public Comment: Permanent Supportive Housing: Treasury has received comments encouraging the use of SLFRF funds for permanent supportive housing. This is an eligible use under the interim final rule. Both the development of affordable housing (including operating subsidies) and wraparound services such as behavioral health services, employment services, and other supportive services, are eligible responses to the public health crisis or its negative economic impacts.

Treasury Response: The final rule maintains the eligibility of permanent supportive housing as an enumerated use. Treasury is also clarifying that other affordable housing developments targeted to specialized populations are also eligible, for example recovery housing for individuals in recovery from substance use.

Public Comment: Operating Expenses: Commenters specifically asked that Treasury allow the use of SLFRF funds for operating expenses of affordable housing units, as operating subsidies are typically required to reach extremely low-income households, whose affordable rents may be lower than the ongoing cost of operating their unit.

Treasury Response: Operating expenses for eligible affordable housing were an eligible use of funds under the interim final rule and the final rule maintains this treatment. This may include capitalized operating reserves.

Rehabilitation and repair of public housing will also be considered an eligible use of SLFRF funds.

Public Comment: Affordable Housing Loans and Revolving Loan Funds: Some commenters requested that loans with

maturities beyond the period of performance or revolving loan funds that revolve beyond the period of performance be eligible uses of SLFRF funds if used for affordable housing. Some commenters pointed out that for-profit developers of low-income housing through the Low-Income Housing Tax Credit (LIHTC) may be deterred from accepting grants to bridge funding gaps in current LIHTC deals by the treatment of grants to for-profit entities in the calculation of eligible basis for the LIHTC.

Treasury Response: The final rule does not change the treatment of loans from the interim final rule. For more details see section Treatment of Loans in Program Administration Provisions. Similarly, the final rule does not change the treatment of grants to support affordable housing development, including developments supported by the LIHTC: such grants are an eligible use of funds.

Additional enumerated eligible uses for assistance to impacted households. As noted above, the interim final rule posed a question on what other types of services or costs Treasury should consider as eligible uses to respond to the negative economic impacts of COVID-19. In response, commenters proposed a wide variety of additional recommended enumerated eligible uses to assist households, ranging from general categories of services (e.g., legal and social services) to services that respond to needs widely experienced across the country (e.g., access to and affordability of health insurance) to services that are most applicable to the particularized needs of certain populations or geographic areas of the United States (e.g., senior citizens, SNAP recipients, immigrants, formerly-incarcerated individuals, responding to environmental issues in certain geographic regions). Other commenters generally requested a high degree of flexibility to respond to the particular needs of their communities.

Treasury Response: Given the large number and diversity of SLFRF recipients, Treasury's approach to assistance to households in the final rule aims to clarify additional enumerated eligible uses that respond to negative economic impacts of the pandemic experienced widely in many jurisdictions across the country, making it clear and simple for recipients to pursue these enumerated eligible uses under the final rule. In the final rule, Treasury is clarifying several additional uses, which generally respond to pandemic impacts experienced broadly across jurisdictions and populations, are eligible under the interim final rule as

assistance to households and continue to be so under the final rule, as outlined below.

11. Paid sick, medical, or family leave.

Public Comment: Some commenters argued that the pandemic increased the need for paid sick or medical leave, as staying home when ill is recommended by the CDC to prevent spread of the virus but lack of access to paid sick leave often prevents workers from staying home. Other commenters recommended paid family leave as an eligible use, arguing that shortages in access to childcare or home health assistance, as well as school closures, may increase the need for family members to serve as caretakers.

Background: The COVID-19 pandemic highlighted the importance of paid leave as well as the number of workers who do not have access to paid sick and/or family leave. When workers have access to paid leave, they are less likely to report to work sick, and therefore less likely to spread illnesses in the workplace: One study demonstrates that the emergency sick leave provision of the Families First Coronavirus Response Act (FFCRA) reduced the spread of COVID-19.¹⁵⁵

The lack of paid leave exacerbates financial hardships experienced as a result of the public health emergency. A 2018 survey by the Department of Labor found that two-thirds of employees that took unpaid or partial-paid leave experienced financial hardship.¹⁵⁶ Furthermore, because the Family and Medical Leave Act (FMLA) excludes small employers, part-time workers, and workers who have been with their employer for less than a year, 44 percent of workers do not have access to even unpaid leave.¹⁵⁷ Workers of color and workers with lower incomes are less likely to have access to paid leave.^{158 159}

¹⁵⁵ Stefan Pichler, Katherine Wen, and Nicolas R. Ziebarth, COVID-19 Emergency Sick Leave Has Helped Flatten The Curve In The United States: Study examines the impact of emergency sick leave on the spread of COVID-19, Health Affairs 39, no. 12 (2020): 2197–2204, <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00863>.

¹⁵⁶ Scott Brown et al., Employee and Worksites Perspectives of the Family and Medical Leave Act: Results from the 2018 Surveys, Abt Associates (July 2020), https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHDFMLA2018SurveyResults_FinalReport_Aug2020.pdf.

¹⁵⁷ *Id.*

¹⁵⁸ Ann P. Bartel et al., Racial and ethnic disparities in access to and use of paid family and medical leave: evidence from four nationally representative datasets, U.S. Bureau of Labor Statistics (BLS) (January 2019), <https://www.bls.gov/opub/mlr/2019/article/racial-and-ethnic-disparities-in-access-to-and-use-of-paid-family-and-medical-leave.htm>.

For workers that are also caregivers for children, seniors, or other family members, there may be a similar need for—and benefits of—paid family leave. For example, some workers may have struggled during the pandemic to balance caring for children, as schools and daycares closed, and working. For new parents, paid parental leave results in fewer infant hospitalizations, lowering parental stress, increasing parental involvement, and improving the overall health of parent and child.¹⁶⁰ COVID-19 has also increased the levels of “caregiving intensity”¹⁶¹ and “caregiving burden”¹⁶² for those providing care to seniors or older family members.¹⁶³ ¹⁶⁴ When surveyed, more than half of caregivers reported that COVID-19 increased both the amount of caregiving responsibilities they had as well as the negative physical and mental impacts their caregiving responsibilities had on themselves.¹⁶⁵

Treasury Response: Treasury agrees that these constitute impacts of the pandemic, and accordingly, under the final rule, creating, expanding, or financially supporting paid sick, medical, or family leave programs is an enumerated eligible use of funds to respond to the negative economic impacts of the pandemic.

12. Health insurance.

Public Comment: Several commenters recommended that uses of funds to expand access to health insurance be enumerated eligible uses; commenters believed that the heightened risk of

illness or hospitalization due to COVID-19 had increased the negative economic impacts of lacking health insurance.

Background: In 2019, prior to the pandemic, it was estimated that 11 percent of nonelderly adults lacked health insurance.¹⁶⁶ By mid-2020, job loss had resulted in an estimated 3.3 million people losing their employer sponsored insurance, resulting in an additional 2 million uninsured adults.¹⁶⁷ Participation in Medicaid, the Children’s Health Insurance Program (CHIP), and the Affordable Care Act (ACA) marketplace played an important role in minimizing the number of people who completely lost health insurance during the early phases of the pandemic; Medicaid and CHIP enrollment increased by 9 percent from February to September 2020¹⁶⁸ and 8.3 million people enrolled in insurance through the ACA marketplace.¹⁶⁹

Although the ACA, CHIP, and Medicaid have significantly reduced the number of uninsured Americans through the pandemic and the economic downturn, adequate coverage and affordability still remains an issue for many. In 2020, 21 percent of working-age adults were inadequately insured, meaning even if they had insurance, they incurred a significant amount of out-of-pocket costs.¹⁷⁰ Additionally, 37 percent of adults reported struggling with medical bills or medical debt and 71 percent of adults who did not purchase insurance cited affordability as the main factor.¹⁷¹

Treasury Response: Treasury agrees that loss of health insurance, increased financial risk from lacking health insurance, or excessive out-of-pocket healthcare costs constitute negative economic impacts of the pandemic. Under the final rule, programs or services to expand access to health insurance coverage are an enumerated eligible use as assistance to households, for example, subsidies for health insurance premiums or expansion of a recipient’s health insurance plan to cover additional employees who currently lack coverage.

13. Services for the unbanked and underbanked.

Public Comment: One commenter expressed support for the inclusion of services to increase banking access as an allowable expense under SLFRF. The commenter recommended that states be encouraged to offer opportunities for consumers to open safe and affordable accounts capable of receiving direct payments. The commenter emphasized that allowing unbanked and underbanked households to receive funds securely through no-fee, direct deposit will help connect or reconnect consumers to the mainstream financial system.

Background: Banking inequities can make it difficult for unbanked or underbanked households to access housing, jobs, and other important economic opportunities. Being unbanked or underbanked can also make it challenging for households to apply for and receive financial assistance, including services like pandemic emergency housing assistance.

Safe, affordable, and accessible financial services play a critical role in assisting households in the United States in managing income volatility and cash flow shortages.¹⁷² Currently, over 5 percent of families, or 7 million households are “unbanked,” meaning they do not have a bank account.¹⁷³ Low-income households, non-white households, and households with individuals with disabilities were even more likely to be unbanked. In 2019, 16 percent of Native American households, 14 percent of Black households, and 12 percent of Hispanic households were unbanked, compared to 2.5 percent of white households. Additionally,

¹⁵⁹ U.S. Bureau of Labor Statistics, Employee Benefits in the United States (March 2019), <https://www.bls.gov/ncs/ebs/benefits/2019/ownership/civilian/table31a.pdf>.

¹⁶⁰ Maya Rossin-Slater et al., Local exposure to school shootings and youth antidepressant use, *Proceedings of the National Academy of Sciences*, vol. 117(38), pages 23484–23489 (2020), <https://www.pnas.org/content/117/38/23484>; Ariel Marek Pihl and Gaetano Basso, Did California Paid Family Leave Impact Infant Health?, *Journal of Policy Analysis and Management*, <https://onlinelibrary.wiley.com/doi/abs/10.1002/pam.2210>.

¹⁶¹ J.C. Jacobs, A. Laporte, C.H. Van Houtven, P.C. Coyte, Caregiving intensity and retirement status in Canada. *Social Science & Medicine*, 102, 74–82 (2014), <https://www.sciencedirect.com/science/article/abs/pii/S0277953613006631>.

¹⁶² E. Lightfoot, R.P. Moone, Caregiving in times of uncertainty: Helping adult children of aging parents find support during the COVID-19 outbreak, *Journal of Gerontological Social Work*, 63(6–7), 542–552 (2020), <https://www.tandfonline.com/doi/abs/10.1080/01634372.2020.1769793>.

¹⁶³ Note: “Caregiving intensity” is defined as the amount and type of care provided by informal caregivers; “Caregiving burden” is defined as the impacts on physical and mental health, and health-related quality of life of informal caregivers.

¹⁶⁴ SA Cohen, ZJ Kunicki, MM Drohan, ML Greaney, Exploring Changes in Caregiver Burden and Caregiving Intensity due to COVID-19, *Gerontology and Geriatric Medicine* (January 2021), doi:10.1177/2333721421999279.

¹⁶⁵ *Id.*

¹⁶⁶ Jennifer Tolbert et al., Key Facts about the Uninsured Population, Kaiser Family Foundation (November 6, 2020), <https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/>.

¹⁶⁷ Joshua Aarons et al., As the COVID-19 Recession Extended into the Summer of 2020, More Than 3 Million Adults Lost Employer-Sponsored Health Insurance Coverage and 2 Million Became Uninsured, Urban Institute (September 18, 2020), <https://www.urban.org/research/publication/covid-19-recession-extended-summer-2020-more-3-million-adults-lost-employer-sponsored-health-insurance-coverage-and-2-million-became-uninsured>.

¹⁶⁸ Centers for Medicare and Medicaid Services, Medicaid and CHIP Enrollment Trends Snapshot through September 2020 (Washington: 2021), available at <https://www.medicare.gov/sites/default/files/2021-01/september-medicare-chip-enrollment-trend-snapshot.pdf>.

¹⁶⁹ Centers for Medicare and Medicaid Services, 2021 Federal Health Insurance Exchange Weekly Enrollment Snapshot: Final Snapshot (January 12, 2021) available at <https://www.cms.gov/newsroom/fact-sheets/2021-federal-health-insurance-exchange-weekly-enrollment-snapshot-final-snapshot>.

¹⁷⁰ Sara R. Collins, Munira Z. Gunja, and Gabriella N. Aboulafia, U.S. Health Insurance Coverage in 2020: A Looming Crisis in Affordability (New York: Commonwealth Fund, 2020), available at <https://www.commonwealthfund.org/publications/issue-briefs/2020/aug/looming-crisis-health-coverage-2020-biennial>.

¹⁷¹ *Id.*

¹⁷² Federal Deposit Insurance Corporation, FDIC National Survey of Unbanked and Underbanked Households (2015), <https://www.fdic.gov/household-survey/2015/2015execsum.pdf>.

¹⁷³ Federal Deposit Insurance Corporation, How America Banks: Household Use of Banking and Financial Services 2019 FDIC Survey, <https://www.fdic.gov/analysis/household-survey/2019report.pdf>.

underbanked households—those that have a bank account but rely on alternative financial services, such as money orders, payday loans, and check cashing services—account for 16 percent of all households in the United States.¹⁷⁴ As a result of the COVID-19 pandemic, new social distancing protocols have, in some instances, made it more difficult to perform financial transactions with paper instruments, like banknotes, coinage, paper checks, or money orders. Households constrained to these payment methods may face challenges receiving government assistance. Additionally, businesses have transitioned to cashless payments systems to promote contactless payments.¹⁷⁵ As a result, unbanked individuals may face additional challenges conducting financial transactions.

Treasury Response: Recognizing these challenges, Treasury is clarifying that recipients may use SLFRF funds to provide financial services that facilitate the delivery of federal, state, or local benefits (e.g., Child Tax Credit, Earned Income Tax Credit, tax refunds, or emergency housing or food assistance funds). The following includes a non-exhaustive list of uses to provide financial services to unbanked and underbanked households:

- Provide low or no cost financial services, including in conjunction with administration of benefits, such as pre-paid debit cards, e.g., via Economic Impact Payment or General Purpose Reloadable pre-paid cards or for the development of public banking infrastructure that can support benefit delivery.
- Provide transitional services to facilitate long-term access to banking and financial services.
- Provide financial literacy programs and conduct community outreach and deploy engagement resources to increase awareness about low-cost, no-overdraft fee accounts, pilot new strategies and approaches that help overcome barriers to banking access and support the gathering and sharing of information in ways that improve equity, such as community meetings, partnerships with community-based organizations, online surveys, focus groups, human-centered design

activities, and other community engagement activities.

Assistance to Unemployed and Underemployed Workers

The interim final rule included assistance to unemployed workers as an enumerated eligible use, including “services like job training to accelerate rehiring of unemployed workers.” Treasury provided further guidance, based on recipient questions after the interim final rule, that eligible uses under this section also include “other efforts to accelerate rehiring and thus reduce unemployment, such as childcare assistance, assistance with transportation to and from a jobsite or interview, and incentives for newly employed workers[.]” as well as assistance to unemployed workers seeking to start small businesses. Finally, further guidance also provided that “public jobs programs, subsidized employment, combined education and on-the-job training programs, or job training to accelerate rehiring or address negative economic or public health impacts experienced due to a worker’s occupation or level of training” are all enumerated eligible uses as assistance to unemployed or underemployed workers.

The interim final rule defined eligible beneficiaries of assistance as “individuals who want and are available for work, including those who have looked for work sometime in the past 12 months or who are employed part time but who want and are available for full-time work.” This definition is based on definitions used by the Bureau of Labor Statistics to define individuals currently unemployed, as well as persons marginally attached to the labor force and working part-time for economic reasons.¹⁷⁶ The latter two classifications are types of labor underutilization, or “underemployed” workers.¹⁷⁷ Finally, the interim final rule specified that assistance to unemployed workers included both workers who lost their job during the pandemic and resulting recession and workers unemployed when the pandemic began who saw further deterioration of their economic prospects due to the pandemic.

Public Comment: Commenters generally supported the inclusion of this enumerated eligible use. One commenter recommended including assistance for underemployed workers who took jobs due to the pandemic that

did not fully utilize their skillset or did not provide the hours, wages, or job quality desired. Treasury has also received recipient questions on whether job fairs or grants to businesses to hire underserved workers are eligible uses under this category. Another commenter recommended flexibility in eligible workforce development programs, arguing that rural areas may face particular challenges.

Treasury Response: Treasury is maintaining this eligible use in the final rule, including the enumerated eligible services in the interim final rule and subsequent guidance. Treasury is also confirming that job fairs or grants to businesses to hire underserved workers are eligible uses under this section.

Treasury is also enumerating that job and workforce training centers are eligible capital expenditures, so long as they adhere to the standards and presumptions detailed in the section Capital Expenditures in General Provisions: Other.

The final rule maintains the definition of eligible beneficiaries, which is aligned with the Bureau of Labor Statistics’ definitions of unemployed workers and other labor underutilization, using a common, widely known definition that incorporates a broad group of individuals both unemployed or whose skills are otherwise underutilized in the labor market.

In addition, recognizing that the pandemic has generated broad workforce disruption, in the final rule, Treasury is making clear that recipients may provide job training or other enumerated types of assistance to individuals that are currently employed but are seeking to move to a job that provides better opportunities for economic advancement, such as higher wages or more opportunities for career advancement.

Recipient Unemployment Insurance Trust Funds and Related Expenses

Under the interim final rule, a recipient may use funds to make deposits into its account of the Unemployment Trust Fund established under section 904 of the Social Security Act (42 U.S.C. 1104) up to the level needed to restore the pre-pandemic balance of such account as of January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021. These costs support the solvency of the unemployment insurance system and, ultimately, unemployment insurance benefits provided to unemployed

¹⁷⁴ Board of the Governors of the Federal Reserve System, Report on the Economic Well-Being of U.S. Households in 2018–May 2019, <https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-banking-and-credit.htm>.

¹⁷⁵ Zaheer Allam, The Forceful Reevaluation of Cash-Based Transactions by COVID-19 and Its Opportunities to Transition to Cashless Systems in Digital Urban Networks. Surveying the Covid-19 Pandemic and its Implications (2020): 107–117. doi:10.1016/B978-0-12-824313-8.00008-5.

¹⁷⁶ Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Concepts and Definitions, <https://www.bls.gov/cps/definitions.htm> (last visited November 9, 2021).

¹⁷⁷ *Id.*

workers during the pandemic.¹⁷⁸ The interim final rule also posed the question of what, if any, conditions should be considered to ensure that funds used under this eligible use category repair economic impacts of the pandemic and strengthen unemployment insurance systems.

Public Comment: Inclusion as an Eligible Use and Conditions: Commenters expressed mixed perspectives on this eligible use category. Some commenters supported its inclusion, arguing that unemployment insurance systems have faced significant costs to support unemployed workers during the pandemic and that this constitutes a negative economic impact that SLFRF funds should be able to address. Other commenters opposed this eligible use category, arguing that funds used under this category may not ultimately support unemployed workers. Some commenters noted that unemployment insurance taxes on businesses automatically increase when trust fund balances are low and suggested that permitting the deposit of funds into unemployment insurance trust funds prevents a tax increase on businesses, some of which may not have faced negative economic impacts from the pandemic, rather than providing assistance to unemployed workers. Other comments suggested that deposits are better thought of as savings for future needs than assistance to unemployed workers in the near term.

Responding to the interim final rule's question, several commenters suggested that, if Treasury maintains this eligible use, the final rule should require detailed reporting on funds used under this category or place conditions on this category to increase the likelihood that funds ultimately support unemployed workers. For example, some commenters suggested that recipients that deposit SLFRF funds into their trust fund should be barred from cutting unemployment insurance benefits for workers during the period of performance or from erecting new barriers to accessing benefits (e.g., through the application process and ongoing requirements to receive benefits). One commenter, noting that unemployment insurance benefits often provide low rates of wage replacement and do not cover some types of unemployed workers, argued that recipients should not be permitted to deposit funds into the trust fund unless

the recipient concurrently expands benefits. Finally, one commenter suggested a cap on the amount of funds that can be used for this purpose.

Treasury Response: Inclusion as an Eligible Use and Conditions: In the final rule, Treasury is maintaining the inclusion of this eligible use category. Because unemployment insurance trust funds directly fund benefits to unemployed workers, maintaining the solvency of the trust fund is critical to the continued provision of assistance to unemployed workers. Further, funds deposited into the trust fund must be used as assistance to unemployed workers, an eligible use of SLFRF funds. Finally, while, in the absence of the SLFRF, trust fund deposits would likely be funded through increases on employer payroll taxes, the eligibility of uses of SLFRF funds does not depend on how obligations would otherwise be satisfied if the SLFRF were not available for this use.

While deposits to unemployment insurance trust funds generally serve as assistance to unemployed workers, recipients that make deposits but also cut unemployment insurance benefits to workers substantially decrease the likelihood that the deposited funds will assist unemployed workers. In other words, SLFRF funds deposited into an unemployment insurance trust fund generally serve as assistance to unemployed workers, unless recipients take policy actions that substantially decrease the extent to which SLFRF funds would flow to unemployed workers. As such, through December 31, 2024, recipients that deposit SLFRF funds into an unemployment insurance trust fund or use SLFRF funds to repay principal on Title XII advances, may not take action to reduce benefits available to unemployed workers by changing the computation method governing regular unemployment compensation in a way that results in a reduction of average weekly benefit amounts or the number of weeks of benefits payable (i.e., the maximum benefit entitlement).

Finally, until the final rule becomes effective on April 1, 2022, the interim final rule remains binding and effective.¹⁷⁹ These requirements were not in effect under the interim final rule and do not apply to funds used (i.e., obligated or expended) under the interim final rule while it is in effect. In addition, recognizing that some recipients have taken significant steps

toward making a trust fund deposit or repaying principal on Title XII advances under the interim final rule, such as the legislative appropriation of funds for this purpose, even if a formal obligation has not occurred, Treasury will exercise enforcement discretion to not pursue violations of this final rule provision (i.e., the requirement not to reduce benefits) for recipients that have appropriated funds for this purpose prior to the date of adoption of the final rule consistent with the laws and procedures in their jurisdiction. Recipients should refer to Treasury's Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule, which provides additional detail on these issues.

Public Comment and Treasury Response: Technical Corrections and Amendments: Following the interim final rule, Treasury received recipient questions on whether paying interest on advances received under Title XII of the Social Security Act (42 U.S.C. 1321) is an eligible use of SLFRF funds; Treasury is clarifying that such use is permissible, consistent with Treasury's treatment of the eligibility of interest on Title XII advances under the Coronavirus Relief Fund.

Treasury is further clarifying that recipients may only use SLFRF funds for contributions to unemployment insurance trust funds and repayment of the principal amount due on advances received under Title XII of the Social Security Act up to an amount equal to (i) the difference between the balance in the recipient's unemployment insurance trust fund as of January 27, 2020 and the balance of such account as of May 17, 2021, plus (ii) the principal amount outstanding as of May 17, 2021 on any advances received under Title XII of the Social Security Act between January 27, 2020 and May 17, 2021. Further, recipients may use SLFRF funds for the payment of any interest due on such Title XII advances. In other words, excluding interest due on Title XII advances, the magnitude of the decrease of the balance in the unemployment insurance trust fund plus the principal outstanding on any Title XII borrowings made from the beginning of the public health emergency to the date of publication of the SLFRF interim final rule sets a cap on the amount of SLFRF funds a recipient may use for trust fund contributions and repayment of principal on Title XII advances. Further, a recipient that deposits SLFRF funds into its unemployment insurance trust fund to fully restore the pre-pandemic balance may not draw down that

¹⁷⁸ Note that, while the economic harm being addressed accrued before March 3, 2021, the cost incurred to address the harm occurs after March 3, 2021 and provides assistance to unemployed workers, an eligible use of SLFRF funds.

¹⁷⁹ See, e.g., U.S. Department of the Treasury, More Information on the Conclusion of the Public Comment Period and the Interim Final Rule on the Coronavirus State and Local Fiscal Recovery Funds, <https://home.treasury.gov/system/files/136/IFR-Explainer.pdf>.

balance and deposit more SLFRF funds, back up to the pre-pandemic balance.

Enumerated Eligible Uses for Disproportionately Impacted Households

Background

The COVID-19 pandemic has had disproportionately negative impacts on many households and communities that were already experiencing inequality related to race, gender, age, or income before the pandemic. People of color, low-income workers, and women disproportionately lost their jobs during the COVID-19 pandemic and experienced disproportionate rates of negative health outcomes.^{180 181}

These disproportionate negative impacts experienced by systemically underserved communities are not novel to the COVID-19 pandemic and the economic downturn. Research shows that historically underserved communities that are experiencing economic and social disparities typically experience disproportionate impacts of economic downturns and natural disasters.¹⁸² This pattern held true for the effects of COVID-19 and the economic downturn: Historically undeserved groups experienced amplified negative impacts, further widening inequality.¹⁸³

Many communities facing systemic barriers had not yet recovered from the impact of the Great Recession before experiencing the impacts of COVID-19 and the economic downturn. For example, in 2009, at the end of the Great Recession, households without a high school diploma had an average annual income of \$32,300 (measured in 2018 dollars). By 2018, nine years into the economic recovery, those same households saw their average income increase by \$600. During that same time period, households with a bachelor's degree saw an increase in their average

household income of \$6,100 (measured in 2018 dollars).¹⁸⁴

The impact pre-existing inequalities have on a household or community's ability to recover is intersectional. Research shows that pre-existing racial and gender disparities exacerbated the disproportionate economic and health impact COVID-19 and the economic downturn had on workers of color, and specifically, women of color.¹⁸⁵ Another study found that during the first six months of the pandemic counties that were both high-poverty and majority non-white experienced COVID-19 infection rates eight times higher than high-poverty, majority white counties.¹⁸⁶ Many residents in these communities are still coping with the negative health and economic impacts.

Summary of the Interim Final Rule and Final Rule Structure

As described previously, the interim final rule provided a broader list of enumerated eligible uses to respond to the pandemic in disproportionately impacted communities, in recognition that pre-existing health, economic, and social disparities contributed to disproportionate pandemic impacts in certain communities and that addressing the root causes of those disparities constitutes responding to the public health and negative economic impacts of the pandemic. The interim final rule described eligible uses in disproportionately impacted communities in four categories, spread across public health and negative economic impacts: (1) Addressing disparities in public health outcomes, (2) building stronger communities through investments in housing and neighborhoods, (3) addressing educational disparities, and (4) promoting healthy childhood environments. As described above, Treasury has moved eligible uses related to community violence intervention, assistance accessing or applying to public benefits and services, affordable housing development, healthy childhood environments, and addressing lost instructional time in K-

12 schools into the category "assistance to impacted households," recognizing that these pandemic impacts were widely shared across the country.

This section discusses enumerated eligible uses to address health disparities, to build stronger communities through investments in neighborhoods, to address educational disparities, to provide rental assistance vouchers or assistance relocating to areas of greater economic opportunity, and additional eligible uses to respond to negative economic impacts in disproportionately impacted communities. While many of these services impact both health and economic outcomes, Treasury has consolidated them into a single section for simplicity and clarity and to reflect the intertwined nature of these issues.

As a reminder, recipients can presume these uses are eligible when provided in a QCT, to families and individuals living in QCTs, by Tribal or territorial governments, or to low-income households or communities. As provided in section Standards: Designating Other Disproportionately Impacted Classes, recipients can also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. Recipients may also identify additional disproportionate impacts of the pandemic and design an appropriate response to address that harm. For details on eligibility standards and presumed eligible populations, see section General Provisions: Structure and Standards.

Enumerated Eligible Uses for Disproportionately Impacted Households

1. Addressing health disparities.

Public Comment: General: In general, commenters supported eligible uses to address health disparities and support health equity; several commenters highlighted the disparities faced by communities of color and low-income populations, as well as the importance of community engagement in developing effective programs to serve disproportionately impacted communities. Many commenters recommended additional enumerated eligible uses to address health disparities; these are discussed further below in this section.

Treasury Response: In line with commenters' recommendations, the final rule maintains several enumerated eligible uses to address health disparities, specifically:

a. Community health workers.

Treasury received few comments on community health workers, though one

¹⁸⁰ U.S. Department of Health and Human Services, COVID-19 and Economic Opportunity: Inequities in the Employment Crisis, April 2021. Retrieved from https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/199901/covid-economic-equity-brief.pdf.

¹⁸¹ Adelle Simmons et al., Health disparities by race and ethnicity during the COVID-19 pandemic: Current evidence and policy approaches. U.S. Department of Health and Human Services https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/199516/covid-equity-issue-brief.pdf.

¹⁸² Perry, Brea L., Brian Aronson, and Bernice A. Pescosolido, Pandemic precarity: COVID-19 is exposing and exacerbating inequalities in the American heartland, National Academy of Sciences (February 2021), <https://www.pnas.org/content/118/8/e2020685118>.

¹⁸³ *Id.*

¹⁸⁴ Jesse Bennet & Rakesh Kochhar, Two Recessions, Two Recoveries, Pew Research Center (December 13, 2019), <https://www.pewresearch.org/social-trends/2019/12/13/two-recessions-two-recoveries-2/>.

¹⁸⁵ Darrick Hamilton et al., Building an Equitable Recovery: The role of Race, Labor Markets, and Education, The New School's Institute on Race and Political Economy (February 2021).

¹⁸⁶ Adhikari S, Pantaleo NP, Feldman JM, Ogedegbe O, Thorpe L, Troxel AB. Assessment of Community-Level Disparities in Coronavirus Disease 2019 (COVID-19) Infections and Deaths in Large US Metropolitan Areas. JAMA Netw Open. 2020;3(7):e2016938. doi:10.1001/jamanetworkopen.2020.16938.

requested further clarification on their role.¹⁸⁷ Treasury is maintaining this eligible use in the final rule.

b. Remediation of lead paint or other lead hazards. The interim final rule included remediation of lead paint or other lead hazards as an enumerated eligible use to address health disparities.

Public Comment: Treasury received several comments asking for clarification on the eligibility of a particular use that would indirectly address lead pollution. For example, a commenter requested the ability to fund remedial actions, such as filtration and plumbing procedures to help address lead pollution. One commenter requested that private wells be eligible for funding to address contamination with substances such as lead. Other commenters requested that Treasury allow replacement of lead pipes as an eligible use of funds.

Treasury Response: Recipients may make a broad range of water infrastructure investments under section 602(c)(1)(d) and 603(c)(1)(d), which can include lead service line replacement and other activities to identify and remediate lead in water. These uses are discussed in greater detail in section Water and Sewer Infrastructure of this Supplemental Information.

Treasury has further determined that several of the services identified by commenters are appropriate responses to address health disparities in disproportionately impacted households. These services were eligible under the interim final rule and continue to be so under the final rule. These services include remediation to address lead-based public health risk factors, outside of lead in water, including evaluation and remediation of lead paint, dust, or soil hazards; testing for blood lead levels; public outreach and education; and emergency protection measures, like bottled water and water filters, in areas with an action level exceedance for lead in water in accordance with the Environmental Protection Agency's Lead and Copper Rule.¹⁸⁸

Further, Treasury had determined that certain capital expenditures, including improvements to existing facilities to remediate lead contaminants (e.g., removal of lead paint), are eligible responses, although this does not

include construction of new facilities for the purpose of lead remediation. Recipients should make sure that all capital expenditures adhere to the standards and presumptions detailed in section Capital Expenditures in General Provisions: Other.

c. Medical facilities. Treasury received a few comments from recipients seeking to use SLFRF funds to build new medical facilities, such as hospitals or public health clinics, to serve disproportionately impacted communities. Given the central role of access to high-quality medical care in reducing health disparities and addressing the root causes that led to disproportionate impact COVID-19 health impacts in certain communities, the final rule recognizes that medical equipment and facilities designed to address disparities in public health outcomes are eligible capital expenditures. This includes primary care clinics, hospitals, or integrations of health services into other settings. Recipients should make sure that all capital expenditures adhere to the standards and presumptions detailed in section Capital Expenditures in General Provisions: Other.

2. Housing vouchers and assistance relocating. In addition to other housing services, the interim final rule permitted a variety of rental assistance approaches to support low-income households in securing stable, long-term housing, including housing vouchers, residential counseling, or housing navigation assistance to facilitate household moves to neighborhoods with high levels of economic opportunity and mobility for low-income residents. Examples could include SLFRF-funded analogues to Section 8 Housing Choice vouchers; other kinds of rent subsidies, including shallow subsidies; and programs to help residents move to areas with higher levels of economic mobility.¹⁸⁹ Treasury did not receive public comments on these enumerated eligible uses.

Treasury Response: Treasury maintains the eligibility of vouchers and relocation assistance in the final rule.

3. Building strong, healthy communities through investments in neighborhoods. While the interim final rule included a category of enumerated eligible uses for "building stronger communities through investments in housing and neighborhoods," the examples of services provided generally focused on housing uses. In response to questions following release of the interim final rule, Treasury issued

further guidance clarifying that "investments in parks, public plazas, and other public outdoor recreation spaces may be responsive to the needs of disproportionately impacted communities by promoting healthier living environments."

Public Comment: General: A significant theme across many public comments was the importance of neighborhood environment to health and economic outcomes and the potential connections between residence in an underserved neighborhood and disproportionate impacts from the pandemic. Many commenters highlighted the connection between neighborhoods and health outcomes, including citing public health research linking neighborhood traits to health outcomes. For example, the CDC states that "neighborhoods people live in have a major impact on their health and well-being."¹⁹⁰ As such, CDC identifies "neighborhoods and built environment" as one of five key social determinants of health¹⁹¹ and includes "creat[ing] neighborhoods and environments that promote health and safety" as one of the agency's goals for social determinants of health outcomes.

a. Neighborhood features that promote improved health and safety outcomes. *Public Comment:* Commenters argued that neighborhoods impact physical health outcomes in several ways. First, some commenters reasoned that the physical environment and amenities in a community¹⁹² influence a person's level of physical activity, with features like parks, recreation facilities, and safe sidewalks promoting increased physical activity that improves health outcomes. Conversely, commenters argued that a lack of these features in a neighborhood could dampen physical activity and contribute to health conditions like obesity that are risk factors for more severe COVID-19 health outcomes.

Second, some commenters also suggested that access to healthy food in a neighborhood impacts health outcomes. These commenters reasoned

¹⁹⁰ U.S. Department of Health and Human Services, Neighborhood and Built Environment, <https://health.gov/healthypeople/objectives-and-data/browse-objectives/neighborhood-and-built-environment#cit1> (last visited November 9, 2021).

¹⁹¹ Social determinants of health are "the conditions in the places where people live, learn, work, and play that affect a wide range of health risks and outcomes." Centers for Disease Control and Prevention, About Social Determinants of Health (SDOH), <https://www.cdc.gov/social-determinants/about.html> (last visited November 9, 2021).

¹⁹² In public health, this is referred to as "built environment," or the man-made physical aspects of a community (e.g., homes, buildings, streets, open spaces, and infrastructure).

¹⁸⁷ See, e.g., Centers for Disease Control and Prevention, Community Health Worker (CHW) Toolkit, <https://www.cdc.gov/dhdp/pubs/toolkits/chw-toolkit.htm> (last visited November 9, 2021).

¹⁸⁸ Environmental Protection Agency, 40 CFR 141.80(c)(1), <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-141/subpart-I/section-141.80>.

¹⁸⁹ See, e.g., Opportunity Insights, Creating Moves To Opportunity (August 2019), <https://opportunityinsights.org/policy/cinto/>.

that lacking adequate access to affordable, healthy food or living in a “food desert” may contribute to disparities in diet that influence health outcomes, including contributing to pre-existing conditions that increased risk for severe COVID-19 outcomes. These commenters cited public health research finding “clear evidence for disparities in food access in the United States by income and race.”¹⁹³

Some commenters also suggested that neighborhood environment is connected to other public health outcomes, like mental health and public safety. For example, some research suggests that living in neighborhoods with green space and tree cover correlates with improved mental health outcomes.¹⁹⁴ Finally, some commenters argued that activities like installing streetlights, greening or cleanup of public spaces or land, and other efforts to revitalize public spaces would support improved public safety.^{195 196}

These commenters recommended that Treasury include as an enumerated eligible use in disproportionately impacted communities projects to develop neighborhood features that promote improved health and safety outcomes, such as parks, green spaces, recreational facilities, sidewalks, pedestrian safety features like crosswalks, projects that increase access to healthy foods, streetlights, neighborhood cleanup, and other projects to revitalize public spaces.

Background: Investments in neighborhood features, including parks, recreation facilities, sidewalks, and healthy food access, can work to improve physical and mental health outcomes. Allowing people access to nature, including parks, has been connected to decreased levels of

mortality and illness and increased well-being.¹⁹⁷ Urban park use during the COVID-19 pandemic may have declined among lower-income individuals.¹⁹⁸ Encouraging physical activity can also play a role in health outcomes, as a sedentary lifestyle is a risk factor for chronic diseases and more severe COVID-19 outcomes.¹⁹⁹ Parks, recreation facilities, and sidewalks can promote healthier living environments by allowing for safe and socially distanced recreation during the COVID-19 pandemic.

Additionally, food insecurity rates, which are higher among lower-income households and households of color, doubled among all households and tripled among households with children during the onset of COVID-19 from February 2020 to May 2020.²⁰⁰ Improving healthy food access supports public health, particularly among lower-income households and households of color that face disproportionate outcomes.

Treasury Response: Treasury recognizes the connection between neighborhood built environment and physical health outcomes as discussed in the research and analysis provided by commenters, including risk factors that may have contributed to disproportionate COVID-19 health impacts in low-income communities. The final rule also recognizes that the public health impacts of the pandemic are broader than just the COVID-19 disease itself and include substantial impacts on mental health and public safety challenges like rates of violent crime, which are correlated with a neighborhood’s built environment and features. As such, neighborhood features that promote improved health and safety outcomes respond to the pre-existing disparities that contributed to COVID-19’s disproportionate impacts on low-income communities.

The final rule includes enumerated eligible uses in disproportionately impacted communities for developing neighborhood features that promote improved health and safety outcomes, such as parks, green spaces, recreational facilities, sidewalks, pedestrian safety features like crosswalks,²⁰¹ projects that increase access to healthy foods, streetlights, neighborhood cleanup, and other projects to revitalize public spaces. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other, which describes additional eligibility standards that apply to uses of funds for capital expenditures.

b. Vacant or abandoned properties. As discussed above, the interim final rule included enumerated eligible uses for building stronger communities through investments in housing and neighborhoods in disproportionately impacted communities. The interim final rule also posed a question of whether other potential uses in this category, specifically “rehabilitation of blighted properties or demolition of abandoned or vacant properties,” address the public health or economic impacts of the pandemic.

Public Comment: Several commenters argued that programs or services to address vacant or abandoned property would respond to the public health and negative economic impacts of the pandemic in disproportionately impacted communities. Some commenters cited research suggesting that living near such property is correlated with worse physical health and mental health outcomes, noted that such properties pose an environmental hazard, or argued that such properties present a barrier to economic recovery. These commenters suggested that renovation or demolition of vacant or abandoned property could benefit community health and raise property values. Other commenters recommended that Treasury include an enumerated eligible use for the operation of land banks that redevelop or renew vacant properties and land.

Treasury Response: As noted throughout the final rule, the pandemic underscored the importance of safe, affordable housing and healthy

¹⁹³ J Beaulac, E Kristjansson, S Cummins, A systematic review of food deserts, 1966–2007, *Prev Chronic Dis* 2009;6(3):A105, http://www.cdc.gov/pcd/issues/2009/jul/08_0163.htm.

¹⁹⁴ See, e.g., Yijun Zhang et al. The Association between Green Space and Adolescents’ Mental Well-Being: A Systematic Review. *International journal of environmental research and public health* vol. 17, 18 6640 (Sep. 11 2020), doi:10.3390/ijerph17186640; EC South, BC Hohl, MC Kondo, JM MacDonald, CC Branas, Effect of Greening Vacant Land on Mental Health of Community-Dwelling Adults: A Cluster Randomized Trial, *JAMA Netw Open*. 2018;1(3):e180298 (2018), available at: doi:10.1001/jamanetworkopen.2018.0298.

¹⁹⁵ See, e.g., Yanqing Xu, Cong Fu, Eugene Kennedy, Shanhe Jiang, Samuel Owusu-Agyemang. The impact of street lights on spatial-temporal patterns of crime in Detroit, Michigan, Cities, Volume 79, Pages 45–52, ISSN 0264–2751 (2018), <https://doi.org/10.1016/j.cities.2018.02.021>.

¹⁹⁶ A. Chalfin, B. Hansen, J. Lerner et al., Reducing Crime Through Environmental Design: Evidence from a Randomized Experiment of Street Lighting in New York City, *Journal of Quantitative Criminology* (2021), <https://doi.org/10.1007/s10940-020-09490-6>.

¹⁹⁷ See, e.g., American Public Health Association, Improving Health and Wellness through Access to Nature (November 5, 2013), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/08/09/18/improving-health-and-wellness-through-access-to-nature>.

¹⁹⁸ LR Larson et al., Urban Park Use During the COVID-19 Pandemic: Are Socially Vulnerable Communities Disproportionately Impacted?, *Front. Sustain. Cities* 3:710243 (2021), <https://doi.org/10.3389/frsc.2021.710243>.

¹⁹⁹ JP Després, Severe COVID-19 outcomes—the role of physical activity, *Nat Rev Endocrinol* 17, 451–452 (2021). <https://doi.org/10.1038/s41574-021-00521-1>.

²⁰⁰ Caroline George and Adie Tomer, Beyond ‘food deserts’: America needs a new approach to mapping food, *Brookings Institution* (August 17, 2021), <https://www.brookings.edu/research/beyond-food-deserts-america-needs-a-new-approach-to-mapping-food-insecurity/>.

²⁰¹ However, Treasury cautions recipients that general infrastructure development, including street or road construction, remains a generally ineligible use of funds under the final rule. Sidewalks and pedestrian safety should be the predominant component of uses of funds in this category. While projects may include ancillary construction needed to execute the predominant component, a project that predominantly involves street construction or repair to benefit vehicular traffic would be ineligible.

neighborhood environments to public health and economic outcomes. Treasury agrees with commenters that high rates of vacant or abandoned properties in a neighborhood may exacerbate public health disparities, for example through environmental contaminants that contribute to poor health outcomes or by contributing to higher rates of crime. As such, certain services for vacant or abandoned properties are eligible to address the public health and negative economic impacts of the pandemic on disproportionately impacted households or communities. Eligible activities include:

- Rehabilitation, renovation, maintenance, or costs to secure vacant or abandoned properties to reduce their negative impact
- Costs associated with acquiring and securing legal title of vacant or abandoned properties and other costs to position the property for current or future productive use
- Removal and remediation of environmental contaminants or hazards from vacant or abandoned properties, when conducted in compliance with applicable environmental laws or regulations
- Demolition or deconstruction of vacant or abandoned buildings (including residential, commercial, or industrial buildings) paired with greening or other lot improvement as part of a strategy for neighborhood revitalization
- Greening or cleanup of vacant lots, as well as other efforts to make vacant lots safer for the surrounding community
- Conversion of vacant or abandoned properties to affordable housing
- Inspection fees and other administrative costs incurred to ensure compliance with applicable environmental laws and regulations for demolition, greening, or other remediation activities

Vacant or abandoned properties are generally those that have been unoccupied for an extended period of time or have no active owner.²⁰² Such

properties may be in significant disrepair (e.g., major structural defects; lack of weather tight conditions; or lack of useable plumbing, kitchen facilities, electricity, or heating infrastructure (not to include utilities currently out of service or disconnected but able to be reconnected and used)), or may be declared unfit for inhabitants by a government authority.

As noted above, demolition and greening (or other structure or lot remediation) of vacant or abandoned properties, including residential, commercial, or industrial buildings, is an eligible use of funds. Treasury encourages recipients to undertake these activities as part of a strategy for neighborhood revitalization and to consider how the cleared property will be used to benefit the disproportionately impacted community. Activities under this eligible use should benefit current residents and businesses, who experienced the pandemic's impact on the community.

Treasury encourages recipients to be aware of potential impacts of demolition of vacant or abandoned residential properties. Demolition activities that exacerbate the pandemic's impact on housing insecurity or lack of affordable housing are not eligible uses of funds. This risk is generally more acute in jurisdictions with low or reasonable vacancy rates and less acute in jurisdictions with high or hyper-vacancy.²⁰³

overview/#overview-of-the-ura (last visited November 9, 2021) and other state and local requirements like condemnation and code enforcement. U.S. Department of Housing and Urban Development, What is the definition of vacant properties as referenced in NSP Eligible Use E—Redevelop Demolished or Vacant Properties? (October 2012), [https://www.hudexchange.info/faqs/programs/neighborhood-stabilization-program-nspr/redemption/what-is-the-definition-of-vacant-properties-as-referenced-in-nspr-eligible/](https://www.hudexchange.info/faqs/programs/neighborhood-stabilization-program-nspr/redvelopment/what-is-the-definition-of-vacant-properties-as-referenced-in-nspr-eligible/). U.S. Department of Housing and Urban Development, What are the definitions of abandoned and foreclosed? (October 2012), <https://www.hudexchange.info/faqs/programs/neighborhood-stabilization-program-nspr/program-requirements/eligible-activities/what-are-the-definitions-of-abandoned-and-foreclosed/>.

²⁰³ For analysis of vacancy rates considered low or high, see, e.g., page 12 of Alan Mallach, The Empty House Next Door, Lincoln Institute (May 2018), <https://www.lincolninstitute.edu/publications/policy-focus-reports/empty-house-next-door#:~:text=%E2%80%9CAlan%20Mallach%20is%20the%20sage,through%20data%20and%20model%20practices>. Recipients may determine the appropriate geographic unit for which to analyze vacancy rates (e.g., county, census tract) based on their circumstances. As needed, recipients may refer to the Current Population Survey/Housing Vacancy Survey data series on Housing Vacancies and Homeownership as one data source to assess vacancy rates. See <https://www.census.gov/housing/hvs/index.html>. Other data sources include the American Community Survey five-year estimates, for smaller geographic areas, or tabulations by the Department of Housing and Urban Development

Treasury presumes that demolition of vacant or abandoned residential properties that results in a net reduction in occupiable housing units for low- and moderate-income individuals in an area where the availability of such housing is lower than the need for such housing would exacerbate the impacts of the pandemic on disproportionately impacted communities and that use of SLFRF funds for such activities would therefore be ineligible. This includes activities that convert occupiable housing units for low- and moderate-income individuals into housing units unaffordable to current residents in the community. Recipients may assess whether units are "occupiable" and what the housing need is for a given area taking into account vacancy rates (as described above), local housing market conditions (including conditions for different types of housing like multi-family or single-family), and applicable law and housing codes as to what units are occupiable. Recipients should also take all reasonable steps to minimize the displacement of persons due to activities under this eligible use category, especially the displacement of low-income households or longtime residents.

Recipients engaging in these activities and other construction activities with SLFRF funds should be mindful of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601, and the Department of Transportation's implementing regulations, 49 CFR part 24, that apply to projects funded with federal financial assistance, such as SLFRF funds. Recipients should also be aware of federal, state, and local laws and regulations, outside of SLFRF program requirements, that apply to this activity. Recipients must comply with the applicable requirements of the Uniform Guidance regarding procurement, contracting, and conflicts of interest and must follow the applicable laws and regulations in their jurisdictions. Recipients must also comply with all federal, state, and local public health and environmental laws or regulations that apply to activities under this eligible use category,²⁰⁴ for example, requirements around the

based on United States Postal Service Vacancy Data. See, respectively, <https://data.census.gov/cedsci/table?q=DP04&tid=ACSDP5Y2019.DP04&hidePreview=true> or <https://www.huduser.gov/portal/datasets/usps.html>.

²⁰⁴ See U.S. Environmental Protection Agency, Large-Scale Residential Demolition, <https://www.epa.gov/large-scale-residential-demolition> (last visited November 9, 2021) for a primer on requirements that may apply.

²⁰² A state or locality may use its existing classifications of what is considered vacant or abandoned property under state law and local ordinances, as well as any corresponding processes for demolition, for these eligible uses. A recipient without a definition of vacant or abandoned property may refer to definitions used in the Department of Housing and Urban Development's Neighborhood Stabilization Program (available at the citations below); however, recipients should be aware that other federal, state, or local requirements may apply such as compliance with the Uniform Relocation Act (see U.S. Department of Housing and Urban Development, Real Estate Acquisition and Relocation Overview in HUD Programs, <https://www.hudexchange.info/programs/relocation/>

handling and disposal of asbestos-containing materials, lead paint, and other harmful materials may apply, as well as environmental standards for any backfill materials used at demolition sites. Treasury encourages recipients to consult and apply best practices from the Environmental Protection Agency as well.

Recipients must evaluate each subrecipient's risk of noncompliance with federal statutes, regulations, and the terms and conditions of the subaward related to safely and properly conducting activities under this eligible use. This may include checking for any past violations recorded by state or local environmental, workplace safety, licensing, and procurement agencies, as well as regular reviews for suspensions, debarments, or stop work orders. Recipients must establish rigorous oversight and internal controls processes to monitor compliance with any applicable requirements, including compliance by subrecipients.

4. Addressing educational disparities. The interim final rule included an enumerated eligible use for addressing educational disparities in disproportionately impacted communities and outlined some enumerated eligible services under this use. These enumerated uses included early learning services, assistance to high-poverty school districts to advance equitable funding across districts and geographies, and educational and evidence-based services to address the academic, social, emotional, and mental health needs of students. Addressing the many dimensions of resource equity—including equitable and adequate school funding; access to a well-rounded education; well-prepared, effective, and diverse educators and staff; and integrated support services—can also begin to mitigate the impact of COVID-19 on schools and students and can close long-standing gaps in educational opportunity. As discussed above, in the final rule, early learning services and addressing the impacts of lost instructional time for K-12 students are enumerated eligible uses for impacted communities, not just disproportionately impacted communities.

Public Comment: Treasury received some comments in this category. Generally, commenters expressed agreement with the elements of the interim final rule regarding use of funds for addressing educational disparities. Some commenters had questions about whether a few specific uses of funds qualified under this category. For example, commenters inquired about whether the funds could be used for

behavioral health in a school setting or cultural language classes.

Treasury Response: Treasury is maintaining these enumerated eligible uses in the final rule, which are now organized under the heading of “services to address educational disparities.” Treasury reiterates that these uses include addressing educational disparities exacerbated by COVID-19, including but not limited to: increasing resources for high-poverty school districts, educational services like tutoring or afterschool programs, summer education and enrichment programs, and supports for students’ social, emotional, and mental health needs. This also includes responses aimed at addressing the many dimensions of resource equity—including equitable and adequate school funding; access to a well-rounded education; well-prepared, effective, and diverse educators and staff; and integrated support services—in order to close long-standing gaps in educational opportunity.

Further, Treasury is clarifying that improvements or new construction of schools and other educational facilities or equipment are eligible capital expenditures for disproportionately impacted communities. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

Treasury notes that services to promote healthy childhood environments, including childcare, early learning services, and home visiting programs that serve infants and toddlers, is a separate category of enumerated eligible uses for households impacted by the pandemic (see eligible uses for “promoting healthy childhood environments”). Similarly, education services to address the impact of lost instructional time during the pandemic are a separate eligible use category for households impacted by the pandemic; when providing these services, recipients may presume that any K-12 student who lost access to in-person instruction for a significant period of time has been impacted by the pandemic and is thus eligible for responsive services (see eligible uses for “addressing the impact of lost instructional time”).

Proposed Additional Enumerated Eligible Uses Not Incorporated

The interim final rule posed a question on what other types of services or costs Treasury should consider as eligible uses to respond to the

disproportionate public health or negative economic impacts of COVID-19 on low-income populations and communities.

In response, commenters proposed a wide variety of additional recommended enumerated eligible uses to assist disproportionately impacted households, ranging from general categories of services (e.g., long-term investments to remediate long-term disparities) to highly specific examples of services (e.g., a specific type of healthcare equipment). As discussed above, Treasury is including several additional categories of enumerated eligible uses in the final rule in response to public comments.

Given the large number and diversity of SLFRF recipients, Treasury’s approach to assistance to households in disproportionately impacted communities in the final rule aims to provide enumerated eligible uses that respond to disproportionate impacts of the pandemic experienced widely in many jurisdictions across the country and are intended to simplify and clarify these enumerated eligible uses. At the same time, Treasury recognizes that the impacts of the pandemic vary over time, by jurisdiction, and by population; as such, the final rule provides flexibility for recipients to identify additional disproportionate impacts to additional households or classes of households and pursue programs and services that respond to those disproportionate impacts.

In the final rule, Treasury has not chosen to include as enumerated uses all uses proposed by commenters; given the significant range, and in some cases highly specific nature, of the proposed uses Treasury was not able to assess that the proposed uses would respond to disproportionate impacts experienced in many jurisdictions across the country, supporting an enumerated eligible use available to all recipients presumptively. However, the final rule continues to provide a framework to allow recipients to identify and respond to additional disproportionate impacts (for details, see section General Provisions: Structure and Standards). Some types of proposed additional enumerated eligible uses for assistance to households in disproportionately impacted communities were recommended by several commenters:

- **Capital expenditures.** Many commenters recommended that capital expenditures on many different types of public and private facilities be enumerated eligible uses. For clarity, Treasury has addressed all comments on the eligibility of capital expenditures on property, facilities, or equipment in one

section (see section Capital Expenditures in General Provisions: Other).

- Equity funds. Several commenters recommended that Treasury permit SLFRF funds to be deposited into an equity fund to support long-term racial and economic equity investments. The eligibility of such use would depend on the specific structure and uses of funds. Under the statute, SLFRF funds can only support costs incurred until December 31, 2024; see section Timeline for Use of SLFRF Funds in Program Administration Provisions. Further, recipients may calculate the cost incurred with respect to investments in revolving loan funds based on the methodology described in section Treatment of Loans in Program Administration Provisions. Projects funded by a revolving loan fund using SLFRF funds would also need to be eligible uses of SLFRF funds.

- Environmental quality and climate resilience. Several commenters recommended eligible uses to enhance environmental quality, remediate pollution, promote recycling or composting, or increase energy efficiency or electrical grid resilience. Whether these projects respond to the disproportionate impacts of the pandemic on certain communities would depend on the specific issue they address and its nexus to the public health and economic impacts of the pandemic.

b. Assistance to Small Businesses

Background

The pandemic has severely impacted many businesses, with small businesses hit especially hard. Small businesses make up nearly half of U.S. private-sector employment²⁰⁵ and play a key role in supporting the overall economic recovery as they are responsible for two-thirds of net new jobs.²⁰⁶ Since the beginning of the pandemic, however, 400,000 small businesses have closed, with many more at risk.²⁰⁷ Sectors with a large share of small business employment have been among those with the most drastic drops in

employment.²⁰⁸ The negative outlook for small businesses has continued: As of November 2021, approximately 66 percent of small businesses reported that the pandemic has had a moderate or large negative effect on their business, and over a third expect that it will take over 6 months for their business to return to their normal level of operations.²⁰⁹

This negative outlook is likely the result of many small businesses having faced periods of closure and having seen declining revenues as customers stayed home.²¹⁰ In general, small businesses can face greater hurdles in accessing credit,²¹¹ and many small businesses were already financially fragile at the outset of the pandemic.²¹²

While businesses everywhere faced significant challenges during the pandemic, minority-owned and very small businesses have faced additional obstacles. Between February and April 2020, the number of actively self-employed Black business owners decreased by 41 percent.²¹³ During that same time period, Asian and Latino business owners decreased by 26 and 32 percent, respectively, compared to a 17 percent decrease in white business owners.²¹⁴ Female business owners also saw significant impacts, with businesses owned by women falling by 25 percent.²¹⁵

Many of the disparities in how minority business owners experienced

the pandemic are rooted in systemic issues present even before the pandemic. For example, before the economic downturn, only 12 percent of Black-owned businesses and 19 percent of Hispanic-owned businesses had annual earnings of over \$1 million compared to 31 percent of white-owned businesses.²¹⁶ Minority-owned businesses were also overrepresented in industries hit hardest by the economic downturn (*e.g.*, services, transportation and warehousing, healthcare and social assistance, administrative and support and waste management, and accommodation and food services).²¹⁷ Approximately 22 percent of all minority-owned business fell into the hardest hit industries compared to 13 percent of nonminority-owned businesses.²¹⁸

Although disparities in annual revenue are not a direct indication of a business's ability to weather an economic downturn, they do highlight other disparities that make it more challenging for these businesses to survive the effects of the pandemic. Black-owned startups, for example, face larger challenges in raising capital, including securing business loans.²¹⁹

Summary of the Interim Final Rule and Final Rule Structure

Summary of Interim Final Rule: As discussed above, small businesses faced significant challenges in covering payroll, mortgages or rent, and other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. Under Sections 602(c)(1)(A) and 603(c)(1)(A), recipients may "respond to the public health emergency or its negative economic impacts," by, among other things, providing "assistance to . . . small businesses." Accordingly, the interim final rule allowed recipients to provide assistance to small businesses to address the negative economic impacts faced by those businesses. A

²⁰⁸ Daniel Wilmoth, U.S. Small Business Administration Office of Advocacy, *The Effects of the COVID-19 Pandemic on Small Businesses*, Issue Brief No. 16 (Mar. 2021), available at <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf>.

²⁰⁹ U.S. Census Bureau, *Small Business Pulse Survey*, <https://portal.census.gov/pulse/data/> (last visited December 7, 2021).

²¹⁰ Olivia S. Kim et al., *Revenue Collapses and the Consumption of Small Business Owners in the Early Stages of the COVID-19 Pandemic* (Nov. 2020), <https://www.nber.org/papers/w28151>.

²¹¹ See, *e.g.*, Board of Governors of the Federal Reserve System, *Report to Congress on the Availability of Credit to Small Businesses* (Sept. 2017), available at <https://www.federalreserve.gov/publications/2017-september-availability-of-credit-to-small-businesses.htm>.

²¹² Alexander W. Bartik et al., *The Impact of COVID-19 on small business outcomes and expectations*, PNAS 117(30): 17656–66 (July 28, 2020), available at <https://www.pnas.org/content/117/30/17656>.

²¹³ Robert Fairlie, *The impact of COVID-19 on small business owners: Evidence from the first 3 months after widespread social-distancing restrictions*, *Journal of economics & management strategy* (August 27, 2020), <https://doi.org/10.1111/jems.12400>.

²¹⁴ U.S. Small Business Administration, *The Effects of the COVID-19 Pandemic on Small Businesses* (March 2021), <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf>.

²¹⁵ Robert Fairlie, *supra* note 213.

²¹⁶ Federal Reserve Bank of Atlanta. 2019. *Small Business Credit Survey 2019 Report on Minority-Owned Firms*. December. fedsmallbusiness.org/survey/2019/report-on-minority-owned-firms.

²¹⁷ Ding, Lei, and Alvaro Sanchez. 2020. *What Small Businesses Will Be Impacted by COVID-19?* Federal Reserve Bank of Philadelphia. philadelphiafed.org/covid-19/covid-19-equity-in-recovery/what-small-businesses-will-be-impacted.

²¹⁸ Lucas Misera, *An Uphill Battle: COVID-19's Outsized Toll on Minority-Owned Firms*, Federal Reserve Bank of Cleveland (October 8, 2020), <https://www.clevelandfed.org/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx>.

²¹⁹ Robert Fairlie, A. Robb, D. Robinson, Black and White: Access to Capital among Minority-Owned Startups, NBER Working Paper 28154 (November 2020), <https://www.nber.org/papers/w28154>.

²⁰⁵ Board of Governors of the Federal Reserve System, *Monetary Policy Report* (June 12, 2020), <https://www.federalreserve.gov/monetarypolicy/2020-06-mpr-summary.htm>.

²⁰⁶ U.S. Small Business Administration, Office of Advocacy, *Small Businesses Generate 44 Percent of U.S. Economic Activity* (Jan. 30, 2019), <https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/>.

²⁰⁷ Joseph R. Biden, Remarks by President Biden on Helping Small Businesses (Feb. 22, 2021), <https://www.whitehouse.gov/briefing-room/speechesremarks/2021/02/22/remarks-by-president-bidenon-helping-small-businesses/>.

“small business” is defined as a business concern or other organization that:

- (1) Has no more than 500 employees or, if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates; and
- (2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Specifically, the interim final rule provided that recipients may provide assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID-19 public health emergency, including:

- Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure;
- Loans, grants, or in-kind assistance to implement COVID-19 prevention or mitigation tactics; and
- Technical assistance, counseling, or other services to assist with business planning needs.

The interim final rule further provided that recipients may consider additional criteria to target assistance to businesses in need, including small businesses. Such criteria may include businesses facing financial insecurity, substantial declines in gross receipts (e.g., comparable to measures used to assess eligibility for the Paycheck Protection Program), or other economic harm due to the pandemic, as well as businesses with less capacity to weather financial hardship, such as the smallest businesses, those with less access to credit, or those serving underserved communities. The interim final rule also indicated that recipients should consider local economic conditions and business data when establishing such criteria. Finally, the interim final rule posed a question on whether there are other services or costs that Treasury should consider as eligible uses to respond to the disproportionate impacts of COVID-19 on low-income populations and communities.

Final Rule Structure: Consistent with the interim final rule approach, the final rule provides a non-exhaustive list of enumerated eligible uses for assistance to small businesses that are impacted or disproportionately impacted by the pandemic. Further, within Assistance to Small Business, a recipient may also identify a negative economic impact experienced by small businesses and design and implement a response to that negative economic impact, beyond the uses specifically enumerated in the final

rule, according to the standard described in the section Standards: Identifying a Negative Economic Impact. A recipient may also identify small businesses that have been disproportionately impacted by the public health emergency and design and implement a program that responds to the source of that disproportionate impact.

Consistent with other eligible use categories to respond to the public health and economic impacts of the pandemic, recipients may identify and serve small businesses that experienced a negative economic impact or disproportionate impact due to the pandemic, as described in the section Standards for Identifying Other Eligible Populations. For example, to identify impacted small businesses, a recipient may consider whether the small businesses faced challenges in covering payroll, mortgage or rent, or other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. In order to ease administrative burden, the final rule presumes that small businesses operating in QCTs, small businesses operated by Tribal governments or on Tribal Lands, and small businesses operating in the U.S. territories were disproportionately impacted by the pandemic.

Reorganizations and Cross-References: As detailed above, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity. For discussion of assistance to small businesses and impacted industries to implement COVID-19 mitigation and prevention strategies, see section COVID-19 Mitigation and Prevention in Public Health.

Small Businesses Eligible for Assistance

Public Comment: Treasury received many comments about the general benefits or drawbacks of use of SLFRF funds to provide assistance to small businesses. Some commenters suggested that SLFRF funds should be available to assist all small businesses, rather than only businesses that experienced direct negative economic impacts due to the public health emergency. Other commenters argued that aid to small businesses should be narrowed in the final rule, asserting that SLFRF funds should instead focus on assistance to households or building public sector capacity.

Treasury also received comments requesting clarification of the types of small businesses eligible for assistance. For example, some commenters requested clarification about whether microbusinesses were included in the

definition of small business. Comments also suggested that self-employed individuals and Tribal enterprises be classified as small businesses, respectively. Commenters argued that these types of small businesses are more common among low-income and minority businessowners and serve as important institutions in underserved communities.

Finally, some commenters suggested that Treasury permit broader enumerated eligible uses to assist small businesses in disproportionately impacted communities and generally strengthen economic growth in these communities. These commenters recommended that Treasury presume small businesses operating in QCTs are disproportionately impacted and eligible for broader enumerated uses.

Treasury Response: As discussed in the section Designating a Negative Economic Impact, in the final rule, recipients must identify an economic harm caused or exacerbated by the pandemic on a small business or class of small businesses to provide services that respond.

As discussed above, programs or services in this category must respond to a harm experienced by a small business or class of small businesses as a result of the public health emergency. To identify impacted small businesses and necessary response measures, recipients may consider impacts such as lost revenue or increased costs, challenges covering payroll, rent or mortgage, or other operating costs, the capacity of a small business to weather financial hardships, and general financial insecurity resulting from the public health emergency.

Recognizing the difficulties faced by small businesses in certain communities, the final rule presumes that small businesses operating in QCTs, small businesses operated by Tribal governments or on Tribal Lands, and small businesses operating in the U.S. territories were disproportionately impacted by the pandemic. This presumption parallels the final rule's approach to assistance to households, reflecting the more severe pandemic impacts in underserved communities and creating a parallel structure across different categories of eligible uses to make the structure simpler for recipients to understand and navigate.

Treasury notes that recipients may also designate a class of small businesses that experienced a negative economic impact or disproportionate negative economic impact (e.g., microbusinesses, small businesses in certain economic sectors), design an intervention to fit the impact, and

document that the individual entity is a member of the class. Additional information about this framework is included in the section General Provisions: Structure and Standards.

Further, Treasury is maintaining the interim final rule definition of “small business,” which used the Small Business Administration’s (SBA) definition of fewer than 500 employees, or per the standard for that industry, as defined by SBA. This definition includes businesses with very few employees, self-employed individuals, and Tribally owned businesses.²²⁰ Finally, Treasury notes that recipients may award SLFRF funds to many different types of organizations, including small businesses, to function as a subrecipient in carrying out eligible uses of funds on behalf of a recipient government. In this case, a small business need not have experienced a negative economic impact in order to serve as a subrecipient. See section Distinguishing Subrecipients versus Beneficiaries for more detailed discussion of interactions with subrecipients, in contrast to beneficiaries of assistance.

Enumerated Eligible Uses for Assistance to Small Businesses

Public Comment: Treasury received comments requesting clarification of the types of assistance available to small businesses. For example, one commenter suggested that outdoor dining be an eligible use for SLFRF funds as assistance to small businesses. Other commenters asked for clarification about how SLFRF funds could be used to support new businesses and start-ups.

Several commenters requested clarification of whether and how recipients may provide services to business districts or downtown areas, particularly those that exist in whole or in part within a QCT, and requested reduced documentation of the specific negative economic impact for the businesses operating within those areas. These commenters argued in favor of allowing redevelopment or other support, including capital investments, in business districts that were

negatively impacted by COVID-19. Several commenters also argued that funds should be available to support and grow microbusinesses, or businesses with five or fewer employees, which are more likely to be owned by women and people of color.

Treasury Response: In the final rule, Treasury is maintaining and clarifying the enumerated eligible uses of funds for assistance to small businesses that are impacted or disproportionately impacted by the pandemic.

Impacted small businesses.

Specifically, Treasury is maintaining enumerated eligible uses from the interim final rule for assistance to impacted small businesses. These include but are not limited to:

- Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;
- Loans, grants, or in-kind assistance to implement COVID-19 prevention or mitigation tactics (see section Public Health for details on these eligible uses); and
- Technical assistance, counseling, or other services to assist with business planning needs.

Treasury acknowledges a range of potential circumstances in which assisting small businesses could be responsive to the negative economic impacts of COVID-19, including for small businesses startups and microbusinesses and individuals seeking to start small or microbusinesses. For example:

- As noted above, a recipient could assist small business startups or microbusinesses with additional costs associated with COVID-19 mitigation tactics; see section Public Health for details on these eligible uses.
- A recipient could identify and respond to a negative economic impact of COVID-19 on new small business startups or microbusinesses; for example, if small business startups or microbusinesses in a locality faced greater difficulty accessing credit than prior to the pandemic or faced increased costs to starting the business due to the pandemic or if particular small businesses or microbusinesses had lost expected startup capital due to the pandemic.
- The interim final rule also discussed, and the final rule maintains, eligible uses that provide support for individuals who have experienced a negative economic impact from the COVID-19 public health emergency, including uses that provide job training

for unemployed individuals. These initiatives also may support small business start-ups, microbusinesses, and individuals seeking to start small or microbusinesses.

Disproportionately impacted small businesses. Additionally, Treasury agrees with commenters that disproportionately impacted small businesses may benefit from additional assistance to address the sources of that disparate impact.

As such, the final rule provides a broader set of enumerated eligible uses for disproportionately impacted small businesses and/or small businesses in disproportionately impacted business districts. Recipients may use SLFRF funds to assist these businesses with certain capital investments, such as rehabilitation of commercial properties, storefront improvements, and façade improvements. Recipients may also provide disproportionately impacted microbusinesses additional support to operate the business, including financial, childcare, and transportation supports.

Recipients could also provide technical assistance, business incubators, and grants for start-ups or expansion costs for disproportionately impacted small businesses. Note that some of these types of assistance are similar to those eligible to respond to small businesses that experienced a negative economic impact (“impacted” small businesses). However, because the final rule presumes that some small businesses were disproportionately impacted, these enumerated eligible uses can be provided to those businesses without any specific assessment of whether they individually experienced negative economic impacts or disproportionate impacts due to the pandemic.

Cross-References: Recipients providing assistance to small businesses for capital expenditures (*i.e.*, expenditures on property, facilities, or equipment) should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards that apply to capital expenditures. Recipients should also note that services to address vacant or abandoned commercial or industrial properties are addressed in section Vacant or Abandoned Properties in Assistance to Households.

Loans to Small Businesses

Public Comment: Treasury received many comments requesting clarification on using SLFRF funds to establish funds that provide loans to small businesses. For example, commenters sought clarification of how eligible use

²²⁰ In regard to counting employees, businesses owned and controlled by a Tribal government are not considered affiliates of the Tribal government and are not considered affiliates of other businesses owned by the Tribal government because of their common ownership by the Tribal government or common management, as described in 13 CFR 121.103(b)(2). This definition is consistent with the Small Business Administration (SBA) HUBZone definition of a “small business concern” relating to Tribal governments as well as how Tribal enterprises are defined for the State Small Business Credit Initiative (SSBCI).

requirements and applicable dates for SLFRF funds would apply to third party organizations (like economic development organizations) who receive SLFRF funds in order to establish a loan fund. In addition, commenters requested clarification on what requirements apply to loan programs with available funds remaining after December 31, 2024.

Treasury Response: SLFRF funds may be used to make loans, including to small businesses, provided that the loan is an eligible use, and the cost of the loan is tracked and reported in accordance with Treasury's Compliance and Reporting Guidance. Funds that are unobligated after December 31, 2024 must be returned to Treasury. See section Treatment of Loans for more information about using SLFRF funds for loan programs.

c. Assistance to Nonprofits

Background: Nonprofits have faced significant challenges because of the pandemic, including increased demand for services and changing operational needs.²²¹ Prior to the pandemic, the median U.S. nonprofit reported that it had six months of cash on hand.²²² This varied by sector, however, with some sectors like disaster relief organizations reporting a median of 17 months cash on hand, and others, like mental health and crisis intervention organizations reporting only three months.²²³ Evidence suggests that the pandemic has damaged the financial health of nonprofits, with small nonprofits, which tend to rely more heavily on donations than large nonprofits, reporting relatively larger declines in donations — 42 percent versus 29 percent, respectively.²²⁴ Among nonprofits that collect fees for services, the median revenue amount collected from such fees fell by 30 percent from 2019 to 2020, with arts organization experiencing a 50 percent decline.²²⁵ Nonprofits also experienced significant job losses. While employment in the nonprofit sector has recovered from its low point in 2020, as of November 2021,

the sector remained 485,000 jobs below its pre-pandemic level.²²⁶ In addition, some nonprofits may have experienced declines in volunteer staffing during the pandemic.²²⁷

At the same time, nonprofits provide a host of services for their communities, including helping Americans weather the multitude of challenges presented by the pandemic. The ARPA and the interim final rule recognized this dichotomy—nonprofits as entities that have themselves been negatively impacted by the pandemic and as entities that provide services that respond to the public health and negative economic impacts of the pandemic on households and others—by creating two roles for nonprofits.

First, under Sections 602(c)(1)(A) and 603(c)(1)(A), recipients may “respond to the public health emergency or its negative economic impacts,” by, among other activities, providing “assistance to . . . nonprofits.” The interim final rule defined assistance to nonprofits to include “loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID-19 public health emergency,” and “nonprofit” to mean a tax-exempt organization under Section 501(c)(3) of the U.S. Internal Revenue Code.²²⁸

Second, as discussed above, ARPA and the interim final rule provided that nonprofit organizations may also receive funds as subrecipients of a recipient government (i.e., a government that received SLFRF funds); subrecipients carry out an eligible use of SLFRF funds on behalf of a recipient government (e.g., a recipient government that would like to provide food assistance to impacted households may grant funds to a nonprofit organization to carry out that eligible use). Recipients generally have wide latitude to award funds to many types of organizations, including nonprofit or for-profit organizations, as subrecipients to carry out eligible uses of funds on their behalf. For further information on distinguishing between beneficiaries and subrecipients, as well as the impacts of the distinction on reporting and other requirements, see section Transfers of Funds and section Distinguishing Subrecipients versus Beneficiaries under the Public Health

and Negative Economic Impacts eligible use category.²²⁹

Reorganization and Cross-References: Under the interim final rule, assistance to disproportionately impacted communities was a separate, stand-alone category. The final rule reorganizes the disproportionate impact analysis within the sections Assistance to Households, Assistance to Small Business, and Assistance to Nonprofits to better articulate how recipients can serve disproportionately impacted beneficiaries in each of those categories.

As detailed above in the Public Health subsection, in response to public comments describing uncertainty on which eligible use category should be used to assess different potential uses of funds, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity. For discussion of assistance to nonprofits to implement COVID-19 mitigation and prevention strategies, see section COVID-19 Mitigation and Prevention in Public Health.

Recipients providing assistance via nonprofits involving capital expenditures (i.e., expenditures on property, facilities, or equipment) should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards for these expenditures. Recipients providing assistances in the form of loans should review the section Treatment of Loans.

Public Comment: Eligible Assistance to Impacted and Disproportionately Impacted Nonprofits: A few commenters asked Treasury to be more explicit in the final rule that recipients may use funds to provide relief directly to nonprofit organizations and to explain how nonprofits might qualify themselves for assistance and what expenses SLFRF funds may be used to cover.²³⁰ Commenters requested that Treasury note that the pandemic is

²²¹ See, e.g., Federal Reserve Bank of San Francisco, Impacts of COVID-19 on Nonprofits in the Western United States (May 2020), <https://www.frbsf.org/community-development/files/impact-of-covid>.

²²² Philanthropy and COVID-19: Measuring one year of giving, Candid and the Center for Disaster Philanthropy. (2021), <https://www.issuelab.org/resources/38039/38039.pdf>.

²²³ *Id.*

²²⁴ Elizabeth T. Boris et al., Nonprofit Trends and Impacts 2021, Urban Institute (October 7, 2021), https://www.urban.org/research/publication/nonprofit-trends-and-impacts-2021/view/full_report.

²²⁵ *Id.*

²²⁶ Chelsea Newhouse, COVID-19 JOBS UPDATE, NOVEMBER 2021: Nonprofits add just 5,000 jobs in November, Center for Civil Society Studies at Johns Hopkins University (December 10, 2021), <http://ccss.jhu.edu/november-2021-jobs/>.

²²⁷ Elizabeth T. Boris et al. *supra* note 224 at p. 38.

²²⁸ § 35.3 Definitions.

²²⁹ The ARPA also states under “Transfer Authority” that a Recipient may transfer funds to a private nonprofit organization such as those defined in paragraph (17) of section 401 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(17)). See 602 & 603(c)(3) of the Social Security Act. See section Transfers of Funds for additional information on other types of entities, including other forms of nonprofits, that may receive transfers.

²³⁰ While not stated specifically in the interim final rule, the Department does not require or have a preference as to the payment structure for recipients that transfer funds to subrecipients (e.g., advance payments, reimbursement basis, etc.). Ultimately, recipients must comply with the eligible use requirements and any other applicable laws or requirements and are responsible for the actions of their subrecipients or beneficiaries.

leading to a changing financial landscape for nonprofits.

Treasury Response: Eligible Assistance to Impacted and Disproportionately Impacted Nonprofits: The interim final rule provided for, and the final rule maintains, the ability for recipients to provide direct assistance to nonprofits that experienced public health or negative economic impacts of the pandemic. Specifically, recipients may provide direct assistance to nonprofits if the nonprofit has experienced a public health or negative economic impact as a result of the pandemic. For example, if a nonprofit organization experienced impacts like decreased revenues or increased costs (e.g., through reduced contributions or uncompensated increases in service need), and a recipient provides funds to address that impact, then it is providing direct assistance to the nonprofit as a beneficiary under Subsection (c)(1) of Sections 602 and 603. Direct assistance may take the form of loans, grants, in-kind assistance, technical assistance, or other services that respond to the negative economic impacts of the COVID-19 public health emergency.

A recipient may identify a negative economic impact experienced by a nonprofit, or class of nonprofits, and design and implement a response to that negative economic impact, see section Standards: Designating a Negative Economic Impact. The final rule provides a non-exhaustive list of enumerated eligible uses for assistance to nonprofits that are impacted or disproportionately impacted by the pandemic.

A recipient may also identify a class of nonprofits that have been disproportionately impacted by the public health emergency and design and implement a program that responds to the source of that disproportionate impact. For example, a recipient may determine that nonprofits offering after-school programs within its jurisdiction were disproportionately impacted by the pandemic due to the previous in-person, indoors nature of the work and the nonprofits' reliance on fees received for services (e.g., attendance fees). The recipient might then design an intervention to assist those nonprofits in adapting their programming (e.g., to outdoor or online venues), their revenue structure (e.g., adapting the fee for service structure or developing expertise in digital donation campaigns), or both. Additional information about this framework is included in General Provisions: Structure and Standards. In order to ease administrative burden, the final rule presumes that nonprofits

operating in QCTs, operated by Tribal governments or on Tribal Lands, or operating in the U.S. territories were disproportionately impacted by the pandemic.

To summarize, a recipient may determine that certain nonprofits were impacted by the pandemic or were disproportionately impacted by the pandemic and provide responsive services.

Public Comment: Beneficiaries and Subrecipients: As noted elsewhere in this final rule, Treasury received multiple comments expressing uncertainty on how to categorize a particular activity in the eligible use categories. For instance, some commenters requested that recipients be able to use SLFRF funds for certain expenses incurred by nonprofits (e.g., unemployment charges) as a response to a public health or negative economic impact to that nonprofit; others asked if nonprofits providing certain services (e.g., social services) made them eligible for direct assistance. Commenters also requested that Treasury acknowledge that engagement directly with nonprofit organizations in low-income communities and communities of color may allow the recipient to better assess economic harms in these areas.

Treasury Response: Beneficiaries and Subrecipients: Treasury recognizes that many nonprofits play important roles in their communities, and some may have experienced public health or negative economic impacts during the pandemic. As such, under the interim final rule and the final rule, nonprofits may be impacted by the pandemic and receive assistance as a beneficiary, as described above, and/or be a subrecipient providing services on behalf of a recipient.²³¹

Specifically, the interim final rule also allowed for, and the final rule maintains, the ability for the recipient to transfer, e.g., via grant or contract, funds to nonprofit entities to carry out an eligible use on behalf of the recipient. Treasury notes that recipients may award SLFRF funds to many different types of organizations to carry out eligible uses of funds and serve beneficiaries on behalf of a recipient government (e.g., assisting in a vaccination campaign, operating a job training program, developing affordable housing). When a recipient provides funds to an organization to carry out eligible uses of funds and serve

beneficiaries, the organization becomes a subrecipient. In this case, a nonprofit need not have experienced a negative economic impact in order to serve as a subrecipient.

In the context of SLFRF, nonprofits of all types may be subrecipients. Treasury is not restricting the types of nonprofits that can operate as subrecipients, rather allowing recipients to decide what form best meets the needs of their community. Therefore, a "nonprofit" that is acting as subrecipient could include, but is not limited to, a nonprofit as that term is defined in paragraph (17) of section 401 of the McKinney-Vento Homeless Assistance.²³² See section Distinguishing Subrecipients versus Beneficiaries for further information. Additional guidance on determining subrecipient status may be found in the Uniform Guidance.²³³

Recipients may transfer funds to subrecipients in several ways, including advance payments and on a reimbursement basis. Ultimately, recipients must comply with the eligible use requirements and any other applicable laws or requirements and are responsible for the actions of their subrecipients or beneficiaries.

As part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the SLFRF award. Pursuant to this requirement, decisions concerning SLFRF funds must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. Recipients may avoid conflicts of interest in providing assistance to nonprofits or making subrecipient awards by, *inter alia*, making aid available to nonprofits on generally applicable terms or utilizing a competitive grant process, respectively. A recipient may not use control over SLFRF funds for their own private gain. Furthermore, no employee, officer, or agent may 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.

Public Comment: Definition of Nonprofit: Treasury also received several requests to expand the definition of nonprofits so that other tax-exempt entities (e.g., 501(c)(7)s, 501(c)(9)s, 501(c)(19)s, nonprofits with "historical

²³¹ Note, this response is meant to clarify the difference between nonprofits as beneficiaries and nonprofits as subrecipients. It is not meant to limit the types of relationships that a recipient may enter into with a nonprofit as permitted under the Uniform Guidance.

²³² See sections 602(c)(3) and 603(c)(3) of the Social Security Act. See also Section 401 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(17)), which defines a "private nonprofit organization."

significance”) could be eligible for direct assistance as beneficiaries.

Treasury Response: Definition of Nonprofit: The final rule expands the definition of nonprofits to mean 501(c)(3) organizations and 501(c)(19) organizations.²³⁴ The 501(c)(3) classification includes a wide range of organizations with varying charitable or public service-oriented goals (e.g., housing, food assistance, job training). As discussed above, these nonprofit organizations often experienced hardship due to increased needs for services combined with decreased donations and other sources of funding. In response to comments, Treasury has expanded the definition of nonprofit to include 501(c)(19) organizations, which includes veterans’ organizations, to provide recipients more flexibility and in alignment with the definition of nonprofit adopted by the CARES Act, wherein 501(c)(3)s and 501(c)(19)s were eligible for assistance.²³⁵

Public Comment: Reporting Requirements: One commenter asked Treasury to clarify if nonprofits that receive direct assistance as beneficiaries are required to comply with guidelines and reporting requirements.

Treasury Response: Reporting Requirements: Nonprofits that receive direct assistance as beneficiaries are not subrecipients under SLFRF and are therefore not required to comply with SLFRF reporting requirements. However, the recipient must comply with SLFRF reporting requirements, which would require reporting obligations and expenditures for assistance to nonprofits. The recipient may also choose to establish other forms of reporting or accountability as a part of the recipient’s direct assistance program.

A nonprofit entity that receives a transfer from a recipient is a subrecipient. Per the Uniform Guidance, subrecipients must adhere to the same requirements as recipients. Therefore, a nonprofit subrecipient may only receive funds to carry out an eligible use of SLFRF funds and must comply with any reporting and compliance requirements. Note that recipients are ultimately responsible for reporting information to Treasury and must collect any necessary

information from their subrecipients to complete required reporting.

d. Aid to Impacted Industries

The interim final rule allowed for “aid to tourism, travel, and hospitality, and other impacted industries” that responds to the negative economic impacts of the COVID-19 public health emergency. In designating other impacted industries, Treasury specified that recipients should consider the “extent of the economic impact as compared to tourism, travel, and hospitality” and “whether impacts were due to the COVID-19 pandemic, as opposed to longer-term economic or industrial trends unrelated to the pandemic.”²³⁶ Treasury identified declines in employment and revenue as possible metrics to compare the economic impact on a particular industry relative to the tourism, travel, and hospitality industries.

Treasury further provided that aid should be limited to businesses, attractions, business districts, and Tribal development districts²³⁷ that were operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. Examples of eligible aid include assistance to implement COVID-19 mitigation and infection prevention measures, aid to support safe reopening of businesses in these industries, as well as aid for a planned expansion or upgrade of tourism, travel, and hospitality facilities delayed due to the pandemic. The interim final rule and Treasury’s subsequent Compliance and Reporting Guidance also required governments to publicly report assistance provided to private-sector businesses under this eligible use and maintain records of their assessments to facilitate transparency and accountability.

Reorganization and Cross-References: As detailed above, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity. In the interim final rule, aid to impacted industries to implement COVID-19 mitigation and prevention strategies was categorized under Aid to Impacted Industries; the final rule addresses these items under the section COVID-19 Mitigation and Prevention in Public Health. Recipients should also be aware of the difference between beneficiaries

of assistance and subrecipients when working with impacted industries; for further information, see section Distinguishing Subrecipients versus Beneficiaries.

Designating an Impacted Industry

Public Comment: Many commenters requested greater clarity on how to designate “other impacted industries” within their jurisdiction. Commenters requested greater specificity as to the metrics used to measure impact, with some suggesting metrics such as the change in the size of an industry’s workforce due to the pandemic, as well as consideration of whether and why employees are choosing to return to work at slower rates in certain industries. One commenter asked if this meant nearly every industry was “disproportionately impacted.” Some commenters encouraged Treasury to focus on industries most negatively impacted by the pandemic, including disallowing across-the-board business subsidies to businesses that were not negatively impacted by the pandemic and saw revenue or profit growth. Other commenters asked for flexibility for recipients to determine impacted industries based on their local knowledge of the economic landscape.

Treasury Response: The final rule maintains the interim final rule’s approach of allowing recipients to designate impacted industries outside the travel, tourism, and hospitality industries, and, in response to comments, provides greater clarity as to how recipients may designate such impacted industries.

Sections 602(c)(1)(A) and 603(c)(1)(A) recognize that the tourism, travel, and hospitality industries are severely negatively impacted by the pandemic. Under the final rule, recipients may provide eligible aid (described in further detail herein) to the tourism, travel, and hospitality industries. Treasury considers Tribal development districts, which are commercial centers for Tribal hospitality, gaming, tourism, and entertainment and can include Tribal enterprises, as part of the tourism, travel, and hospitality industries that have been severely hit by the pandemic. Therefore, Treasury reaffirms that Tribal development districts are considered impacted industries and recipients may provide eligible aid to them.

To identify other industries comparably impacted to the tourism, travel, and hospitality industries, recipients should undertake a two-step process: Identifying an industry and determining whether that industry is comparably impacted.

²³⁴ § 35.3 Definitions.

²³⁵ Treasury considered expanding the definition of nonprofit to include 501(c)(6) organizations, as Congress later did in the Coronavirus Response and Consolidated Appropriations Act of 2021, but ultimately decided to retain the original CARES Act definition. To the extent impacted by the pandemic, 501(c)(6) organizations may be eligible to receive funds to support eligible uses that align with their overall purpose (e.g., tourism promotion in aid of an impacted industry).

²³⁶ Coronavirus State and Local Fiscal Recovery Funds, 86 FR at 26795.

²³⁷ For a definition of “Tribal development districts,” please see FAQ 2.9 at the following: Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

First, recipients should identify an industry to be assessed. In identifying this industry, the final rule provides recipients the flexibility to define its substantive or geographic scope.²³⁸ Recipients may identify a broad sector that encompasses a number of sub-industries, or they may identify a specific sub-industry to be assessed. For example, a recipient may identify “personal care services” as an industry, or they may identify a more specific category within the “personal care services” industry (e.g., barber shops) as an industry. In defining the industry, Treasury encourages recipients to define narrow and discrete industries eligible for aid. Recipients are not required to follow, but may consider following, industry classifications under the North American Industry Classification System (NAICS). Treasury notes that the larger and more diverse the sector, the more difficult it may be to demonstrate that the larger and less specific sector is negatively impacted in the same way given the scale and diversity of businesses within it.

State or territory recipients may also define a constituent industry with greater geographic precision than state or territory-wide. For example, a state may identify a particular industry in a certain region of the state that was negatively impacted by the pandemic, even if the same industry in the rest of the state did not see a meaningful negative economic impact from the pandemic. State recipients oversee large and diverse industries, sometimes with differences in economic activity between geographic regions. Allowing greater geographic precision allows recipients to target aid to those that need it most, ensuring that state averages do not conceal hard-hit areas in their state.

Second, to determine whether the industry is “impacted,” recipients should compare the negative economic impacts of the public health emergency on the identified industry to the impacts observed on the travel, tourism, and hospitality industries.

1. *Simplified test.* An industry is presumed to be impacted if the industry experienced employment loss of at least 8 percent.

Specifically, a recipient should compare the percent change in the

number of employees of the recipient’s identified industry and the national Leisure & Hospitality sector in the three months before the pandemic’s most severe impacts began (a straight three-month average of seasonally-adjusted employment data from December 2019, January 2020, and February 2020) with the latest data as of the final rule release (a straight three-month average of seasonally-adjusted employment data from September 2021, October 2021, and November 2021).²³⁹ The national Leisure & Hospitality sector largely represents the national travel, tourism, and hospitality industries enumerated in the statute. According to the Bureau of Labor Statistics, employment has fallen by approximately 8 percent for the national Leisure & Hospitality sector when comparing the most recent three-month period available as of the date of adoption of the final rule to the three-month period immediately before the public health emergency. Therefore, if the identified industry has suffered an employment loss of at least 8 percent, the final rule presumes the industry to be an “impacted industry.”

For parity and simplicity, smaller recipients without employment data that measure industries in their specific jurisdiction may use data available for a broader unit of government for this calculation (e.g., a county may use data from the state in which it is located; a city may use data for the county, if available, or state in which it is located) solely for purposes of determining whether a particular industry is an impacted industry.

2. *If simplified test is not met.* If an industry does not satisfy the test above or data are unavailable, the recipient may still designate the industry as impacted by demonstrating the following:

a. The recipient can show that the totality of relevant major economic indicators demonstrate that the industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries at the time of the publication of the final rule, and that the impacts were generally due to the COVID-19 public health emergency. Example economic indicators include gross output, GDP, net profits, employment levels, and projected time to restore employment back to pre-pandemic levels. Recipients may rely on available economic data, government research

publications, research from academic sources, and other quantitative sources for this determination.

If quantitative data is unavailable, the recipient can rely on qualitative data to show that the industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries, and the impacts were generally due to the COVID-19 public health emergency. Recipients may rely on sources like community interviews, surveys, and research from relevant state and local government agencies.

As the public health emergency and economic recovery evolves, recipients should assess how industry impacts shift over time. Impacted industries may recover in a short period of time and no longer face a negative economic impact; in those circumstances, the recipient should ensure that the extent and length of aid is reasonably proportional to the negative economic impact that is experienced, as detailed further below and in section General Provisions: Structure and Standards. Recipients may add to their list of impacted industries by showing that the negative economic impacts to the industry at the time of the designation are comparable to the negative economic impacts to the national tourism, travel, and hospitality sectors as of the date of the final rule adoption, as detailed herein.

Eligible Aid

Public Comment: Commenters asked for further clarification as to the definition of eligible aid to an impacted industry, with many requesting that a broad range of aid be eligible. Examples of aid that recipients asked to be considered eligible include aid to businesses to cover COVID-19 mitigation costs and planned renovations or improvements to tourism, travel, and hospitality facilities, as well as marketing and in-kind incentives to attract visitors. Commenters also asked about the eligibility of aid to broadly cover losses incurred by facilities such as convention centers and hotels due to the pandemic’s economic impact. Commenters also asked for further clarification about the requirements related to private-sector reporting. Further, some commenters asked for clarification about eligible aid to impacted industries owned and operated by Tribal governments, including for Tribal construction projects that have been delayed due to the pandemic’s economic impacts, and for deference to Tribal determinations of negative economic impacts.

²³⁸ Once an industry is designated as impacted, aid should be generally broadly available to businesses in the industry that qualify. Recipients should document how they defined the scope of their industry and how they determined that the industry was impacted. For states and territories, this includes documenting their justification for defining a constituent industry with greater geographic precision than state or territory-wide.

²³⁹ National Leisure & Hospitality supersector employment data can be found on the U.S. Bureau of Labor Statistics website: U.S. Bureau of Labor Statistics, Leisure and Hospitality, <https://www.bls.gov/iag/tgs/iag70.htm> (last visited December 7, 2021).

Treasury Response: In response to commenters' requests for clarification on eligible aid, the final rule requires that aid to impacted industries, including to Tribal development districts, be designed to address the harm experienced by the impacted industry.

First, recipients should identify a negative economic impact, *i.e.*, an economic harm, that is experienced by businesses in the impacted industry. Second, recipients should select a response that is designed to address the identified economic harm resulting from or exacerbated by the public health emergency. Responses must also be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Recipients should consider the further discussion of this standard provided in the sections Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact.

These responses may take the form of direct spending by recipients to promote an industry or support for businesses within an "impacted" industry that experienced a negative economic impact (*e.g.*, through a grant program). Examples of eligible responses include:

- Aid to mitigate financial hardship due to declines in revenue or profits by supporting payroll costs and compensation of returning employees for lost pay and benefits during the COVID-19 pandemic, as well as support of operations and maintenance of existing equipment and facilities, such as rent, leases, and utilities;
- Aid for technical assistance, counseling, and other services to assist with business planning needs; and
- Aid to implement COVID-19 mitigation and infection prevention measures, such as vaccination or testing programs, is broadly eligible for many types of entities, including travel, tourism, hospitality, and other impacted industries. Recipients providing aid to impacted industries for COVID-19 public health measures should review the section Assistance to Businesses to Implement COVID-19 Strategies in Public Health, which describes types of eligible uses of funds in this category.

To address the identified harms, responses (*e.g.*, aid through a grant program) should be generally broadly available to all businesses within the impacted industry to avoid the risk of self-dealing, preferential treatment, and

conflicts of interest.²⁴⁰ Treasury encourages recipients to design aid programs such that funds are first used for operational expenses that are generally recognized as ordinary and necessary for the recipient's operation, such as payroll, before being used on other types of costs. As noted in the section General Standards: Structure and Standards, uses of funds that do not respond to the negative economic impacts of the pandemic, such as excessive compensation to employees, is ineligible.

The final rule maintains the interim final rule's requirement that aid may only be considered responsive to the negative economic impacts of the pandemic if it supports businesses, attractions, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. Further, to facilitate transparency and accountability, the final rule maintains the interim final rule's requirement that recipients publicly report assistance provided to private-sector businesses under this eligible use, including tourism, travel, hospitality, and other impacted industries, and its connection to negative economic impacts of the public health emergency. Recipients also should maintain records to support their assessment of how businesses receiving assistance were affected by the negative economic impacts of the public health emergency and how the aid provided responds to these impacts.

Recipients providing aid to impacted industries for capital expenditures (*i.e.*, expenditures on property, facilities, or equipment), including Tribal governments providing aid to Tribal development districts, should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards that are applicable to these expenditures, depending on the type of aid. Recipients providing assistance in the form of loans should review the section Treatment of

²⁴⁰ As part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the SLFRF award. Pursuant to this policy, decisions concerning SLFRF must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. Recipients may avoid conflicts of interest in awarding aid to impacted industries by, *inter alia*, making aid available to businesses in the industry on generally applicable terms or utilizing a competitive grant process. A recipient may not use control over SLFRF for their own private gain. Furthermore, no employee, officer, or agent may 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.

Loans in Program Administration Provisions.

4. General Provisions: Other

As noted above, the final rule consolidates into a General Provisions section several types of uses of funds; in the interim final rule, the eligibility of these uses of funds was discussed within specific categories of eligible uses for public health and negative economic impacts. Treasury anticipates that this re-organization will enhance recipient clarity in assessing eligible uses of funds. These General Provisions apply across all uses of funds under public health and negative economic impacts.

Specifically, this section considers eligible uses for:

- *Public Sector Capacity and Workforce*, which includes several separate and non-mutually exclusive categories articulated in the interim final rule: public health and safety staff; rehiring state, local, and Tribal government staff; expenses for administering COVID-19 response programs; expenses to improve the efficacy of public health or economic relief programs; and administrative expenses caused or exacerbated by the pandemic. Treasury recognizes that these are closely related and frequently overlapping categories. The final rule treats them as a single purpose, supporting public sector capacity, and provides coordinated guidance on the standards and presumptions that apply to them.

- *Capital Expenditures*, which was addressed only under Public Health in the interim final rule. The final rule moves this expense to General Provisions and provides more clarity on the eligibility of capital expenditures across all aspects of the public health and negative economic impacts eligible use category.

- *Distinguishing Subrecipients versus Beneficiaries*, which describes the differences between these two categories. Recipient governments responding to the public health and negative economic impacts of the pandemic may provide assistance to beneficiaries or execute an eligible use of funds through a subrecipient; some types of entities (*e.g.*, nonprofits) could fit into either category depending on the specific purpose of the use of funds.

- *Uses Outside the Scope of this Category*, which addresses uses of funds that are ineligible or generally ineligible under this eligible use category in the interim final rule. These uses of funds remain ineligible under the final rule, but Treasury has re-categorized where they are addressed, as described below.

This section also addresses enumerated eligible uses proposed by commenters that Treasury has not incorporated into the final rule.

Recipients should also note that the Office of Management and Budget's (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (commonly called the "Uniform Guidance") generally applies to SLFRF.

a. Public Sector Capacity and Workforce Public Safety, Public Health, and Human Services Staff

Summary of Interim Final Rule: Under the interim final rule, funds may be used for payroll and covered benefits²⁴¹ for *public safety, public health, health care, human services, and similar employees*²⁴² of a recipient government, for the portion of the employee's time that is spent responding to COVID-19. For administrative convenience, the recipient may consider *public health and safety* employees to be entirely devoted to responding to COVID-19, and therefore their full payroll and covered benefits eligible to be covered, if the employee, or his or her operating unit or division, is "primarily dedicated" to responding to COVID-19, meaning that more than half of the employee, unit, or division's time is dedicated to responding to COVID-19. Recipients may consider other presumptions for assessing the extent to which an employee, division, or operating unit is responding to COVID-19. Recipients must periodically reassess their determination and maintain records to support their assessment, such as payroll records, attestations from supervisors or staff, or regular work product or

correspondence; recipients need not track staff hours. The interim final rule also posed a question on how long recipients should be able to use funds for staff responding to COVID-19 and what other measures or presumptions might Treasury consider to assess the extent to which public sector staff are engaged in COVID-19 response in an easily administrable manner.

Treasury also provided further guidance on the types of employees covered by this category of eligible use, specifically: "Public safety employees would include police officers (including state police officers), sheriffs and deputy sheriffs, firefighters, emergency medical responders, correctional and detention officers, and those who directly support such employees such as dispatchers and supervisory personnel. Public health employees²⁴³ would include employees involved in providing medical and other health services to patients and supervisory personnel, including medical staff assigned to schools, prisons, and other such institutions, and other support services essential for patient care (e.g., laboratory technicians, medical examiner, or morgue staff) as well as employees of public health departments directly engaged in matters related to public health and related supervisory personnel. Human services staff include employees providing or administering social services; public benefits; child welfare services; and child, elder, or family care, as well as others."

Public Comment: Measuring Time Spent on COVID-19 Response: Treasury received public comments on several components of this eligible use category. Many commenters argued that it poses an administrative burden to identify the extent to which staff are responding to COVID-19 and to maintain records to support that assessment. Largely citing administrative burden in assessing eligibility, several commenters recommended revisions to the administrative convenience that the full payroll and covered benefits for public health and safety staff "primarily dedicated" to responding to COVID-19 may be paid with SLFRF funds. Some commenters recommended presuming that all public health and safety staff are primarily dedicated to COVID-19 response, while others proposed that public health and safety workers who primarily serve QCTs or low- and moderate-income areas be presumed to be primarily dedicated to COVID-19

response, given the disproportionate impacts of the pandemic in those communities. Similarly, Tribal communities recommended that their public health staff be presumed eligible due to the disproportionate impact of the pandemic on their communities. Some commenters proposed that they be able to use the administrative convenience for staff outside of public health and safety that are responding to COVID-19 (i.e., to be able to pay the full payroll and covered benefits for any staff "primarily dedicated" to COVID-19 response).

Treasury Response: In the final rule, Treasury is maintaining the approach in the interim final rule, including elaborations issued in further guidance, but providing additional clarification on its application, including methods to apply the approach to minimize administrative burden. Treasury notes that recipients may assess the extent to which staff are dedicated to responding to COVID-19 through a variety of means, including establishing presumptions or assessing public health and safety staff at the division or operating unit level. For example, a recipient could consider the amount of time spent by employees in its public health department's epidemiology division in responding to COVID-19 and, if a majority of its employees are dedicated to responding to COVID-19, determine that the entire division is primarily dedicated to responding to COVID-19. Treasury also clarifies that recipients may use reasonable estimates to establish administrable presumptions; for example, a recipient could estimate, based on discussions with staff, the general share of time that employees in a specific role or type of position spend on COVID-19 related tasks and apply that share of time to all employees in that position.

Recipients are generally required to be able to support uses of SLFRF funds as eligible, including, in this instance, maintenance of records to support an assessment that public health and safety staff are primarily dedicated to responding to COVID-19. As noted above, recipients may use reasonable estimates to implement this provision. Recipients should maintain records on how they developed these estimates and need not track staff hours. Treasury notes that records retained can include payroll records (e.g., the number and type of staff in various positions), attestations from supervisors or staff (e.g., self-attestation of share of time spent on COVID-19), or regular work product or correspondence (e.g., calendars, email correspondence, documents, and other electronic

²⁴¹ In general, if an employee's wages and salaries are an eligible use of SLFRF funds, recipients may treat the employee's covered benefits as an eligible use of SLFRF funds. For purposes of SLFRF funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes). As described further in the section Deposits into Pension Funds in Restrictions on Use, that limitation on use does not apply to pension contributions that are part of regular payroll contributions for employees whose wages and salaries are an eligible use of SLFRF funds.

²⁴² Note that the interim final rule adapted prior guidance issued by CRF that described these four categories of employees; however, when listing the specific occupations or types of employees in each of these categories, the guidance collapses health care and public health into one category titled "public health." Therefore, the presumption described around public health employees also covers health care employees.

²⁴³ Note that this category encompasses both public health and health care employees; both are treated as public health employees for the purposes of this eligible use category.

records). Treasury anticipates that these types of records are generally retained in many government settings; recipients should also consult the Award Terms and Conditions for SLFRF funds for requirements on length of record retention. For example, a recipient could establish a reasonable presumption about the share of time that an employee, division, or operating unit is responding to COVID-19 and simply retain those employees' electronic records as a record to support their assessment.

Public Comment: Public Health and Safety Staff Primarily Dedicated to COVID-19 Response: Some commenters recommended expanding the administrative convenience for public health and safety staff primarily dedicated to COVID-19 response to further types of staff, to all public health and safety staff, or to public health and safety staff serving underserved areas.

Treasury Response: The interim final rule recognized that COVID-19 response continues to require substantial staff resources and provides an administrative convenience to make it relatively simpler to identify the eligibility of the types of workers—public health and safety workers—generally most involved in COVID-19 response. At the same time, many public health and safety workers perform roles unrelated to COVID-19; coverage of all roles would be overbroad compared to the workers responding to COVID-19 in actuality. For this reason, the final rule maintains the interim final rule's approach to permitting SLFRF funds to be used for public health and safety staff primarily dedicated to responding to COVID-19. Finally, to the extent that a greater proportion of public health and safety staff time is needed to respond to COVID-19 in disproportionately impacted communities, the "primarily dedicated" approach recognizes this increased need.

Public Comment: Eligible Types of COVID-19 Response: Some public commenters also sought further clarification on how to identify eligible types of "COVID-19 response." For example, commenters requested clarification on delineating COVID-19 response from general public health response and defining COVID-19 response for public safety employees.

Treasury Response: Treasury is clarifying that "responding to" COVID-19 entails work needed to respond to the public health or negative economic impacts of the pandemic, apart from the typical pre-pandemic job duties or workload of an employee in a comparable role, if one existed. For

example, responding to COVID-19 for a public safety worker may entail working in an emergency operations center to coordinate pandemic-related supply distribution, responding to an increased volume of 911 calls, or implementing COVID-19 prevention and mitigation protocols in a carceral setting.

Public Comment: Eligible Employees: Some commenters requested clarification on the types of eligible employees or expansion of eligible employees to include additional types of staff, including in behavioral health; administrative, management, or financial management positions; social services; morgue staff; and nonprofit staff supporting projects to undertake eligible uses of funds under SLFRF.

Treasury Response: Treasury provided further guidance on eligible types of employees following the interim final rule, which expressly included social services and morgue staff, and incorporates that guidance into the final rule. In addition, Treasury is clarifying that public health "employees involved in providing medical and other health services to patients and supervisory personnel" includes behavioral health services as well as physical health services.

Treasury also is clarifying that this provision only addresses employees of the recipient government responding to COVID-19. For discussion of eligible expenses to administer SLFRF, including eligible costs for subrecipients performing eligible activities on behalf of a recipient government, see section Administrative Expenses in Program Administration Provisions.

Finally, Treasury is clarifying that indirect costs for administrative, management, and financial management personnel to support public health and safety staff responding to COVID-19 are not permissible under this provision, given the relatively greater challenge of differentiating the marginal increase in staff time and workload due to pandemic response for indirect versus direct costs.

Public Comment: Time Period: Finally, some commenters made recommendations on the time period during which this eligible use should be available. Some commenters recommended eligibility begin before March 3, 2021, the period when Treasury's interim final rule permitted recipients to begin to incur costs using SLFRF funds; for discussion of this topic, see section Timeline for Use of SLFRF Funds in Program Administration Provisions. As noted above, Treasury also posed a question in the interim final rule asking for how long Treasury should maintain the

administrative convenience that SLFRF funds may be used for the full payroll and covered benefits of public health and safety staff primarily dedicated to COVID-19 response. Several commenters recommended that Treasury maintain this approach throughout the program or through December 31, 2024. Other commenters requested clarification on whether eligibility for this use of funds was tied to the length of the state of emergency or whether a jurisdiction has an active state of emergency.

Treasury Response: In the final rule, Treasury is clarifying that recipients will be permitted to fund the full payroll and covered benefits of public health and safety staff primarily dedicated to COVID-19 response throughout the period of performance for the SLFRF program, though recipients should periodically reassess their determination of primarily dedicated staff, including as the public health emergency and response evolves. Government Employment and Rehiring Public Sector Staff

The interim final rule permitted use of funds for costs associated with rehiring state, local, and Tribal government staff in order to bolster the government's ability to effectively administer services. Specifically, recipients may pay for payroll, covered benefits, and other costs associated with the recipient increasing the number of its employees up to the pre-pandemic baseline, or the number of employees that the recipient government employed on January 27, 2020.

Public Comment: Many commenters requested greater flexibility and additional clarification on the provision's requirements, including the pre-pandemic baseline and re-hiring process. Some commenters requested that the final rule allow for hiring above the pre-pandemic baseline given historic underinvestment in the public sector workforce. Commenters suggested a number of adjustments to the pre-pandemic baseline, including adjusting based on population or revenue growth, while some recommended allowing recipients to set their own hiring levels. Others requested clarification on the definition of the baseline and the re-hiring process, including whether the pre-pandemic baseline referred to budgeted or filled positions and whether new hires had to fill the same roles as the previous hires. Commenters also asked whether recipients need to show if the reduction in number of employees was due to the pandemic in order to qualify for funding and requested that workers dedicated to

COVID-19 response be exempted from the calculation of number of employees.

Many commenters also requested an expanded set of eligible uses beyond restoring their workforce up to the pre-pandemic baseline. Commenters requested that funding be able to be used to avoid layoffs, provide back pay, retain employees through pay increases and other retention programs, or reimburse salaries and benefits already paid. Some commenters also requested clarification as to whether recipients can fund re-hired positions through the period of performance and on the definition of payroll and benefits. Other commenters requested preferential hiring for workers laid off, a strong commitment to equity, and a requirement that funds would not be used to pay for contract or temporary replacement workers during a labor dispute.

Treasury Response: The final rule allows for an expanded set of eligible uses to restore and support public sector employment. Eligible uses include hiring up to a pre-pandemic baseline that is adjusted for historic underinvestment in the public sector, providing additional funds for employees who experienced pay cuts or were furloughed, avoiding layoffs, providing worker retention incentives, and paying for ancillary administrative costs related to hiring.

Restoring pre-pandemic employment. In response to comments and recognizing underinvestment in public sector employment, the final rule expands the ability to use SLFRF funds to restore pre-pandemic employment. Treasury is also clarifying how, and the extent to which, recipients may use SLFRF funds to rehire public employees.

The final rule provides two options to restore pre-pandemic employment, depending on recipient's needs. Under the first and simpler option, recipients may use SLFRF funds to rehire staff for pre-pandemic positions that were unfilled or were eliminated due to the pandemic without undergoing further analysis. Under the second option, the final rule provides recipients an option to hire above the pre-pandemic baseline, by adjusting the pre-pandemic baseline for historical growth in public sector employment over time, as well as flexibility on roles for hire. Recipients may choose between these options but cannot use both.

To pursue the first option, recipients may use SLFRF funds to hire employees for the same positions that existed on January 27, 2020 but that were unfilled or eliminated as of March 3, 2021, without undergoing further analysis. For

these employees, recipients may use SLFRF funds for payroll and covered benefit costs that are obligated by December 31, 2024 and expended by December 31, 2026, consistent with the Uniform Guidance's Cost Principles at 2 CFR part 200 Subpart E. This option provides administrative simplicity for recipients that would simply like to restore pre-pandemic positions and would not like to hire above the pre-pandemic baseline.

To pursue the second option, recipients should undergo the analysis provided below. In short, this option allows recipients to pay for payroll and covered benefits associated with the recipient increasing its number of budgeted full-time equivalent employees (FTEs) up to 7.5 percent above its pre-pandemic employment baseline, which adjusts for the continued underinvestment in state and local governments since the Great Recession. State and local government employment as a share of population in 2019 remained considerably below its share prior to the Great Recession in 2007, which presented major risks to recipients mounting a response to the COVID-19 public health emergency. The *adjustment factor* of 7.5 percent results from estimating how much larger 2019 state and local government employment would have needed to be for the share of state and local government employment to population in 2019 to have been back at its 2007 level and is intended to correct for this gap.

Recipients should complete the steps described below. Recipients may choose whether to conduct this analysis on a government-wide basis or for an individual department, agency, or authority.

- **Step One:** Identify the recipient's budgeted FTE level on January 27, 2020. This includes all budgeted positions, filled and unfilled. This is called the *pre-pandemic baseline*.

- **Step Two:** Multiply the *pre-pandemic baseline* by 1.075 (that is, 1 + *adjustment factor*). This is called the *adjusted pre-pandemic baseline*.

- **Step Three:** Identify the recipient's budgeted FTE level on March 3, 2021, which is the beginning of the period of performance for SLFRF funds. Recipients may, but are not required to, exclude FTEs dedicated to responding to the COVID-19 public health emergency.²⁴⁴ This is called the *actual number of FTEs*.

²⁴⁴ Recipients may determine that a portion of an FTE's time is dedicated to responding to the COVID-19 public health emergency. Further, for administrative convenience, the recipient may

- **Step Four:** Subtract the *actual number of FTEs* from the *adjusted pre-pandemic baseline* to calculate the number of FTEs that can be hired and covered by SLFRF funds.

Recipients may use SLFRF funds to cover payroll and covered benefit costs obligated by December 31, 2024, and expended by December 31, 2026, up to the number of FTEs calculated in Step Four, consistent with the Uniform Guidance's Cost Principles at 2 CFR part 200 Subpart E. Recipients may only use SLFRF funds for additional FTEs hired over the March 3, 2021 level of budgeted FTEs (*i.e.*, the *actual number of FTEs*); note again that recipients may choose whether to conduct the analysis of FTEs that can be covered by SLFRF funds on a government-wide basis or for an individual department, agency, or authority.

These FTEs must have begun their employment on or after March 3, 2021, which is the beginning of the period of performance. For administrative convenience, recipients do not need to demonstrate that the reduction in number of FTEs was due to the COVID-19 pandemic, as Treasury assumes the vast majority of employment reductions during this time were due to pandemic fiscal pressures on state and local budgets. Recipients do not need to hire for the same roles that existed pre-pandemic.

For illustration, consider a hypothetical recipient with 1,000 budgeted FTEs on January 27, 2020 (950 filled FTE positions and 50 unfilled FTE positions). The recipient's *pre-pandemic baseline* is 1000 FTEs; its *adjusted pre-pandemic baseline* is $1,000 * 1.075 = 1,075$ FTEs. Now, assume that on March 3, 2021, the recipient had 800 budgeted FTEs in total (795 filled FTE positions and 5 unfilled FTE positions), with 50 FTEs primarily dedicated to responding to the COVID-19 public health emergency. The recipient would have the option of using either 800 FTEs or 750 FTEs as its *actual number of FTEs* for the calculation; assuming it chooses the lower number, it would be able to fund up to 325 FTEs with SLFRF funds (that is, $1,075 - 750 = 325$ FTEs).

consider public health and safety FTEs to be entirely devoted to mitigating or responding to the COVID-19 public health emergency if the FTE, or his or her operating unit of division, is primarily dedicated to responding to the COVID-19 public health emergency. Recipients may also consider other presumptions for assessing the extent to which an FTE, division, or operating unit is engaged in activities that respond to the COVID-19 public health emergency, provided that the recipient reassesses periodically and maintains records to support its assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence demonstrating work on the COVID-19 response.

Specifically, the recipient would be able to use SLFRF to fund payroll and covered benefits for up to 325 FTEs that begin their employment on or after March 3, 2021, for costs obligated by December 31, 2024, and expended by December 31, 2026, consistent with the Uniform Guidance's Cost Principles, as long as SLFRF funds are used for additional FTEs hired over the recipient's 750 FTE level (which is its March 3, 2021 budgeted FTE level).

In hiring new employees, the final rule encourages recipients to ensure a diverse workforce. The final rule also prohibits recipients from using funds to temporarily fill positions during a labor dispute, as this would not constitute responding to the public health or negative economic impacts of the pandemic. Further, recipients must ensure that its hiring practices do not violate conflict-of-interest policies.²⁴⁵ Total compensation for a hired employee that is substantially in excess of typical compensation for employees of their experience and tenure within the recipient's government, without a corresponding business case, may indicate a potential conflict-of-interest in fact or appearance.

Providing additional funding for employees who experienced pay cuts and furloughs. In recognition of the economic hardship caused by pay cuts and furloughs, additional funds may be provided to employees who experienced pay cuts or were furloughed since the onset of the pandemic on January 27, 2020. Recipients must be able to substantiate that the pay cut or furlough was substantially due to the public health emergency or its negative economic impacts (e.g., fiscal pressures on state and local budgets) and should document their assessment. As a reminder, this additional funding must be reasonably proportional to the negative economic impact of the pay cut or furlough on the employee, which would include taking into account unemployment insurance (UI) benefits that a furloughed employee may have received during the furloughed period. Treasury presumes that additional funds beyond the difference in pay had the

employee not received a pay cut or been furloughed would not be reasonably proportional.

Recipients may also provide premium pay to certain employees, as detailed further in section Premium Pay.

Avoiding layoffs. Funds may be used to maintain current compensation levels, with adjustments for inflation, in order to prevent layoffs that would otherwise be necessary. Recipients must be able to substantiate that layoffs were likely in the absence of SLFRF funds and would be substantially due to the public health emergency or its negative economic impacts (e.g., fiscal pressures on state and local budgets) and should document their assessment.

Retaining workers. Funds may be used to provide worker retention incentives, which are designed to persuade employees to remain with the employer as compared to other employment options. Recipients must be able to substantiate that the employees were likely to leave employment in the absence of the retention incentive and should document their assessment. For example, a recipient may determine that a retention bonus is necessary based on the presence of an alternative employment offer for an employee.

All worker retention incentives must be narrowly tailored to need and should not exceed incentives traditionally offered by the recipient or compensation that alternative employers may offer to compete for the employees. Further, because retention incentives are intended to provide additional incentive to remain with the employer, they must be entirely additive to an employee's regular rate of wages and other remuneration and may not be used to reduce or substitute for an employee's normal earnings. Treasury will presume that retention incentives that are less than 25 percent of the rate of base pay for an individual employee or 10 percent for a group or category of employees are reasonably proportional to the need to retain employees, as long as the other requirements are met.

Ancillary administrative costs. Funds may be used to pay for ancillary administrative costs associated with administering SLFRF-funded hiring and retention programs detailed above, including costs to publish job postings, review applications, and onboard and train new hires. For additional information on administrative expenses, see section Administrative Expenses in Program Administration Provisions.

Effective Service Delivery: Administrative Expenses

The interim final rule provided that funds could be used for: "Expenses to improve efficacy of public health or economic relief programs: Administrative costs associated with the recipient's COVID-19 public health emergency assistance programs, including services responding to the COVID-19 public health emergency or its negative economic impacts, that are not federally funded." In the final rule, Treasury is clarifying that there are several categories of eligible administrative expenses.

First, recipients may use funds for administrative costs to improve the efficacy of public health or economic relief programs through tools like program evaluation, data analysis, and targeted consumer outreach (see section Effective Service Delivery: Program Evaluation, Data, and Outreach).

Second, recipients may use funds for administrative costs associated with programs to respond to the public health emergency and its negative economic impacts, including programs that are not funded by SLFRF or not federally funded. In other words, Treasury recognizes that responding to the public health and economic impacts of the pandemic requires many programs and activities, some of which are not funded by SLFRF. Executing these programs effectively is a component of responding to the public health and negative economic impacts of the pandemic.

Finally, recipients may use funds for direct and indirect administrative costs for administering the SLFRF program and projects funded by the SLFRF program. See section Administrative Expenses in Program Administration Provisions for details on this eligible use category.

Effective Service Delivery: Program Evaluation, Data, and Outreach

The Supplementary Information of the interim final rule provided that state, local and Tribal governments may use SLFRF funds to improve the design and execution of programs responding to the COVID-19 pandemic and to improve the efficacy of programs addressing negative economic impacts. The interim final rule included high-level guidance about how SLFRF funds could be used in this eligible use category, including the use of targeted consumer outreach, improvements to data or technology infrastructure, impact evaluations, and data analysis.

Since the publication of the interim final rule, Treasury has also released

²⁴⁵ As part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c)112 that is applicable to all activities funded with the SLFRF award. Pursuant to this policy, decisions concerning SLFRF must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. A recipient may not use control over SLFRF for their own private gain. Furthermore, no employee, officer, or agent may 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.

supplementary information on data analysis, evidence building, and program evaluation in the Compliance and Reporting Guidance.

Public Comment: Treasury received positive comments about the opportunity to invest in data and technology upgrades with SLFRF funds. For example, one commenter noted that investing in technology for better connectivity, coupled with software and hardware upgrades, will allow the workforce to be more productive. Treasury also received comments seeking clarification on using funds for investments in data and technology, including whether upgrading government websites to improve community outreach and investing in technologies that support social distancing were eligible uses.

Treasury Response: Governments with high capacity to use data and evidence to administer programs are more likely to be responsive to the needs of their community, more transparent about their community impact, and more resilient to emergencies such as the pandemic and its economic impacts.²⁴⁶ Treasury recognizes that collecting high-quality data and developing community-driven, evidence-based programs requires resources to hire and build the capacity of staff, adopt new processes and systems, and use new technology and tools in order to effectively develop, execute, and evaluate programs. As such, Treasury is clarifying that recipients may use SLFRF funds toward the following non-exhaustive list of uses to address the data, evidence, and program administration needs of recipients. Additional information may be provided in the Compliance and Reporting Guidance.

- **Program evaluation and evidence resources** to support building and using evidence to improve outcomes, including development of Learning Agendas²⁴⁷ to support strategic evidence building, selection of evidence-based interventions, and program evaluations including impact evaluations (randomized control trials

and quasi-experimental designs) as well as rapid-cycle evaluations, process or implementation evaluations, outcome evaluations, and cost-benefit analyses. Recipients are encouraged to undertake rigorous program evaluations when practicable, assess the impact of their programs by beneficiary demographics (including race, ethnicity, gender, income, and other relevant factors), and engage with community stakeholders (including intended beneficiaries) when developing Learning Agendas and designing evaluations to ensure that programmatic, cultural, linguistic, and historical nuances are accurately and respectfully addressed.

Recipients are also encouraged to use relevant evidence Clearinghouses,²⁴⁸ among other sources, to assess the level of evidence for their interventions and identify evidence-based models that could be applied in their jurisdiction (meaning models with strong or moderate evidence; see Compliance and Reporting Guidance for details on these terms).

- **Data analysis resources** to gather, assess, and use data for effective policy-making and real-time tracking of program performance to support effective implementation of SLFRF-funded programs and programs that respond to the public health emergency and its negative economic impacts, or which households, small businesses, or impacted industries are accessing during the pandemic that are funded by other sources. These resources include but are not limited to data gathering, data cleaning, data analysis, data infrastructure, data management, data sharing, data transparency, performance management, outcomes-based budgeting, outcomes-based procurement, and other data needs. Treasury encourages the disaggregation of data to identify disparate program impacts and the use of cross-jurisdictional data sharing to better measure and implement government programs.

²⁴⁶ Evidence Clearinghouses are databases of research in particular program areas. Frequently these Clearinghouses identify evidence-based programs, the strength of the evidence for those programs, and provide contextual or supporting information in easy to understand formats. Many federal departments have developed rigorous and helpful Clearinghouses that cover a wide range of uses enumerated in this final rule as well as other programs that may be responsive to public health or negative economic impacts of the pandemic. For more information on Clearinghouses, please see the Compliance and Reporting Guidance: U.S. Department of the Treasury, Recipient Compliance and Reporting Responsibilities, as of November 5, 2021; <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities>.

- **Technology infrastructure resources** to improve access to and the user-experience of government information technology systems, including upgrades to hardware and software as well as improvements to public-facing websites or to data management systems, to increase public access and improve public delivery of government programs and services (including in the judicial, legislative, or executive branches).

- **Community outreach and engagement resources** to support the gathering and sharing of information in ways that improve equity and effective implementation of SLFRF-funded programs and programs that respond to the public health emergency and its negative economic impacts, or which households, small businesses, or impacted industries are accessing during the pandemic that are funded by other sources. These methods include but are not limited to community meetings, online surveys, focus groups, human-centered design activities, behavioral science techniques, and other community engagement tools.

- **Capacity building resources** to support using data and evidence in designing, executing, and evaluating programs, including hiring public sector staff, contractors, academics, consultants, and others with expertise in evaluation, data, technology, and community engagement as well as technical assistance support for public sector staff, staff of subrecipients, and community partners to support effective implementation of SLFRF-funded programs and programs that respond to the public health emergency and its negative economic impacts, or which households, small businesses, or impacted industries are accessing during the pandemic that are funded by other sources.

Administrative Needs Caused or Exacerbated by the Pandemic

As described in guidance and the interim final rule, SLFRF funds may be used to address administrative needs of recipient governments that were caused or exacerbated by the pandemic. Guidance following the interim final rule included several examples of this, for example, uses of funds to address backlogs resulting from pandemic-related shutdowns (e.g., backlogs in court systems).²⁴⁹ This also includes

²⁴⁹ See FAQ 2.19: Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>. In the case of courts specifically, this includes "implementing COVID-19 safety measures to facilitate court operations, hiring additional court staff or attorneys to increase speed of case

²⁴⁶ Results for America, Invest in What Works State Standard of Excellence (August 2020), https://2020state.results4america.org/2020_State-Standard-of-Excellence.pdf.

²⁴⁷ Learning Agendas are systematic plans to identify, prioritize, answer important questions about programs and policies using analytic techniques that are appropriate to the type of question asked. For more information on learning agendas, please see OMB Memorandum M-19-23, available at: <https://www.whitehouse.gov/wp-content/uploads/2019/07/M-19-23.pdf> and OMB Memorandum M-21-27, available at: <https://www.whitehouse.gov/wp-content/uploads/2021/06/M-21-27.pdf>.

using funds for increased repair or maintenance needs to respond to significantly greater use of public facilities during the pandemic (e.g., increased use of parks resulting in damage or increased need for maintenance). Some commenters expressed support for the ability to use funds for these purposes. Treasury is maintaining these enumerated eligible uses in the final rule and clarifying that capital expenditures such as technology infrastructure to adapt government operations to the pandemic (e.g., video-conferencing software, improvements to case management systems or data sharing resources), reduce government backlogs, or meet increased maintenance needs are eligible.

b. Capital Expenditures

The interim final rule expressly permitted use of funds for a limited number of capital expenditures that mostly pertained to COVID-19 prevention and mitigation. These included capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics; adaptations to public buildings to implement COVID-19 mitigation tactics; ventilation improvements in congregate settings, health care settings, or other key locations; assistance to small businesses and nonprofits and aid to impacted industries to implement COVID-19 prevention or mitigation tactics, such as physical plant changes to enable social distancing. For disproportionately impacted populations and communities, the interim final rule also expressly permitted development of affordable housing to increase the supply of affordable and high-quality living units.

Public Comment: Many commenters supported the interim final rule's allowance of capital expenditures in facilities to meet pandemic operational needs but requested that the final rule explicitly allow for a broader range of capital expenditures. Commenters expressed an interest in investing in equipment, real property, and facilities that they argued will yield lasting benefits beyond the SLFRF period of performance. Some commenters stated that the approach in the interim final rule limited the vast majority of capital expenditures to governments that experienced revenue loss under Sections 602(c)(1)(C) and 603(c)(1)(C) and that this approach may prevent some governments from fully meeting the needs of their residents. A few

resolution, and other expenses to expedite case resolution are eligible uses."

commenters argued that Treasury should limit use of funds on capital expenditures not related to addressing a direct pandemic harm, such as general economic development or workforce development, and some expressed support for generally limiting capital expenditures to those that address the needs of low-income communities and communities of color.

Many commenters requested that capital expenditures related to direct COVID-19 public health response be included as enumerated eligible uses. The requested types of expenditures include improvements and construction of hospitals and health clinics (including behavioral health clinics), as well as other health-related infrastructure improvements, such as improvements to medical equipment or public health information technology. These commenters stated that investments in health and public health systems are vital to ensuring critical infrastructure necessary to respond to continued impacts of COVID-19 or to address disparities in health, due to lack of access to health care, that contributed to disproportionate impacts of COVID-19 on some communities. Further, some commenters requested that construction or improvements of emergency management and public safety facilities be deemed eligible, citing that some of these sites serve as remote vaccination sites or are otherwise crucial to the pandemic public health response.

Commenters also requested use of funds for capital expenditures that support community needs apart from health care, such as new construction or improvements to schools, affordable housing (beyond presumed disproportionately impacted communities), childcare facilities, and community centers; some suggested that all types of projects permissible under the Community Development Block Grant Program should be eligible both for policy and administrability reasons. Further, some commenters also asked for clarification as to whether parks and recreational facilities are eligible if built in certain disproportionately impacted areas, as well as public transportation infrastructure.

Finally, some commenters also requested use of funds for capital expenditures in government administration buildings, such as public courthouses, as well as technology infrastructure that would allow for remote delivery of public benefits. Others also asked about whether funds could be used to renovate vacant business district buildings or commercial spaces to spur economic recovery.

Treasury Response: Capital expenditures, in certain cases, can be appropriate responses to the public health and economic impacts of the pandemic, in addition to programs and services. Like other eligible uses of SLFRF funds in this category, capital expenditures should be a related and reasonably proportional response to a public health or negative economic impact of the pandemic. The final rule clarifies and expands how SLFRF funds may be used for certain capital expenditures, including criteria and documentation requirements specified in this section, as applicable.

Treasury provides presumptions and guidelines for capital expenditures that are enumerated earlier in sections Public Health, Negative Economic Impacts, and General Provisions: Other under the Public Health and Negative Economic Impact eligible use category ("enumerated projects"), along with capital expenditures beyond those enumerated by Treasury. In addition to satisfying the two-part framework in Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact for identifying and designing a response to a pandemic harm, Treasury will require projects with total expected capital expenditure costs of \$1 million or greater to undergo additional analysis to justify their capital expenditure. Increased reporting requirements will be required for projects that are larger in size, as well as projects that are not enumerated as eligible by Treasury, with certain exceptions for Tribal governments discussed below. Smaller projects with total expected capital expenditures below \$1 million will not be required to undergo additional analysis to justify their capital expenditure, as such projects will be presumed to be reasonably proportional, provided that they are responding to a harm caused or exacerbated by the public health emergency. These standards and documentation requirements are designed to minimize administrative burden while also ensuring that projects are reasonably proportional and supporting Treasury's risk-based approach to overall program management and monitoring.

This section provides (1) an overview of general standards governing capital expenditures; (2) presumptions on capital expenditures, which help guide recipients in determining whether the expenditure meets the standards and the associated documentation requirements; and (3) additional standards and requirements that may apply.

Overview of General Standards

In considering whether a capital expenditure would be eligible under the public health and negative economic impacts eligible use category, recipients must satisfy the requirements for all uses under the public health and negative economic impacts eligible use category, including identifying an impact or harm and designing a response that addresses or responds to the identified impact or harm. Responses must be reasonably designed to benefit the individual or class that experienced the impact or harm and must be related and reasonably proportional to the extent and type of impact or harm. Recipients should consult further details on this standard provided in the sections Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact under General Provisions: Structure and Standards.

In addition to the framework described above, for projects with total expected capital expenditures of \$1 million or greater, recipients must complete and meet the substantive requirements of a Written Justification for their capital expenditure, except for Tribal governments as discussed below. This Written Justification helps clarify the application of this interpretive framework to capital expenditures, while recognizing that the needs of communities differ. In particular, this justification reflects the fact that the time required for a large construction project may make capital expenditures less responsive to pandemic-related needs relative to other types of responses. In addition, as discussed in section Timeline for Use of SLFRF Funds of this Supplemental Information, SLFRF funds must be obligated by December 31, 2024 and expended by December 31, 2026. Capital expenditures may involve long lead-times, and the Written Justification may support recipients in analyzing proposed capital expenditures to confirm that they conform to the obligation and expenditure timing requirements. Further, such large projects may be less likely to be reasonably proportional to the harm identified. For example, construction of a new, larger public facility for the purpose of increasing the ability to socially distance generally would not be considered a reasonably proportional response compared to other less time- and resource-intensive options that may be available and would be equally or more effective. Other solutions, such as improvements in ventilation, could be made more quickly and are typically

more cost effective than construction of a new, larger facility. The needs of communities differ, and recipients are responsible for identifying uses of SLFRF funds that best respond to these needs. The Written Justification recognizes this while also establishing consistent documentation and reporting to support monitoring and compliance with the ARPA and final rule. Finally, the Written Justification also reflects the fact that infrastructure projects are generally not within scope of this eligible use category. See section Uses Outside the Scope of this Category in General Provisions: Other.

As noted above, Tribal governments are not required to complete the Written Justification for projects with total capital expenditures of \$1 million or greater. Tribal governments generally have limited administrative capacity due to their small size and corresponding limited ability to supplement staffing for short-term programs. In addition, Tribal governments are already subject to unique considerations that require additional administrative processes and administrative burden for Tribal government decision making, including capital expenditures. Tribal governments generally are subject to a jurisdictionally complex sets of rules and regulations in the case of improvements to land for which the title is held in trust by the United States for a Tribe (Tribal Trust Lands).²⁵⁰ This includes the requirement in certain circumstances to seek the input or approval of one or more federal agencies such as the Department of the Interior, which holds fee title of Tribal Trust Lands.

As a result of their limited administrative capacity and unique and complex rules and regulations applicable to Tribal governments operating on Tribal Trust Lands, Tribal governments would experience significant and redundant administrative burden by also being required to complete a Written Justification for applicable capital expenditures. While Tribal governments are not required to complete the Written Justification for applicable capital expenditures, the associated substantive requirements continue to apply, including the requirement that a capital expenditure must be reasonably designed to benefit the individual or class that experienced the identified impact or harm and must be related and reasonably proportional to the extent and type of impact or harm. Note that, as a general matter, Treasury may also

request further information on SLFRF expenditures and projects, including capital expenditures, as part of the regular SLFRF reporting and compliance process, including to assess their eligibility under the final rule.

The Written Justification should (1) describe the harm or need to be addressed; (2) explain why a capital expenditure is appropriate to address the harm or need; and (3) compare the proposed capital expenditure against alternative capital expenditures that could be made. The information required for the Written Justification reflects the framework applicable to all uses under the public health and negative economic impacts eligible use category, providing justification for the reasonable design, relatedness, and reasonable proportionality of the capital expenditure in response to the harm or impact identified.

1. *Description of harm or need to be addressed:* Recipients should provide a description of the specific harm or need to be addressed, and why the harm was exacerbated or caused by the public health emergency. When appropriate, recipients may provide quantitative information on the extent and type of the harm, such as the number of individuals or entities affected.

2. *Explanation of why a capital expenditure is appropriate:* Recipients should provide an independent assessment demonstrating why a capital expenditure is appropriate to address the specified harm or need. This should include an explanation of why existing capital equipment, property, or facilities would be inadequate to addressing the harm or need and why policy changes or additional funding to pertinent programs or services would be insufficient without the corresponding capital expenditures. Recipients are not required to demonstrate that the harm or need would be irremediable but for the additional capital expenditure; rather, they may show that other interventions would be inefficient, costly, or otherwise not reasonably designed to remedy the harm without additional capital expenditure.

3. *Comparison of the proposed capital expenditure against alternative capital expenditures:* Recipients should provide an objective comparison of the proposed capital expenditure against at least two alternative capital expenditures and demonstrate why their proposed capital expenditure is superior to alternative capital expenditures that could be made. Specifically, recipients should assess the proposed capital expenditure against at least two alternative types or sizes of capital expenditures that are potentially effective and reasonably

²⁵⁰ See 25 U.S.C. 5108.

feasible. Where relevant, recipients should compare the proposal against the alternative of improving existing capital assets already owned or leasing other capital assets. Recipients should use quantitative data when available, although they are encouraged to supplement with qualitative information and narrative description. Recipients that complete analyses with minimal or no quantitative data should provide an explanation for doing so.

In determining whether their proposed capital expenditure is superior to alternative capital expenditures, recipients should consider the following factors against each selected alternative.

a. *A comparison of the effectiveness of the capital expenditures in addressing the harm identified.* Recipients should generally consider the effectiveness of the capital expenditures in addressing the harm over the useful life of the capital asset and may consider metrics such as the number of impacted or disproportionately impacted individuals or entities served, when such individuals or entities are estimated to be served, the relative time horizons of the project, and consideration of any uncertainties or risks involved with the capital expenditure.

b. *A comparison of the expected total cost of the capital expenditures.* Recipients should consider the expected total cost of the capital expenditure required to construct, purchase, install, or improve the capital assets intended to address the public health or negative economic impact of the public health emergency. Recipients should include pre-development costs in their calculation and may choose to include information on ongoing operational costs, although this information is not required.

Recipients should balance the effectiveness and costs of the proposed capital expenditure against alternatives and demonstrate that their proposed capital expenditure is superior. Further, recipients should choose the most cost-effective option unless it substantively reduces the effectiveness of the capital investment in addressing the harm identified.

As an example, a recipient considering building a new diagnostic testing laboratory to enhance COVID-19 testing capacity may consider whether existing laboratories sufficiently meet demand for COVID-19 testing, considering the demand for test results (along with their turnaround time) as well as the impact of current testing

availability on the spread of COVID-19. Recipients may also consider other public health impacts of the level of diagnostic testing capacity, for example if insufficient capacity has decreased testing for other health conditions. The recipient may consider alternatives such as expanding existing laboratories or building a laboratory of a different size. In comparing the effectiveness of the capital expenditures, examples of factors that the recipient may consider include when the facilities will become operational and for how long; the daily throughput of COVID-19 tests; and the effect on minimizing delays in test results on the populations that such tests will serve. In comparing costs, the recipient may compare the total expected cost of the new laboratory (including costs of acquisition of real property, construction of the laboratory, and purchase of any necessary equipment needed to operationalize the lab), against the expected costs of expanding existing laboratories (whether by replacing current equipment with higher throughput devices or physically expanding space to accommodate additional capacity) or building a new laboratory of a different size, including by leasing property. As a reminder, recipients should only consider alternatives that are potentially effective and reasonably feasible.

Because, in all cases, uses of SLFRF funds to respond to public health and negative economic impacts of the pandemic must be related and reasonably proportional to a harm caused or exacerbated by the pandemic, some capital expenditures may not be eligible. For example, constructing a new correctional facility would generally not be a proportional response to an increase in the rate of certain crimes or overall crime as most correctional facilities have historically accommodated fluctuations in occupancy.²⁵¹ In addition, construction of new congregate facilities, which would generally be expected to involve expenditures greater than \$1 million, would generally not be a proportional response to mitigate or prevent COVID-19, because such construction is generally expected to be more costly than alternative approaches or capital expenditures that may be equally or more effective in decreasing spread of

the disease.²⁵² These alternatives include personal protective equipment, ventilation improvements, utilizing excess capacity in other facilities or wings, or temporary facility capacity expansions.

Large capital expenditures intended for general economic development or to aid the travel, tourism, and hospitality industries—such as convention centers and stadiums—are, on balance, generally not reasonably proportional to addressing the negative economic impacts of the pandemic, as the efficacy of a large capital expenditure intended for general economic development in remedying pandemic harms may be very limited compared to its cost.²⁵³

Presumptions on Capital Expenditures

For administrative convenience, the final rule provides presumptions on whether a Written Justification is required—and required to be submitted to Treasury through reporting—based on the type and size of the capital expenditure, as detailed in the table below.

As discussed above, Tribal governments are not required to complete the Written Justification for applicable capital expenditures, but the associated substantive requirements continue to apply, including the requirement that a capital expenditure must be reasonably designed to benefit the individual or class that experienced the identified impact or harm and must be related and reasonably proportional to the extent and type of impact or harm.

²⁵² For instance, the CDC has published detailed recommendations for nursing homes, long-term care facilities, and correctional and detention facilities, on infection prevention and control. Many of these recommendations are relatively low cost, such as proper use of PPE. In addition, increasing vaccination rates among nursing home staff is among the most important ways to decrease the spread of the disease. Centers for Disease Control and Prevention, Interim Infection Prevention and Control Recommendations to Prevent SARS-CoV-2 Spread in Nursing Homes (September 10, 2021), https://www.cdc.gov/coronavirus/2019-ncov/hcp/long-term-care.html#anchor_1631030153017.

²⁵³ For instance, researchers have found no consistent positive relationship between building sports facilities and local economic development. As Siegfried and Zimbalist (2000, 103) write in a review of the literature, “independent work on the economic impact of stadiums and arenas has uniformly found that there is no statistically significant positive correlation between sports facility construction and economic development.” John Siegfried and Andrew Zimbalist, *The Economics of Sports Facilities and Their Communities*, *Journal of Economic Perspectives* 14, no. 3 (Summer 2000): 95–114, <https://www.aeaweb.org/articles?id=10.1257/jep.14.3.95>.

²⁵¹ See, e.g., “Economic Perspectives on Incarceration and the Criminal Justice System,” Council of Economic Advisers (April 2016), pg. 36–43.

If a project has total expected capital expenditures of	and the use is enumerated by Treasury as eligible, then ²⁵⁴	and the use is beyond those enumerated by Treasury as eligible, then ²⁵⁵
Less than \$1 million	No Written Justification required	No Written Justification required.
Greater than or equal to \$1 million, but less than \$10 million.	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury.	Written Justification required and recipients must submit as part of regular reporting to Treasury.
\$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury.	

In selecting these thresholds, Treasury recognized that capital expenditures vary widely in size and therefore would benefit from tiered treatment to implement eligibility standards while minimizing administrative burden, especially for smaller projects. For example, Treasury selected \$1 million as a threshold for whether a recipient needs to complete a Written Justification as well as a threshold under which capital expenditures would be presumed reasonably proportional. Treasury estimates that \$1 million would encapsulate the costs of a significant portion of equipment or small renovations. These types of smaller projects are often a necessary and reasonably proportional part of a response to the public health emergency; therefore, the \$1 million threshold provides a simplified pathway to complete smaller projects more likely to meet the eligibility standard. At the same time, Treasury selected \$10 million as the threshold for more intensive reporting requirements, estimating that projects larger than \$10 million would likely constitute significant improvements or construction of mid- or large-sized facilities. As discussed above, given their scale and longer time to completion, these types of larger

²⁵⁴ Whether or not a Written Justification is required, recipients should still determine that the response is related and reasonably proportional to the public health emergency and its negative economic impacts. Treasury recognizes that enumerated eligible uses are "related" to the public health emergency and its negative economic impacts and presumed to be reasonably proportional, except recipients pursuing projects with expected total capital expenditures equal to or greater than \$1 million should still independently determine that the expenditures are a reasonably proportional response. Enumerated projects with total expected capital expenditures under \$1 million receive a safe harbor and deemed to meet the related and reasonably proportional standard.

²⁵⁵ Whether or not a Written Justification is required, recipients should still determine that the response is related and reasonably proportional to the public health emergency and its negative economic impacts. Treasury presumes that projects with total expected capital expenditures under \$1 million are reasonably proportional in size to responding to the public health emergency and its negative economic impacts; however, recipients should determine that the response otherwise meets the requirements of the standard, including that the response is related to the public health emergency and its negative economic impacts.

projects may be less likely to be reasonably proportional responses. The \$10 million threshold also generally aligns with thresholds in other parts of the SLFRF program, such as for enhanced reporting on labor practices.

Expenditures from closely related activities directed toward a common purpose are considered part of the scope of one project. These expenditures can include capital expenditures, as well as expenditures on related programs, services, or other interventions. A project includes expenditures that are interdependent (e.g., acquisition of land, construction of the school on the land, and purchase of school equipment), or are of the same or similar type and would be utilized for a common purpose (e.g., acquisition of a fleet of ambulances that would be used for COVID-19 emergency response). Recipients must not segment a larger project into smaller projects in order to evade review. A recipient undertaking a set of identical or similar projects (e.g., development of a number of new affordable housing complexes across the recipient jurisdiction) may complete one Written Justification comprehensively addressing the entire set of projects.

Projects Enumerated as Eligible by Treasury

Under the public health and negative economic impacts eligible use category, the final rule provides a non-exclusive list of eligible uses of funding for projects that respond to the public health emergency or its negative economic impacts. Treasury has determined that these enumerated projects are related to the public health emergency and its negative economic impacts; however, recipients (other than Tribal governments) undertaking these projects with total expected capital expenditures of \$1 million or greater must still complete and meet the substantive requirements of a Written Justification as part of their demonstration that the project is a related and reasonably proportional response to the harm identified.

• *Projects with total expected capital expenditures of under \$1 million:* Treasury provides a safe harbor for

projects with total expected capital expenditures of less than \$1 million and will not require recipients to complete, submit, or meet the substantive requirements of a Written Justification for the capital expenditure. In essence, recipients may pursue an enumerated project with total expected capital expenditures of under \$1 million without having to undergo additional assessments to meet SLFRF requirements.

• *Projects with total expected capital expenditures of at least \$1 million but under \$10 million:* Recipients should complete a Written Justification for the capital expenditure and make an independent assessment of whether their proposed capital expenditure meets the substantive requirements of the Written Justification. Recipients will not be required to submit the Written Justification as part of regular reporting to Treasury but should keep documentation for their records.

• *Projects with total expected capital expenditures of at least \$10 million:* Similar to the above, recipients should complete a Written Justification of the capital expenditure and make an independent assessment of whether their proposed capital expenditure meets the substantive requirements of the Written Justification. Further, recipients will be asked to submit the Written Justification as part of regular reporting to Treasury. Similar to other parts of the SLFRF program, such as on reporting on labor practices, Treasury recognizes that projects with expected total capital expenditures of at least \$10 million may be less likely to meet eligibility requirements and therefore requires recipients to provide an enhanced level of information to Treasury.

Projects Beyond Those Enumerated as Eligible by Treasury

As with all uses, recipients that undertake capital expenditures beyond those enumerated as eligible by Treasury must meet the two-part framework under Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact under General Provisions: Structure and Standards,

including the requirement that responses are related and reasonably proportional to the harm or impact identified. As part of that assessment, these recipients may also be asked to complete a Written Justification. Recipients (other than Tribal governments) are subject to the following presumptions for the Written Justification of the capital expenditure, based on the total expected capital expenditures of the project:

- *Projects with total expected capital expenditures of under \$1 million:* Treasury provides a safe harbor for unenumerated projects with total expected capital expenditures of under \$1 million and will not require recipients to complete, submit, or meet the substantive requirements of a Written Justification of the capital expenditure. Recipients should still make a determination as to whether the capital expenditure is part of a response that is related and reasonably proportional to the public health emergency or its negative economic impacts.

- *Projects with total expected capital expenditures of \$1 million or over:* Recipients should complete a Written Justification of the capital expenditure and make an independent assessment that their proposed capital expenditure meets the substantive requirements of the Written Justification. Further, recipients will be asked to submit the Written Justification as part of regular reporting to Treasury.

Treasury employs a risk-based approach to overall program management and monitoring, which may result in heightened scrutiny on larger projects. Accordingly, recipients pursuing projects with larger capital expenditures should complete more detailed analyses for their Written Justification, commensurate with the scale of the project.

Additional Provisions, Standards, and Definitions

Strong Labor Standards in Construction

Treasury encourages recipients to carry out projects in ways that produce high-quality work, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to use strong labor standards, including project labor agreements (PLAs) and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also recommends that recipients prioritize in their procurement decisions employers who can demonstrate that their workforce meets high safety and training standards

(e.g., professional certification, licensure, and/or robust in-house training), that hire local workers and/or workers from historically underserved communities, and who directly employ their workforce or have policies and practices in place to ensure contractors and subcontractors meet high labor standards. Treasury further encourages recipients to prioritize employers (including contractors and subcontractors) without recent violations of federal and state labor and employment laws.

Treasury believes that such practices will promote effective and efficient delivery of high-quality projects and support the economic recovery through strong employment opportunities for workers. Such practices will reduce likelihood of potential project challenges like work stoppages or safety accidents, while ensuring a reliable supply of skilled labor and minimizing disruptions, such as those associated with labor disputes or workplace injuries. That will, in turn, promote on-time and on-budget delivery.

Furthermore, among other requirements contained in 2 CFR 200, Appendix II, all contracts made by a recipient or subrecipient in excess of \$100,000 with respect to a capital expenditure that involve employment of mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5).

Treasury will seek information from recipients on their workforce plans and practices related to capital expenditures undertaken under the public health and negative economic impacts eligible use category with SLFRF funds. This reporting will support transparency and competition by enhancing available information on the services being provided.

Environmental, Uniform Guidance, and Other Generally Applicable Requirements

Treasury cautions that, as is the case with all projects using SLFRF funds, all projects must comply with applicable federal, state, and local law. In the case of capital expenditures in particular, this includes environmental and permitting laws and regulations. Likewise, as with all capital expenditure projects using the SLFRF funds, projects must be completed in a manner that is technically sound, meaning that it must meet design and construction methods and use materials that are approved, codified, recognized, fall under standard

or acceptable levels of practice, or otherwise are determined to be generally acceptable by the design and construction industry.

Further, as with all other uses of funds under the SLFRF program, the Uniform Guidance at 2 CFR part 200 applies to capital expenditures unless stated otherwise. Importantly, this includes 2 CFR part 200 Subpart D on post-federal award requirements, including property standards pertaining to insurance coverage, real property, and equipment; procurement standards; sub-recipient monitoring and management; and record retention and access.

Definitions

Treasury adopts several definitions from the Uniform Guidance at 2 CFR 200.1 under this section, including for capital expenditures, capital assets, equipment, and supplies.

Per the Uniform Guidance, the term “capital expenditures” means “expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.” The term “capital assets” means “tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with [Generally Accepted Accounting Principles].”

Capital assets include lands, facilities, equipment, and intellectual property. Equipment means “tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000.” Supplies, which means all tangible personal property other than those included as “equipment,” are not considered capital expenditures.

Recipients may also use SLFRF funds for pre-project development costs that are tied to or reasonably expected to lead to an eligible capital expenditure. For example, pre-project costs associated with planning and engineering for an eligible project are considered an eligible use of funds.

c. Distinguishing Subrecipients Versus Beneficiaries

Under the interim final rule, state, local, and Tribal governments that receive a federal award directly from a federal awarding agency, such as Treasury, are designated as “recipients,”

and state, local, and Tribal governments are authorized to transfer funds to other entities, including private entities like nonprofits. The interim final rule stated that, “[a] transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be a subrecipient. Subrecipients are entities that receive a subaward from a recipient to carry out a program or project on behalf of the recipient with the recipient’s Federal award funding.”

For funds transferred to a subrecipient, the interim final rule noted that “[r]ecipients continue to be responsible for monitoring and overseeing the subrecipient’s use of SLFRF funds and other activities related to the award to ensure that the subrecipient complies with the statutory and regulatory requirements and the terms and conditions of the award. Recipients also remain responsible for reporting to Treasury on their subrecipients’ use of payments from the SLFRF funds for the duration of the award.”

Public Comment: Treasury received many comments requesting clarification about which entities qualify as subrecipients and are, in turn, subject to subrecipient monitoring and reporting requirements. For example, commenters sought clarification about whether a nonprofit that received a grant to provide services under a program to carry out an enumerated eligible use would qualify as a subrecipient and be subject to subrecipient monitoring and reporting requirements. Similarly, commenters also wondered if a nonprofit that received a grant in recognition of experiencing a negative economic impact of the public health emergency would also be a subrecipient and subject to subrecipient reporting requirements.

Treasury Response: Treasury is clarifying the distinction between a subrecipient and beneficiary in the final rule. The Uniform Guidance definitions for subaward and subrecipient inform Treasury’s distinction between subrecipients and beneficiaries.

First, per 2 CFR 200.1 of Uniform Guidance “[s]ubaward means an award provided by a pass-through entity²⁵⁶ to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement,

including an agreement that the pass-through entity considers a contract.”

Further, 2 CFR 200.1 of the Uniform Guidance defines a subrecipient, in that “[s]ubrecipient means an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.” Treasury is aligning the definition of subrecipient in the final rule with the definition of subrecipient in the Uniform Guidance.

Treasury is maintaining the monitoring and subrecipient reporting requirements outlined in the final rule. Per 2 CFR 200.101 (b)(2) of the Uniform Guidance, the terms and conditions of federal awards flow down to subawards to subrecipients. Therefore, non-federal entities, as defined in the Uniform Guidance, must comply with the applicable requirements in the Uniform Guidance regardless of whether the non-federal entity is a recipient or subrecipient of a federal award. This includes requirements such as the treatment of eligible uses of funds, procurement, and reporting requirements.

The Uniform Guidance definitions for both subaward and subrecipient specify that payments to individuals or entities that are direct beneficiaries of a federal award are not considered subrecipients. The final rule adopts this definition of a beneficiary and outlines that households, communities, small businesses, nonprofits, and impacted industries are all potential beneficiaries of projects carried out with SLFRF funds. Beneficiaries are not subject to the requirements placed on subrecipients in the Uniform Guidance, including audit pursuant to the Single Audit Act and 2 CFR part 200, subpart F or subrecipient reporting requirements.

The distinction between a subrecipient and a beneficiary, therefore, is contingent upon the rationale for why a recipient is providing funds to the individual or entity. If the recipient is providing funds to the individual or entity for the purpose of carrying out a SLFRF program or project on behalf of the recipient, the individual or entity is acting as a subrecipient. Acting as a subrecipient, the individual or entity is subject to subrecipient monitoring and reporting requirements. Conversely, if the recipient is providing funds to the individual or entity for the purpose of directly benefitting the individual or

entity as a result of experiencing a public health impact or negative economic impact of the pandemic, the individual or entity is acting as a beneficiary. Acting as a beneficiary, the individual or entity is not subject to subrecipient monitoring and reporting requirements.

d. Uses Outside the Scope of This Category

Summary of the Interim Final Rule and Final Rule Structure

In the interim final rule, Treasury noted that certain uses of funds are not permissible under the eligible use category of responding to the public health and negative economic impacts of the pandemic. In the final rule, these uses remain impermissible, but Treasury has re-categorized where they are addressed to increase clarity.

Specifically, the interim final rule provided that the following uses of funds are not eligible under this eligible use category: Contributions to rainy day funds, financial reserves, or similar funds; payment of interest or principal on outstanding debt instruments; fees or issuance costs associated with the issuance of new debt; and satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding, except to the extent the judgment or settlement requires the provision of services that would respond to the COVID-19 public health emergency. These uses of funds remain ineligible under the final rule; Treasury has re-categorized these issues to the section Restrictions on Use, which describes restrictions that apply to all eligible use categories, to clarify that these uses are not eligible under any eligible use category of SLFRF. Treasury responds to public comments on this issue in the section Restrictions on Use.

As noted above, the interim final rule also posed several questions on what other types of services or costs Treasury should consider as eligible uses to respond to the public health and negative economic impacts of COVID-19, including in disproportionately impacted communities. In this section, Treasury addresses proposed uses of funds suggested by commenters that Treasury has not included as enumerated eligible uses of funds in this eligible use category.

General Eligible Uses

Public Comment: Commenters proposed a wide variety of additional recommended enumerated eligible uses

²⁵⁶ In this context, a pass-through entity means a recipient of SLFRF funds.

in all sections of the public health and negative economic impacts eligible use category, including in impacted and disproportionately impacted communities. The proposed additional uses included general categories of services (e.g., legal and social services, long-term investments to remediate long-term disparities, response to natural disasters). Other suggested uses of funds respond to needs widely experienced across the country (e.g., access to and affordability of health insurance). Finally, other suggested uses of funds were highly specific (e.g., healthcare equipment for a specific health condition, fire hydrants, weather alert systems) or most applicable to the particularized needs to certain populations or geographic areas of the United States (e.g., senior citizens, immigrants, formerly incarcerated individuals, responding to environmental issues in certain geographic regions). Other commenters generally requested a high degree of flexibility to respond to the particular needs of their communities.

Treasury Response: Given the large number and diversity of SLFRF recipients, Treasury has aimed to include as enumerated eligible uses programs, services, and capital expenditures that respond to public health and negative economic impacts of the pandemic experienced widely in many jurisdictions across the country, making it clear and simple for recipients to pursue these enumerated eligible uses under the final rule. This provides enumerated eligible uses that many recipients may want to pursue, while including uses that are responsive to the pandemic's impacts across the diverse range of SLFRF recipients. In the final rule, Treasury has clarified several additional uses that generally respond to pandemic impacts experienced broadly across jurisdictions and populations.

Treasury has not chosen to include as enumerated uses all uses proposed by commenters; given the significant range, and in some cases highly specific nature, of the proposed uses Treasury was not able to assess that the proposed uses would respond to negative economic impacts experienced generally across the country, supporting an enumerated eligible use available to all recipients presumptively.

However, Treasury emphasizes that the enumerated eligible uses are non-exhaustive and that other uses, beyond those enumerated, are eligible. Treasury recognizes that the impacts of the pandemic vary over time, by jurisdiction, and by population; as such, the final rule provides flexibility for

recipients to identify other public health or negative economic impacts to additional households, small businesses, or nonprofits, including classes of these entities, and pursue programs and services that respond to those impacts. Treasury also notes that some populations are presumed to be impacted or disproportionately impacted by the pandemic, and thus eligible for responsive services; these presumed eligible populations may encompass many individuals in the specific populations for whom commenters recommended services. For details on these issues, see section General Provisions: Structure and Standards.

Infrastructure, Community Development, and General Economic Development

Some potential additions to enumerated eligible uses were also recommended by several commenters each but are not included as enumerated eligible uses in the final rule.

Public Comment: Infrastructure: In the interim final rule, Treasury noted that a "general infrastructure project, for example, typically would not be included [in this eligible use category] unless the project responded to a specific pandemic public health need."

Numerous commenters requested that Treasury permit investments in infrastructure as a response to the public health and negative economic impacts of the pandemic. While these comments most commonly recommended that constructing and maintaining roads and surface transportation infrastructure be eligible, the proposed uses for infrastructure ranged widely and included parking lots, bridges, traffic management infrastructure, solid waste disposal facilities, and utility infrastructure (outside of water, sewer, and broadband).

Many commenters argued that infrastructure development and maintenance is a pressing need in their communities and that their communities had less need for water, sewer, and broadband infrastructure or other eligible uses to respond to the public health and negative economic impacts of the pandemic. Other commenters argued that these uses would stimulate the economy, attract businesses, or allow for tourist movement; these commenters argued that, by generally supporting a stronger economy or facilitating conditions that are more conducive to business activity and tourism, these uses respond to the negative economic impacts of the pandemic.

Treasury Response: In the final rule, Treasury is maintaining the approach under the interim final rule that general infrastructure projects, including roads, streets, and surface transportation infrastructure, would generally not be eligible, unless the project responded to a specific pandemic public health need or a specific negative economic impact.

The ARPA expressly includes infrastructure if it is "necessary" and in water, sewer, or broadband, suggesting that the statute contemplates only those types of infrastructure. Further, responding to the public health and negative economic impacts of the pandemic requires identifying whether, and the extent to which, there has been a harm that resulted from the COVID-19 public health emergency and whether, and the extent to which, the use would respond or address this harm. Uses of funds intended to generally grow the economy and therefore enhance opportunities for workers and businesses would not be an eligible use, because such assistance is not reasonably designed to impact individuals or classes that have been identified as having experienced a negative economic impact. In other words, there is not a reasonable connection between the assistance provided and an impact on the beneficiaries. Such an activity would be attenuated from and thus not reasonably designed to benefit the households that experienced the negative economic impact.

Note, however, that Treasury has clarified that capital expenditures that are related and reasonably proportional to responding to the public health and economic impacts of the pandemic are eligible uses of funds, in addition to programs and services; for details on eligibility criteria for capital expenditures, see section Capital Expenditures in General Provisions: Other.

Public Comment: Community Development Block Grant: Several commenters recommended that Treasury enumerate as eligible uses those eligible under the Department of Housing and Urban Development's Community Development Block Grant (CDBG) or the Housing and Community Development Act of 1974, which established the CDBG program. Commenters requested that these uses be eligible either to respond to the negative economic impacts of the pandemic, or in the alternate the disproportionate negative economic impacts of the pandemic in certain communities. Under the CDBG program, recipient governments may undertake a wide range of community and economic

development services and projects. Commenters reasoned that many state and local governments are familiar with this program, and that aligning to its eligible uses may help recipients easily understand and pursue eligible projects. Commenters also noted that Treasury had chosen to align with existing federal programs in other eligible use categories, namely water infrastructure, in the interim final rule.

Treasury Response: In the final rule, Treasury is not including all categories of projects permissible under CDBG as enumerated eligible uses to respond to the public health and negative economic impacts of the pandemic. Because CDBG permits such a broad range of activities, including services to individual households, communities, small businesses, general economic development activities, and capital expenditures, Treasury determined that it was more appropriate to assess the underlying types of projects eligible within CDBG and whether each type of project responds to the negative economic impacts of the pandemic. In other words, Treasury considered whether various types of community and economic development projects respond to the impacts of the pandemic in different communities and circumstances. In the final rule, Treasury addresses the eligibility of these various types of projects in each relevant eligible use category within public health and negative economic impacts under SLFRF, including assistance for impacted households, disproportionately impacted households, disproportionately impacted small businesses, and capital expenditures.

Public Comment: General Economic Development: Treasury provided guidance following the interim final rule that general economic development or workforce development would generally not be eligible as it does not respond to a negative economic impact of the COVID-19 public health emergency.

Some commenters recommended that Treasury expand enumerated eligible uses to include general economic development activities, beyond those that respond to negative economic impacts of the pandemic, such as creating an economic development strategy for the jurisdiction's overall economic growth, creating a general workforce development strategy, or providing funds to businesses that did not experience negative economic impacts to carry out economic development activities or to incentivize the addition or retention of jobs. Commenters supportive of assistance to

businesses for general economic development activities argued that subsidies to businesses increase job growth and that, in some cases, assistance to companies that excelled during the public health emergency would help create more job opportunities for workers or expand the jurisdiction's tax base and produce funds to support government services. In contrast, other commenters argued that academic research consistently finds that economic development subsidies have a negligible, or even negative, economic effect, citing research findings to this effect.²⁵⁷

Treasury Response: In the final rule, Treasury maintains the interim final rule's approach that general economic development or workforce development, meaning activities that do not respond to negative economic impacts of the pandemic and rather seek to more generally enhance the jurisdiction's business climate, would generally not be eligible under this eligible use category. As noted above, to identify an eligible use of funds under this category, a recipient must identify a beneficiary or class of beneficiaries that experienced a harm or impact due to the pandemic, and eligible uses of funds must be

²⁵⁷ See, e.g., Matthew D. Mitchell et al., *The Economics of a Targeted Economic Development Subsidy* (Arlington, VA: Mercatus Center at George Mason University, 2019), 5, available at <https://www.mercatus.org/publications/government-spending/economics-targeted-economic-development-subsidy>; Timothy J. Bartik, *Who Benefits from Economic Development Incentives? How Incentive Effects on Local Incomes and the Income Distribution Vary with Different Assumptions about Incentive Policy and the Local Economy* (Upjohn Institute Technical Report No. 13-034, W.E. Upjohn Institute for Employment Research, March 1, 2018), available at https://research.upjohn.org/up_technicalreports/34/; Cailin Slattery and Owen Zidar, *Evaluating State and Local Business Tax Incentives*, *Journal of Economic Perspectives* 34, no. 2 (2020): 90-118, available at <https://www.aeaweb.org/articles?id=10.1257/jep.34.2.90>; Kenneth Thomas, *The State of State and Local Subsidies to Business* (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, October 2019), available at https://www.mercatus.org/system/files/thomas_-_policy_brief_-_the_state_of_state_and_local_subsidies_to_business_-_v1.pdf; Dennis Coates, *Growth Effects of Sports Franchises, Stadiums, and Arenas: 15 Years Later* (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, September 2015), available at <https://www.mercatus.org/system/files/Coates-Sports-Franchises.pdf>; Dennis Coates and Brad R. Humphreys, *Do Economists Reach a Conclusion on Subsidies for Sports Franchises, Stadiums, and Mega-Events?*, *Econ Journal Watch* 5, no. 3 (2008): 294-315, available at <https://econjwatch.org/articles/do-economists-reach-a-conclusion-on-subsidies-for-sports-franchises-stadiums-and-mega-events>; Matthew D. Mitchell, Daniel Sutter, and Scott Eastman, *The Political Economy of Targeted Economic Development Incentives*, *Review of Regional Studies* 48, no. 1 (2018): 1-9, available at <https://www.mercatus.org/publications/corporate-welfare/political-economy-targeted-economic-development-incentives>.

reasonably designed to respond to the harm, benefit the beneficiaries that experienced it, and be related and reasonably proportional to that harm or impact.

As noted above, recipients should analyze eligible uses based on the beneficiary of the assistance, and recipients may not provide assistance to small businesses or impacted industries that did not experience a negative economic impact. Provision of assistance to a business that did not experience a negative economic impact, under the theory that such assistance would generally grow the economy and therefore enhance opportunities for workers, would not be an eligible use, because such assistance is not reasonably designed to impact individuals or classes that have been identified as having experienced a negative economic impact. In other words, there is not a reasonable connection between the assistance provided and an impact on the beneficiaries. Such an activity would be attenuated from and thus not reasonably designed to benefit the households that experienced the negative economic impact. Research cited by some commenters finding that business subsidies have limited or negative economic impact also suggests that such a response may not be reasonably designed to benefit households and other entities impacted by the pandemic. Similarly, planning activities for an economic development or workforce strategy regarding general future economic growth do not provide a program, service, or capital expenditure that responds to negative economic impacts of the pandemic.

However, Treasury notes that the final rule includes as enumerated eligible uses many types of assistance that respond to negative economic impacts of the pandemic and may produce economic development benefits. For example, see sections Assistance to Unemployed Workers, Assistance to Small Businesses, and Capital Expenditures.

B. Premium Pay

Background and Summary of the Interim Final Rule

Sections 602(c)(1)(B) and 603(c)(1)(B) of the Social Security Act, as added by the ARPA, provide that SLFRF funds may be used "to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the . . . government that are performing such essential work, or by providing grants to eligible employers

that have eligible workers who perform essential work.”

Premium pay is designed to compensate workers that, by virtue of their employment, were forced to take on additional burdens and make great personal sacrifices as a result of the COVID-19 pandemic. Premium pay can be thought of as hazard pay by another name.²⁵⁸

During the public health emergency, employers’ policies on COVID-19-related premium pay or hazard pay have varied widely, with many essential workers not yet compensated for the heightened risks they have faced and continue to face.²⁵⁹ Many of these workers earn lower wages on average and live in socioeconomically underserved communities as compared to the general population.²⁶⁰ A recent study found that 25 percent of essential workers were estimated to have low household income, with 13 percent in high-risk households.²⁶¹ The low pay of many essential workers makes them less able to cope with the financial consequences of the pandemic or their work-related health risks. As Americans return to work and governments relax certain rules, essential workers will continue to bear the brunt of the risk of maintaining the ongoing operation of vital facilities and services. The added health risk to essential workers is one prominent way in which the pandemic has amplified pre-existing socioeconomic inequities. Premium pay is designed to address the disparity between the critical services provided by and the risks taken by essential workers and the relatively low compensation they tend to receive.

The interim final rule established a three-part framework for recipients seeking to use SLFRF funds for premium pay. First, to receive premium pay one must be an eligible worker. Second, an eligible worker must also perform essential work. Finally, premium pay must respond to workers performing essential work during the COVID-19 public health emergency. Most of the comments received by Treasury pertaining to premium pay related to these three requirements. Comments also addressed the definition of premium pay generally and posed

questions regarding premium pay program structuring. This section responds to the comments by addressing the three requirements in turn, then the overall definition of premium pay and, finally, program structure.

Eligible Workers

The ARPA defines “eligible workers” as “those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each . . . [government] may designate as critical to protect the health and wellbeing of [its] residents.” The interim final rule supplemented this definition by identifying a list of “essential critical infrastructure sectors” whose workers are eligible workers, based on the list of sectors in the HEROES Act, a bill introduced in the House of Representatives in 2020 that would have provided premium pay to essential workers.²⁶² In addition to the critical infrastructure sectors defined in the interim final rule, the chief executive (or equivalent) of a recipient government may designate additional non-public²⁶³ sectors as critical so long as doing so is necessary to protecting the health and wellbeing of the residents of such jurisdiction.

Public Comment: Treasury received multiple comments on the definition of “eligible worker” included in the interim final rule. Many commenters agreed with the definition of eligible worker adopted by Treasury. Other commenters sought clarification about or changes to the definition of eligible worker, including the definition of eligible sectors, the inclusion of government workers in the definition of eligible workers, and the process for designating additional non-public sectors as eligible.

Some commenters asked Treasury to change how it identifies eligible sectors, including suggestions to add to or subtract from the list of eligible sectors. For example, some commenters asked Treasury to consider using Bureau of Labor Statistics (BLS)-Standard Occupational Classifications to identify specific sectors or occupations, in contrast to the approach taken in the interim final rule, which included a mixture of economic sectors, industries, and occupations. Many commenters asked Treasury to explicitly clarify that a particular industry or occupation is covered by the definition of “essential critical infrastructure sector.” Some of

these commenters represented public employees, e.g., employees of facilities and public works; public utilities; courthouse employees; police, fire, and emergency medical services; and waste and wastewater services. Others were a mixture of public and private sector employees, e.g., coroners and medical examiners; transportation infrastructure (specifically electric vehicle infrastructure and supply equipment); electric utilities, natural gas, and steam supply; and grocery employees. Other commenters requested that Treasury prohibit certain occupations currently included in the eligible workers definition (e.g., police and corrections officers) from receiving premium pay for performance of regular duties.

Commenters also asked Treasury to clarify which government workers are included in the definition of eligible workers. The interim final rule included as an essential critical infrastructure sector, “any work performed by an employee of a State, local, or Tribal government.” Some commenters requested that Treasury adopt a definition of eligible worker that includes all employees of the recipient government; however, all public employees of state, local, and Tribal governments are already included in the interim final rule definition of “eligible worker.” Commenters asked whether this includes governments that did not receive SLFRF funds (i.e., “non recipient governments”). Many commenters from Tribal governments requested that the definition of eligible worker, which includes “any work performed by an employee of a . . . Tribal government,” also include an employee of a “Tribal enterprise” to remove uncertainty regarding which employees are included.

Finally, commenters made suggestions for the process by which the chief executive (or equivalent) of a recipient government may designate additional non-public sectors as critical. Commenters asked that Treasury adopt a requirement that Treasury must approve or deny any additional non-public sector identified by the chief executive of a recipient government prior to implementation of the recipient’s program.

Some commenters asked Treasury to clarify whether their chief executive (or equivalent) could designate particular, and in some cases *all*, employees of the recipient government as eligible for premium pay.

Treasury Response: In the final rule, Treasury will preserve the definition of “eligible worker” as it was defined in the interim final rule with minor modifications to clarify that all public

²⁵⁸ See U.S. Department of Labor, *Hazard Pay*, <https://www.dol.gov/general/topic/wages/hazardpay> (last visited October 18, 2021).

²⁵⁹ Economic Policy Institute, *Only 30% of those working outside their home are receiving hazard pay* (June 16, 2020), <https://www.epi.org/press/only-30-of-those-working-outside-their-home-are-receiving-hazard-pay-black-and-hispanic-workers-are-most-concerned-about-bringing-the-coronavirus-home/>.

²⁶⁰ McCormack, *supra* note 65.

²⁶¹ *Id.*

²⁶² See H.R. 6800, 116th Cong. (2020).

²⁶³ Note that the sectors defined in the interim final rule already include all state, local, and Tribal government employees.

employees of recipient governments are already included in the interim final rule definition of “eligible worker.” A more specific eligibility system (e.g., linking eligibility to specific occupational or industry codes) would have provided more certainty but would have been much more rigid. In contrast, the current definition is flexible enough to give recipients the ability to tailor their premium pay programs to meet their needs while ensuring that programs focus on sectors where workers were forced to shoulder substantial risk as a result of the COVID-19 pandemic. Furthermore, the critical infrastructure sectors defined in the interim final rule already include many of the occupations that commenters requested be added. For example, Treasury received many comments from public workers asking to be included in the definition of “eligible worker” even though these workers already fall within the scope of “any work performed by an employee of a State, local, or Tribal government.” Treasury has clarified in the final rule that the chief executive’s discretion to designate additional sectors as critical relates only to “non-public” sectors, since all public employees of recipient governments are already included in the definition of “eligible worker.” While all such public employees are “eligible workers” and the chief executive (or equivalent) of a recipient government may designate additional non-public sectors as critical, in order to receive premium pay, these workers must still meet the other premium pay requirements (e.g., performing essential work).

Treasury recognizes that the list of “essential critical infrastructure sectors” includes both occupations and sectors. Recipients, if uncertain which occupations are included in a critical infrastructure sector, may consult government occupational classifications if helpful but are not required to do so.²⁶⁴ Furthermore, a recipient government does not need to submit to Treasury for approval its designation of a sector as essential critical infrastructure; rather, Treasury will defer to the reasonable interpretation of the recipient government and the discretion of the recipient’s chief executive in making such designations. If a recipient is unsure if a non-public sector is covered by the definition in the

final rule,²⁶⁵ the chief executive (or equivalent) of a recipient government may also identify the non-public sector as critical so long as the chief executive deems the non-public sector necessary to protecting the health and wellbeing of residents. Treasury has, where possible, clarified the definition of “essential critical infrastructure sectors.” For instance, Treasury has clarified in the final rule that work performed by an employee of a Tribal government includes an employee of a Tribal enterprise and discussed in this Supplementary Information how a recipient may qualify other non-public sectors as essential critical infrastructure.

Essential Work

The interim final rule defined “essential work” as work that (1) is not performed while teleworking from a residence and (2) involves either (i) regular, in-person interactions with patients, the public, or coworkers of the individual that is performing the work or (ii) regular physical handling of items that were handled by, or are to be handled by, patients, the public, or coworkers of the individual that is performing the work. Treasury adopted this definition of essential work to ensure that premium pay is targeted to workers that faced or face heightened risks due to the character of their work during a pandemic.

Public Comment: Some commenters found the definition unclear and asked Treasury to clarify what constitutes “essential work.” Others disagreed with the essential work test altogether, arguing that it forces recipients to distinguish between essential and non-essential employees, which may be difficult to do. Accordingly, these commenters asked Treasury to allow recipients to determine which workers qualify as essential. Treasury also received several requests that specific occupations be explicitly deemed essential, including all public employees, veterinarians, election administrators, detention staff and sheriff’s deputies, and employees of utilities, such as electric power, natural gas, steam supply, water supply, and sewage removal.

Several commenters requested that Treasury not distinguish between remote and in-person work or amend the standard so that employees providing essential services would still be eligible even if they worked remotely. Finally, a few commenters requested clarification as to the

definition of “regular” in-person interactions and whether Treasury could clarify which job functions merit more (or less) premium pay.

Treasury Response: Treasury is maintaining the definition of “essential work” in the final rule without modification. The test adopted in the interim final rule was designed to compensate workers facing disproportionate risk due to the pandemic. COVID-19 is transmitted through person-to-person interactions, and therefore, workers with regular in-person interactions are the primary group facing increased health risks. Although COVID-19 is not transmitted primarily by people handling items, such work may present increased risk in certain cases, and the final rule maintains the interim final rule’s inclusion of such work in order to give recipient governments the flexibility to include workers performing such work as they determine appropriate. Changing the test as some commenters suggested, e.g., by eliminating the in-person work requirement or allowing recipients to designate which employees are essential, even if not working in person, would no longer focus the program on workers taking on additional health risks and instead allow premium pay to be awarded to individuals who experienced relatively little risk of exposure to COVID-19. To maintain flexibility, Treasury is not defining the term “regular” with regard to in-person interactions, allowing recipients to develop programs based on the specific workforce to be served and local circumstances. Generally speaking, however, recipients are encouraged to consider an eligible worker’s risk of exposure in designing premium pay programs.

Respond To

As required by the ARPA, the interim final rule required that premium pay programs “respond to” eligible workers performing essential work during the COVID-19 public health emergency. Premium pay responds to eligible workers performing essential work if it prioritizes low- and moderate-income persons, given the significant share of essential workers that are low- and moderate-income and may be least able to bear added costs associated with illness. The level of the award limit—up to \$13 per hour not to exceed \$25,000 in aggregate—in the ARPA supports this reasoning.

Accordingly, the interim final rule required written justification for how premium pay to certain higher-income workers responds to eligible workers performing essential work: If a recipient

²⁶⁴ See, e.g., sources such as Bureau of Labor Statistics, Occupational Outlook Handbook, which provide information on which professions or occupations are typically included in interpretations of a sector, <https://www.bls.gov/ooh/>.

²⁶⁵ Public sector workers are “eligible workers” under the interim final rule and final rule.

(or grantee) uses SLFRF funds to provide premium pay to an employee and the pay or grant would increase a worker's total pay above 150 percent of their residing state or county's average annual wage for all occupations, as defined by the BLS Occupational Employment and Wage Statistics, whichever is higher, on an annual basis, then the recipient must provide, whether for themselves or on behalf of a grantee, written justification to Treasury detailing how the award responds to eligible workers performing essential work.

Public Comment: Treasury received numerous comments on the wage threshold and the written justification requirement. Several commenters supported the threshold as a way to encourage recipients to target premium pay to lower-income, eligible workers. Some commenters even asked Treasury to make the wage threshold a firm restriction, above which an eligible worker could not receive premium pay. Others agreed with the threshold but also requested flexibility to use existing worker classifications as an administratively simple way to identify workers for whom premium pay would be responsive. For instance, a few commenters asked Treasury to allow recipients or grantees to presume that premium pay "responds to" eligible workers performing essential work when it is provided to employees who are not exempt from the Fair Labor Standards Act (FLSA) overtime provisions—a test that employers are routinely required to apply.²⁶⁶

In contrast, several commenters disagreed with the threshold and the requirement for written justification. A few commenters thought the threshold was too low to capture employees in certain critical infrastructure sectors (e.g., public safety, waste collection) and that it did not sufficiently account for the variance in economic need across different geographic areas and family structures. Some smaller communities argued that the threshold was difficult to calculate and apply.

Other commenters proposed revisions for how the threshold is calculated. For instance, a few commenters asked Treasury to consider using alternative earnings measures such as median income. Similarly, another commenter asked Treasury to consider the incomes of workers with different levels of seniority in developing any income

thresholds for permitting or reporting on premium pay.

Finally, there was also some uncertainty as to the threshold and the requirement for written justification. Some commenters interpreted the threshold as a hard cap on who was eligible for premium pay, which is not the case. Relatedly, some commenters also requested further guidance on what recipients should include in the written justification submitted to the Secretary.

Treasury Response: The final rule makes some modifications to the determination of when premium pay "responds to" eligible workers performing essential work during the public health emergency. Under the interim final rule, premium pay was responsive if either the workers' pay was below a wage threshold or, if the pay was above a wage threshold, the recipient submitted written justification to Treasury explaining how the premium pay was responsive. The final rule retains these two means of establishing premium pay in response to workers performing essential work and adds an additional means of demonstrating that premium pay is responsive. Under the final rule, a recipient may also show that premium pay is responsive by demonstrating that the eligible worker receiving premium pay is not exempt from the FLSA overtime provisions.²⁶⁷ This change will expand the number of workers eligible to receive premium pay²⁶⁸ and does not require recipients to provide written justification to Treasury regarding the workers who are not exempt from the FLSA overtime provisions, making the program easier to administer for recipients. Incorporating this change further simplifies application of the

final rule for recipients because Treasury understands that most employers, public and private, are familiar with and are routinely required to apply the FLSA.

With this addition, the final rule provides that premium pay is responsive to eligible workers performing essential work during the public health emergency if each eligible worker who receives premium pay falls into one of three categories: (1) The worker's pay is below the wage threshold, (2) the worker is not exempt from the FLSA overtime provisions, or (3) the recipient has submitted a written justification to Treasury.

The final rule makes it clear that written justification to Treasury is not necessary with respect to eligible workers whose pay is less than the wage threshold. Nor is written justification necessary with respect to eligible workers who are not exempt from the FLSA overtime provisions. The written justification is only necessary if the worker's pay (with or without the premium) exceeds the threshold, and the worker is exempt from the FLSA overtime provisions. The final rule also clarifies that a worker's pay exceeds the threshold if either the premium pay increases the worker's total pay above the wage threshold or the worker's total pay was already above the threshold, before receiving premium pay.

Treasury has also updated the final rule to clarify that written justification means a brief, written narrative justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19, and why the recipient determined that the premium pay was responsive despite the workers' higher income.

Recipients should refer to SLFRF program reporting guidance, user guides, and other documentation for further guidance on the form and content of the written justification. Treasury anticipates that recipients will easily be able to satisfy the justification requirement for front-line workers, like nurses and hospital staff.

Definition of Premium Pay

The statute defines premium pay as "an amount of up to \$13 per hour . . . , in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID-19 public health emergency. Such amount may not exceed \$25,000 with respect to any single eligible worker." The interim

²⁶⁷ Department of Labor, Overtime Pay, <https://www.dol.gov/agencies/whd/overtime>; see also 29 U.S.C. 207.

²⁶⁸ Among workers that report working overtime, roughly 41–44 percent of workers earn above \$50,000 per year, which is slightly less than the national average annual wage for all employees according to the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, available at <https://www.bls.gov/oes/>. See also U.S. Census Bureau, Basic Monthly CPS, January 2019 through December 2019, available at <https://www.census.gov/data/datasets/time-series/demo/cps/cps-basic.html>. Notes: Annual earnings reflect weekly wages multiplied by 52. Usual weekly earnings are computed by BLS to include earnings from work such as tips, overtime, regular wages, etc., but not non-labor sources of income such as government transfers and capital gains. Pre-overtime earnings are computed by taking the difference of usual weekly earnings and earnings from overtime last week and multiplying by 52. Note, some sources multiply weekly earnings by 50 instead of 52 to account for unpaid time off and holidays, so these figures may be slightly larger than those reported elsewhere. Either assumption may overestimate earnings if workers do not work year-round.

²⁶⁶ See generally 29 U.S.C. 207(a); U.S. Department of Labor, Overtime Pay Requirements of the FLSA (Fact Sheet No. 23), <https://www.dol.gov/agencies/whd/fact-sheets/23-flsa-overtime-pay>.

final rule incorporated this definition and emphasized that premium pay should be in addition to compensation typically received.

Public Comment: Several submitted comments related to the definition of “premium pay.” Several commenters asked Treasury to clarify certain aspects of the interim final rule and statutory definition of premium pay. For instance, a few commenters asked whether the \$25,000 limit applies to the annual amount of premium pay received or the aggregate amount of premium pay received over the period of performance. A few commenters requested flexibility as to how premium pay may be awarded, including flexibility to make monthly or quarterly payments or lump sum payments. Finally, commenters requested additional clarification as to how premium pay should be calculated. For instance, a commenter asked how to calculate the amount of and account for overtime pay and other incentive pay.²⁶⁹

Treasury Response: Treasury has clarified some of these issues in the final rule. For example, Treasury has clarified in the final rule that the \$25,000 per employee limit is for the entire period of performance, not an annual cap. Further, recipients have discretion with respect to the way in which premium pay is awarded to eligible workers (e.g., monthly, quarterly, lump sum), provided that the total premium pay awarded to any eligible worker does not exceed \$13 per hour or \$25,000 over the period of performance. Finally, a recipient may award premium pay to an eligible worker in addition to the overtime pay already earned by the eligible worker but in no instance may the portion of the compensation funded with SLFRF funds exceed \$13 per hour, even if strict time-and-a-half calculation requires more.²⁷⁰ To the extent that an employer is required under the FLSA to make payments to an eligible worker in excess of \$13 per hour or \$25,000 in the aggregate over the period of performance, the employer must use a source of funding other than the SLFRF funds to satisfy those obligations.

Program Structure

Public Comment: Several commenters also requested elaboration on eligible

types of employees and permissible structures for awarding premium pay. A few commenters asked if premium pay could be awarded to volunteers or those in irregular and non-hourly or salaried employment positions. Similarly, various commenters asked if part-time workers were eligible for premium pay.

Some commenters asked Treasury to provide more detail on when premium pay may be paid retroactively or if a government could reimburse its general fund for hazard pay already paid before the start of the period of performance.

Treasury Response: Treasury has also made clear in the final rule that a recipient may award premium pay to non-hourly or salaried workers as well as part-time workers. Premium pay may not, however, be awarded to volunteers. If a recipient is interested in compensating volunteers with SLFRF funds, then it must do so consistent with the requirements set forth in other eligible use categories; for example, see section Public Sector Capacity and Workforce in Public Health and Negative Economic Impacts.

Under the final rule, recipients may award premium pay retroactively; however, SLFRF funds may not be used to reimburse a recipient or eligible employer grantee for premium pay or hazard pay already received by the employee. To make retroactive premium payments funded with SLFRF funds, a recipient or eligible employer grantee must make a new cash outlay for the premium payments and the payments must be in addition to any wages or remuneration the eligible worker already received, subject to the other requirements and limitations set forth in the ARPA and this final rule.

Finally, as part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the SLFRF award. This award term requires recipients and subrecipients to report to Treasury or the pass-through agency, as appropriate, any potential conflict of interest related to the award funds per 2 CFR 200.112. Pursuant to this policy, decisions concerning SLFRF funds must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. Consistent with this policy, elected officials are prohibited from using their official position and control over SLFRF funds for their own private gain. This policy also prohibits, among other things, elected officials from steering funds to projects in which they have a financial interest or using funds to pay themselves premium pay.

C. Revenue Loss

Background

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act provide that SLFRF funds may be used “for the provision of government services to the extent of the reduction in revenue of such . . . government due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the . . . government prior to the emergency.” This provision allows recipients experiencing budget shortfalls to use payments from the SLFRF funds to avoid cuts to government services and, thus, enables state, local, and Tribal governments to continue to provide valuable services and ensures that fiscal austerity measures do not hamper the broader economic recovery.

State and local government budgets experienced stress in fiscal year 2020 as delayed tax filings and pandemic-related business closures caused revenues to decline sharply.²⁷¹ Twenty-two state governments took actions to close budget gaps in fiscal year 2020²⁷² and nearly 80 percent of cities reported being less able to meet the fiscal needs of their communities relative to fiscal year 2019.²⁷³ Surveys of Tribal governments and Tribal enterprises conducted in 2020 found majorities of respondents reporting substantial cost increases and revenue decreases, with Tribal governments reporting reductions in health care, housing, social services, and economic development activities as a result of reduced revenues.²⁷⁴

The economic recovery, aided by the broad distribution of COVID-19 vaccines and the deployment of federal stimulus, has led to a strong rebound in total state and local government revenue and is contributing to a brighter fiscal

²⁷¹ In the second quarter of 2020, quarterly state and local tax revenues as reported by the U.S. Census Bureau fell 19 percent compared to the second quarter of 2019; U.S. Census Bureau, Quarterly Summary of State and Local Tax Revenue, <https://www.census.gov/programs-surveys/qtax.html>.

²⁷² National Association of State Budget Officers, Fiscal Survey of the States (Fall 2020), available at https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/Fiscal%20Survey/NASBO_Fall_2020_Fiscal_Survey_of_States_S.pdf.

²⁷³ National League of Cities, City Fiscal Conditions (2020), available at https://www.nlc.org/wp-content/uploads/2020/08/City_Fiscal_Conditions_2020_FINAL.pdf.

²⁷⁴ Surveys conducted by the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis in March, April, and September 2020. Elijah Moreno & Heather Sobrepena, Tribal entities remain resilient as COVID-19 batters their finances, Federal Reserve Bank of Minneapolis (Nov. 10, 2020), <https://www.minneapolisfed.org/article/2020/tribal-entities-remain-resilient-as-covid-19-batters-their-finances>.

²⁶⁹ See 29 U.S.C. 207(a) (“[A]t a rate not less than one and one-half times the regular rate at which he is employed.”).

²⁷⁰ All recipients are required to comply with otherwise applicable laws, including any wage and hour requirements in the Fair Labor Standards Act. See generally, Department of Labor, *Wages and the Fair Labor Standards Act*, <https://www.dol.gov/agencies/whd/flsa>.

outlook for most jurisdictions as compared to the earlier months of the public health emergency. For the fiscal year ending June 30, 2021, total state and local government tax revenues increased 21 percent relative to the same period in 2020, reflecting the combined impact of the modified tax filing deadline in 2020 and an improving economy.²⁷⁵ However, despite a stable budget situation overall, many governments face uncertainty as the COVID-19 pandemic continues to impact commuting patterns, hospitality and tourism, and other drivers of jurisdictions' economies. Thirty-five percent of cities still report being less able to meet financial needs than in fiscal year 2020,²⁷⁶ and over half of surveyed Tribal governments and Tribal enterprises reported losing at least 40 percent of their revenue since the start of the pandemic.²⁷⁷ Budget challenges persist as governments work to mitigate and contain COVID-19 and help citizens weather the economic downturn.

State, local, and Tribal government budgets affect the broader economic recovery. During the period following the 2007–2009 recession, state and local government budget pressures led to fiscal austerity that was a significant drag on the overall economic recovery.²⁷⁸ Inflation-adjusted state and local government revenue did not return to the previous peak until 2013,²⁷⁹ while employment in the sector returned to the previous peak in August 2019, nearly a decade later.²⁸⁰ Just months after recouping losses from the previous downturn, the COVID-19

pandemic caused state and local government employment to contract again, but this time more sharply: By May 2020, state and local government payrolls fell 7.7 percent compared to February 2020. Despite improvement, non-federal public sector job growth continues to lag behind the rest of the U.S. labor market recovery.²⁸¹

Summary of Interim Final Rule

As stated above, the Social Security Act provides that SLFRF funds may be used “for the provision of government services to the extent of the reduction in revenue of such . . . government due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the . . . government prior to the emergency.” The interim final rule provided a formula for calculating revenue loss through a four-step process:

- **Step 1:** Identify revenues collected in the most recent full fiscal year prior to the public health emergency (*i.e.*, last full fiscal year before January 27, 2020), called the *base year revenue*.
- **Step 2:** Estimate *counterfactual revenue*, which is the amount of revenue the recipient would have expected in the absence of the downturn caused by the pandemic. The counterfactual revenue is equal to *base year revenue* * $[(1 + \text{growth adjustment}) \wedge (n/12)]$, where *n* is the number of months elapsed since the end of the base year to the calculation date, and *growth adjustment* is the greater of the average annual growth rate across all State and Local Government “General Revenue from Own Sources” in the most recent three years prior to the

emergency, 5.2 percent, or the recipient's average annual revenue growth in the three full fiscal years prior to the COVID-19 public health emergency.²⁸² This approach to the growth rate provides recipients with the option to use a standardized growth adjustment when calculating the counterfactual revenue trend and thus minimizes administrative burden, while not disadvantaging recipients with revenue growth that exceeded the national average prior to the COVID-19 public health emergency by permitting these recipients to use their own revenue growth rate over the preceding three years.

- **Step 3:** Identify *actual revenue*,²⁸³ which equals revenues collected over the twelve months immediately preceding the calculation date.

- **Step 4:** The extent of the reduction in revenue is equal to *counterfactual revenue* less *actual revenue*. If *actual revenue* exceeds *counterfactual revenue*, the extent of the reduction in revenue is set to zero for that calculation date.

For illustration, consider a hypothetical recipient with *base year revenue* equal to 100 (Step 1) that ends on June 30, 2019. In Step 2, the hypothetical recipient finds that the average annual growth across all state and local government “General Revenue from Own Sources” in the most recent three years of available data, 5.2 percent, is greater than the recipient's average annual revenue growth in the three full fiscal years prior to the public health emergency. In this illustration, *n* (months elapsed) and *counterfactual revenue* would be equal to:

As of:	12/31/2020	12/31/2021	12/31/2022	12/31/2023
<i>n</i> (months elapsed)	18	30	42	54
<i>Counterfactual revenue</i> :	107.9	113.5	119.4	125.6

²⁷⁵ Analysis of Quarterly Summary of State and Local Tax Revenue, U.S. Census Bureau, *supra* note 271.

²⁷⁶ National League of Cities, City Fiscal Conditions (2021), available at <https://www.nlc.org/wp-content/uploads/2021/10/2021-City-Fiscal-Conditions-Report-2021.pdf>.

²⁷⁷ Center for Indian Country Development and Federal Reserve Bank of Minneapolis, One Year Into COVID-19, Pandemic's Negative Effects Persist in Indian Country (May 2021), available at <https://www.minneapolisfed.org/article/2021/one-year-into-covid-19-pandemics-negative-effects-persist-in-indian-country>.

²⁷⁸ See, e.g., Nora Fitzpatrick et al., Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), [https://libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-](https://libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html)

[and-local-sector.html](https://libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html); Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), available at <https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf>; Gordon, *supra* note 16.

²⁷⁹ State and local government general revenue from own sources, adjusted for inflation using the Bureau of Economic Analysis' implicit price deflator for GDP, U.S. Census Bureau, Annual Survey of State Government Finances and U.S. Bureau of Economic Analysis, National Income and Product Accounts, <https://www.census.gov/programs-surveys/gov-finances.html>.

²⁸⁰ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001>.

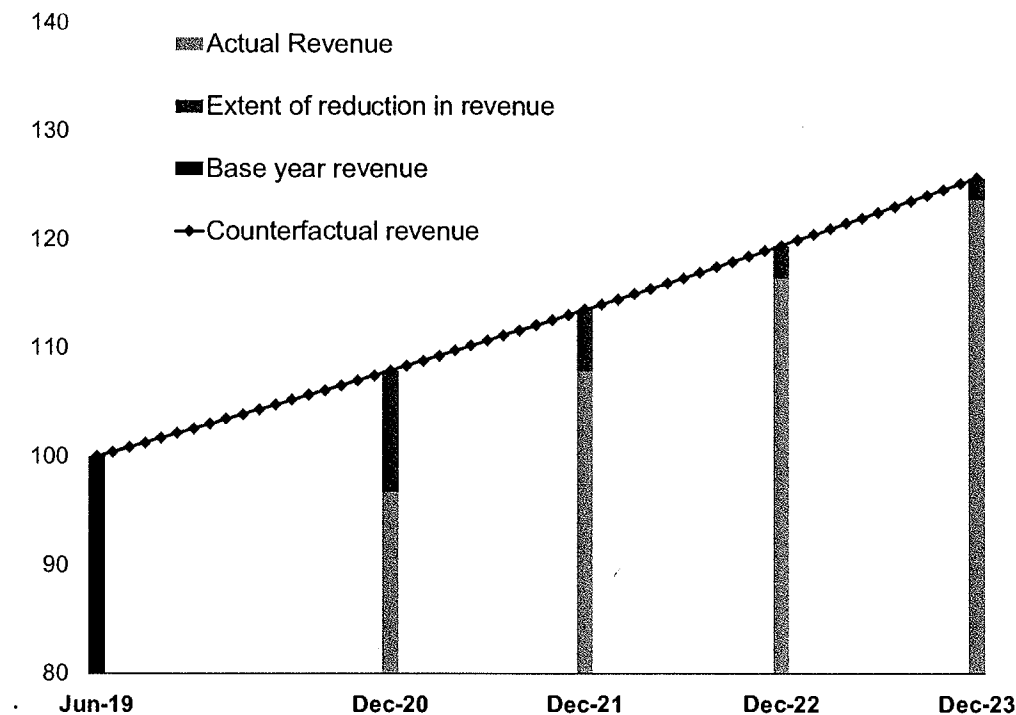
²⁸¹ Pew Research, State and Local Government Job Growth Lags as Economy Recovers (September 2021), available at <https://www.pewtrusts.org/en/research-and-analysis/articles/2021/09/14/state-and-local-government-job-growth-lags-as-economy-recovers>.

²⁸² At the time the interim final rule was published, the average annual growth across all state and local government “General Revenue from Own Sources” in the most recent three years of available data (2015–2018) was 4.1%, which was presented as one option for the growth adjustment. Since the interim final rule was published, 2019 data has been made available, which increases this rate to 5.2%. The final rule updates the percentage to 5.2%, as shown in Step 2.

²⁸³ As explained below, in the final rule, recipients must adjust actual revenue amounts based on certain tax policy changes.

The figure below illustrates the reduction in revenue for the

hypothetical recipient calculated in accordance with the methodology.



Finally, as explained in greater detail below, the clear meaning of the statutory phrase “due to the COVID-19 public health emergency” is that it is referring to revenue reductions caused by the public health emergency. As such, it does not include revenue reduced for reasons other than the public health emergency. Treasury in the interim final rule presumed that any reduction in revenue relative to the counterfactual estimate would be considered revenue lost due to the pandemic and thereby relieved recipients of the administrative burden of determining the extent to which reduction in revenue was due to the public health emergency. The calculation methodology in the interim final rule implicitly assumed that recipients did not suffer a loss in revenue due to the public health emergency if they did not experience a reduction in aggregate revenue compared to the counterfactual estimate. The interim final rule invited comments on whether Treasury should revise its presumption to “take into account other factors, including actions taken by the recipient as well as the expiration of the COVID-19 public health emergency, in determining whether to presume that revenue losses

are ‘due to’ the COVID-19 public health emergency.”

Treasury received a substantial number of comments on the revenue loss provisions set forth in the interim final rule. These comments largely pertained to the following topics: The overall methodology for calculating revenue loss; the definition of “revenue”; whether revenue should be aggregated or calculated on some alternative basis (e.g., source-by-source or fund-by-fund); the appropriate calculation dates (*i.e.*, fiscal year or calendar year); the presumption that all revenue loss is due to the pandemic; the base year; and the definition of “government services.”

Overall Methodology for Calculating Revenue Loss

As noted above, the interim final rule provided a formula for recipients to calculate revenue loss by comparing actual revenues received during a given time-period with a counterfactual amount of revenue based on revenues in the base year and an adjustment for expected growth in revenue each year.

Public Comment: Treasury received many public comments on the overall methodology for calculating revenue loss. Some recipients, including smaller governments, have expressed concern regarding the burden associated with

the calculation of revenue loss, particularly the burden involved in calculating the amount of general revenue, given that the definition of general revenue in the interim final rule does not always align with the definition of revenue already calculated by recipients for other purposes, and requested clarifications regarding a number of components, including the definition of revenue. Commenters also asked for clarification on the relationship between revenue loss calculations across different calculation dates. Other commenters argued that the revenue loss formula does not precisely capture the nuances of local revenues or their particular situation. For example, some commenters stated that requiring that revenues be aggregated fails to capture decreases in revenue sources that cannot easily be made up for with other revenue sources.

Treasury Response: In the final rule, Treasury is largely maintaining the revenue loss formula as set forth in the interim final rule. To address comments that the formula for calculating revenue loss was difficult to apply, Treasury is including an option for recipients to use a standard allowance for revenue loss. Specifically, in the final rule, recipients will be permitted to elect a fixed amount of loss that can then be used to fund government services. This fixed

amount, referred to as the “standard allowance,” is set at up to \$10 million total for the entire period of performance not to exceed the recipient’s SLFRF award amount. Although Treasury anticipates that this standard allowance will be most helpful to smaller local governments and Tribal governments, any recipient can use this standard allowance instead of calculating revenue loss pursuant to the formula above, so long as recipients employ a consistent methodology across the period of performance (*i.e.*, choose either the standard allowance or the regular formula). Treasury intends to amend its reporting forms to provide a mechanism for recipients to make a one-time, irrevocable election to utilize either the revenue loss formula or the standard allowance.

The \$10 million level is based on average revenue loss across state and local governments, taking into consideration potential variation in revenue types and losses and continued uncertainty faced by many recipients regarding revenue shortfalls. To calculate this estimate, Treasury applied a variation of the final rule’s revenue loss calculation on available aggregate state and local government tax revenue data as reported by the Census Bureau for the first calculation date of December 31, 2020. This estimate accounts for expected variation across recipient experiences and reflects the fact that the final rule revenue loss calculation provides recipients several options for specific aspects (*e.g.*, calendar year or fiscal year basis; use of average state and local revenue growth rate or specific local rate). Treasury compared actual calendar year 2020 tax revenues, in aggregate for all state and local governments, to several counterfactual trends that vary based on the end date of the fiscal base year.²⁸⁴ Treasury also assessed counterfactual trends using different revenue growth rates (*e.g.*, the three-year average growth rates of total state and local government general revenue for both fiscal years ending in 2016–2018 and fiscal years ending in 2017–2019; the three-year average growth rates of total state and local government tax revenues for fiscal years ending in 2017–2019; and the one-year growth rate for total state and local government tax revenue in the last full fiscal year before the public health emergency). To account for the fact that the initial estimate, based on tax

revenue, only includes a subset of recipient aggregate general revenue, Treasury applied a scaling factor to recognize that tax revenues generally make up just over half of general revenue collected by state and local governments (*i.e.*, Treasury scaled up its estimate based on tax revenue to produce an estimate for total general revenue).²⁸⁵ The resulting calculation was then extrapolated over the four-year period of performance and divided by a population of interest to arrive at an average loss estimate.

As noted above, Treasury estimated a range of scenarios to account for different values of the variables that would impact average losses. For example, the end date of the fiscal base year and growth rate of counterfactual revenue impact the overall estimate of revenue loss. In addition, this estimate takes into consideration the limitations in the available data. The governments covered by the Census Bureau’s survey do not entirely align with SLFRF recipients. The Census Bureau’s figures are based on 50 state governments, all local government property tax collectors and local government non-property tax imposers, representing at a minimum the more than 38,000 “General Purpose Governments” defined by Census. However, there are only roughly 32,000 recipients of SLFRF funds. Thus, Treasury considered the difference between the number and type of entities in the Census Bureau data and the SLFRF recipients.

Based on this methodology, Treasury estimates that average revenue loss (determined by comparing the counterfactual revenue to actual revenue) may range from \$0 to \$11.7 million per recipient over the period of performance.²⁸⁶ Treasury settled on a point estimate toward the upper end of the range of potential averages, in part, to account for significant variation in the experiences of recipient governments: Some recipients likely experienced losses at the upper end of this range of potential averages. A point estimate toward the upper end of the range errs toward ensuring more recipients’ experiences are covered and increases the utility of the standard allowance for SLFRF recipients. Specifically, the program includes a very large number of recipients with relatively smaller awards; these recipients have tended to describe having greater difficulty completing the

regular revenue loss calculation. Thus, selecting a point estimate toward the higher end of the expected range not only increases the likelihood that the standard allowance will reflect the experience of a larger number of SLFRF recipients but is more responsive to the comments of those with smaller awards. In addition, using a point estimate toward the upper end of the range accounts for the difficulty and uncertainty in predicting revenue losses years into the future, throughout the period of performance.²⁸⁷

Finally, Treasury selected a single allowance level, as opposed to varying levels, to further the goals of simplicity, flexibility, and administrability. Furthermore, data limitations make it difficult to distinguish between types of local governments.²⁸⁸

General Revenue

The interim final rule adopted a definition of “general revenue” based largely on the components reported under “General Revenue from Own Sources” in the Census Bureau’s Annual Survey of State and Local Government Finances. Under the interim final rule, general revenue included revenue collected by a recipient and generated from its underlying economy, and it would capture a range of different types of tax revenues, as well as other types of revenue that are available to support government services.²⁸⁹ Specifically, revenue under the interim final rule included money that is received from tax revenue, current charges, and miscellaneous general revenues and excluded refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, revenue from utilities, social insurance trust revenues, and intergovernmental

²⁸⁷ See, *e.g.*, Government Accountability Office, State and Local Governments: Fiscal Conditions During the COVID–19 Pandemic in Selected States (July 2021) (noting that “[s]tate and local government revenues partly depend on the overall economy, and actions to stem the spread of the virus drastically reduced economic activity.”); Board of Governors of the Federal Reserve System, Monetary Policy Report (July 9, 2021) (noting that the pandemic “pushed down state and local government tax collections” and that while some of the drag is “abating” state and local “government payrolls . . . have only edged up from their lows at the onset of the pandemic”).

²⁸⁸ Local government tax revenue data in the Census Bureau’s Quarterly Summary of State and Local Tax Revenue, *supra* note 271, is provided on an aggregated basis.

²⁸⁹ The Department also released guidance clarifying how a recipient may determine whether a particular entity is “part of the recipient’s government.” See FAQ 3.14, Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

²⁸⁴ Because the Census Bureau’s state and local government tax revenue data is reported on a quarterly frequency, fiscal base year end dates of March 31, June 30, September 30, and December 31 were used in this assessment.

²⁸⁵ Annual Survey of State and Local Government Finances (2019).

²⁸⁶ This is the range of averages that Treasury calculated by varying the aforementioned assumptions.

transfers from the federal government, including transfers made pursuant to section 9901 of the ARPA.²⁹⁰ In the case of Tribal governments, it also included revenue from Tribal business enterprises.

Public Comment: Many commenters asked Treasury to include certain items in the definition of “general revenue.” For instance, several commenters that operate their own utilities asked that revenue from utilities be included, arguing that declines in utility revenue directly affect contributions to their general funds. Many of these commenters noted that moratoriums on utility shutoffs and a decline in collections have resulted in significant budgetary pressures.

Some commenters also asked for the exclusion of certain intergovernmental transfers in the definition of general revenue, including transfers of shared revenue from the state.²⁹¹ Other commenters asked for the inclusion of certain transfers from the federal government, including fees paid for services and grants that are, in effect, paid for the provision of services.

Treasury also received multiple requests to include revenue from Tribal enterprises in the definition of “general revenue” and that “Tribal enterprise” be defined broadly. Others asked for the ability to choose whether to include revenue from Tribal enterprises.

Finally, some commenters requested that the definition of general revenue exclude certain sources of revenue, such as revenue sources that do not support a general fund (*i.e.*, revenue sources that are restricted in use). Commenters also asked that general revenue exclude revenue from special assessments, settlements that make the recipient

whole for past expenditures, and one-time revenues such as revenue from the sale of property.

Treasury Response: In the final rule, Treasury has maintained the definition of “general revenue” from the interim final rule with two exceptions.

Treasury has adjusted the definition to allow recipients that operate utilities that are part of their own government to choose whether to include revenue from these utilities in their revenue loss calculation. This change responds to comments from recipients indicating that revenue from utilities is used to fund other government services and that utility revenues have declined on aggregate.²⁹² This approach is consistent with other eligible uses, which recognize decreased ability of many households to make utility payments; see section Assistance to Households, which identifies utility assistance as an enumerated eligible use of funds, including through direct or bulk payments to utilities for consumer assistance. Furthermore, for utilities or other entities (*e.g.*, certain service districts) that are not part of the recipient government, a transfer from the utility to the recipient constitutes an intergovernmental transfer and therefore is included in the definition of “general revenue.”²⁹³

Treasury has also added liquor store revenue to the definition of general revenue. The Supplemental Information to the interim final rule stated that the definition of tax revenue would include liquor store revenue, but the text of the rule did not include it. Accordingly, in the final rule, Treasury is clarifying that revenue includes liquor store revenue. However, Treasury believes revenue from government-owned liquor stores is better classified as general revenue than it is as tax revenue, so the final rule includes it as part of general revenue.

In response to requests that the definition of general revenue exclude revenue from special assessments, settlements that make the recipient whole for past expenditures, and one-time revenues such as revenue from the sale of property, Treasury is maintaining its position in the final rule that such revenue is included in general revenue. While such revenues may be less predictable than other sources of

revenue (*e.g.*, property taxes), these are not uncommon sources of revenue for recipients, and their inclusion provides a more complete view of the financial health of a recipient government and is consistent with the Census Bureau methodology. Treasury is also maintaining the exclusion of all payments from the federal government (including payments for services) from general revenue in order to avoid substantial dilution of the definition of revenue, particularly in light of extraordinary fiscal support provided during the pandemic. Treasury is maintaining the inclusion of intergovernmental transfers other than from the federal government for the reasons provided in the Supplemental Information to the interim final rule; to do otherwise would be to significantly distort the revenue calculations for local governments that regularly receive revenue sharing payments, for example, from their state governments. Treasury is also maintaining the approach that “general revenue” includes revenue from Tribal enterprises. This approach recognizes that these enterprises often form the revenue base for Tribal governments’ budgets.

To ease the burden on recipients and account for anomalous variations in revenue, as mentioned above, Treasury has incorporated a “standard allowance” option into the final rule. A recipient may choose to use the standard allowance, which under the final rule is set at up to \$10 million, not to exceed the recipient’s SLFRF award amount, as an alternative to calculating revenue loss according to the formula described above. This addition will promote administrative efficiency and simplify the revenue loss calculation for the vast majority of recipients. Treasury intends to amend its reporting forms to provide a mechanism for recipients to elect to utilize either the revenue loss formula or the standard allowance, in addition to other changes made as part of the final rule.

Aggregate Revenue Loss Calculation

Under the interim final rule, revenue loss was calculated based on aggregate revenues and therefore loss in one type of revenue could be offset by gains in another. The amount of SLFRF funds available to provide government services was based on overall net revenue loss. In the Supplementary Information to the interim final rule, Treasury asked commenters to discuss the advantages and disadvantages of, and any potential concerns with, this approach, including circumstances in which it could be necessary or

²⁹⁰ The interim final rule stated that “general revenue” and “tax revenue” excludes refunds and other correcting transactions. Instead of “excluding” refunds and other correcting transactions, the Census Bureau methodology upon which those definitions are based provides that general revenue and tax revenue are determined “net of” refunds and other correcting transactions. The use of “excluding” in the interim final rule is substantively the same as the Census Bureau methodology. However, to be consistent with the terminology used by the Census Bureau, the final rule uses “net of” instead of “excluding.” Current charges are defined as “charges imposed for providing current services or for the sale of products in connection with general government activities.” It includes revenues such as public education institution, public hospital, and toll revenues. Miscellaneous general revenue comprises of all other general revenue of governments from their own sources (*i.e.*, other than utility and insurance trust revenue), including rents, royalties, lottery proceeds, and fines.

²⁹¹ The interim final rule excluded governmental transfers from the Federal Government, but it did not exclude intergovernmental transfers from other governmental units for purposes of the revenue loss provisions.

²⁹² U.S. Energy Information Administration, Annual Electric Utility Data (October 2021), available at https://www.eia.gov/electricity/sales_revenue_price/.

²⁹³ FAQ 3.14 provides further guidance on how to determine what entities constitute a government for purposes of calculating revenue loss. See Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRFAQ.pdf>.

appropriate to calculate the reduction in revenue by source.

Public Comment: Treasury received many comments stating that revenue loss should be calculated on a source-by-source basis. Some commenters argued that a source-by-source approach would be administratively simpler. Other commenters argued that calculating revenue loss source-by-source would better reflect the impact of the COVID-19 pandemic on their ability to fund government services because revenue gains in one source cannot always be used to make up for losses in another. For similar reasons, other commenters asked that revenue loss be calculated on a fund basis.

Treasury Response: Treasury considered alternative methods (e.g., source-by-source, fund-by-fund) but ultimately determined to maintain the calculation of revenue loss in the aggregate. The pandemic has had different effects on recipients (and their revenues), and Treasury recognized that one particular type of revenue or one particular source may have experienced a greater amount of loss for some recipients. However, the statute refers only to “the reduction in revenue of such State, local government, or Tribal government.” The statute is thus clear that Treasury is to refer to the aggregate revenue reduction of the recipient due to the public health emergency. Further, this provision is designed to address declines in the recipients’ overall ability to pay for governmental services, and calculating revenue loss on an aggregate basis provides a more accurate representation of the effect of the pandemic on overall revenues and the fiscal health of the recipient. In many circumstances, recipient governments have flexibility to use revenues from an array of sources and offset declines in some sources with gains in others. While the details and configuration of this flexibility vary widely across recipient governments, calculating revenue loss on a source-by-source or fund-by-fund basis would not capture how recipient governments balance their budgets in the regular course of business. Accordingly, the final rule maintains the requirement that revenue loss is to be calculated on an aggregate basis.

Calculation Dates

Public Comment: Under the interim final rule, recipients calculate revenue loss as of the end of the calendar year. Treasury received many comments requesting that recipients be permitted to calculate revenue loss as of the end of their fiscal year. Commenters argued that doing so would be simpler and less

burdensome on recipients and that financial data as of the end of the fiscal year is audited and therefore more reliable. Commenters also argued that recipients’ fiscal years are structured around the timing of major revenue sources, and that the Census Bureau uses fiscal years in its Annual Survey.

Treasury also received comments about the use of multiple calculation dates. Several Tribal governments stated that they would not see ongoing revenue losses due to the COVID-19 public health emergency and asked to be able to determine revenue loss as of the first calculation date. Several commenters asked whether revenue loss is determined independently for each year, so that a gain in one year does not offset a loss in another, or whether revenue loss is cumulative from the beginning of the pandemic.

Treasury Response: In the final rule, Treasury has made adjustments to give recipients more flexibility with respect to calculation dates and to clarify certain elements. Specifically, the final rule provides recipients the option to choose whether to calculate revenue loss on a fiscal year or calendar year basis, though they must choose a consistent basis for loss calculations throughout the period of performance. Treasury has also clarified in the final rule that revenue loss is calculated separately for each year such that the calculation of revenue lost in one year does not affect the calculation of revenue lost in prior or future years.

Presumption That Revenue Loss Is Due to the Pandemic

As stated above, sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act provide that SLFRF funds may be used “for the provision of government services to the extent of the reduction in revenue of such . . . government due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the . . . government prior to the emergency.” As discussed in the interim final rule, although revenue may decline for reasons unrelated to COVID-19, in order to minimize the administrative burden on recipients in calculating revenue loss and take into consideration the devastating effects of the COVID-19 public health emergency, any reduction in revenue relative to the counterfactual estimate was presumed in the interim final rule to be considered revenue lost due to the pandemic.

Treasury stated in the Supplementary Information to the interim final rule that it was considering when, if ever, during the period of performance it would be appropriate to reevaluate the

presumption that all losses are attributable to the public health emergency. Treasury also sought comment on whether to take into account other factors, including actions taken by the recipient as well as the expiration of the COVID-19 public health emergency, in determining whether to presume that revenue losses are “due to” the COVID-19 public health emergency.

Public Comment: Treasury received many comments in support of the presumption, as well as some opposed. Some commenters argued that the presumption eases the administrative burden on recipients because, without it, it would be difficult to identify which losses are attributable to the COVID-19 public health emergency. Many commenters also argued that Treasury should maintain the presumption because recipients are likely to experience losses due to the public health emergency even after the end of the public health emergency. Treasury also received comments asking that it adjust any revenue loss calculation to account for tax changes enacted by the recipient. In particular, some commenters noted that some recipients had increased taxes in order to meet additional demands for government services or to address declines in revenue due to the pandemic. These tax increases have in some cases offset some or all of the actual revenue loss attributable to the public health emergency. Because the interim final rule calculates revenue loss by reference to actual revenue collected, commenters argued that the calculation of revenue loss “due to” the public health emergency needs to take into consideration the effects of tax increases by deducting the effect of these tax increases from actual revenue collected.

Treasury Response: In the final rule, Treasury has maintained the presumption that a reduction in a recipient’s revenue is due to the public health emergency with certain adjustments to respond to comments and to better account for revenue loss “due to the COVID-19 public health emergency.” The final rule makes adjustments to the presumption to take into account certain government actions to change tax policy. In particular, Treasury is adjusting the presumption to account for changes to tax policy by providing that changes in revenue that are caused by tax increases or decreases adopted after the issuance of the final rule will not be treated as due to the public health emergency.

Presumption of Revenue Loss “Due To” the Pandemic

In enacting sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act, Congress provided that a state, local government, or Tribal government could use funds to “cover costs . . . for the provision of government services,” but only “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.” In doing so, Congress recognized that the pandemic was causing significant disruption to economic activity and sought to minimize the impact of associated revenue losses on the ability of the recipient to provide government services when such services were needed most.²⁹⁴ The text of the statute itself reinforces this important context: The law specifically limits funds to cover revenue losses that both are “due to the COVID–19 public health emergency” and could impact “the provision of government services.”

Courts have recognized that the phrase “due to” can refer to various causal standards.²⁹⁵ Here, in the context of Congress’s addressing economic disruptions caused by the COVID–19 pandemic that could impact both revenues and government services, the key consideration is whether a revenue loss experienced by the recipient resulted from the exogenous impacts of the public health emergency (and were thus “due to” the pandemic) or instead from the recipient’s own discretionary actions (and, in this context, were not “due to” the pandemic). Reductions in revenue due to the public health emergency does not cover revenue reductions that resulted from a recipient’s own discretionary actions.

In the interim final rule, Treasury included a presumption that all revenue loss is due to the pandemic in order to minimize the administrative burden on recipients discussed above and take into consideration the devastating effects of the COVID–19 public health emergency. Based on comments, Treasury believes that the reasons for the presumption continue to be valid and has determined to maintain the presumption in the final rule with certain modifications. In

particular, at this point in the course of the pandemic, with the fiscal pressure on state and local governments having been significantly reduced, it is appropriate for Treasury to reassess aspects of this presumption. As discussed below, the final rule requires recipients to exclude the value of tax policy changes adopted after January 6, 2022.

Recipients of the SLFRF range from states to the smallest local governments. At the time that the interim final rule was adopted, it was important for recipients to be able to calculate with ease and certainty their amount of revenue loss so that they could begin deploying these funds to continue to maintain essential government services. To this end, the presumption in the interim final rule provided a relatively simple formula for all recipients to use, but the exigent need for recipients to immediately deploy funds for the provision of government services has decreased and the benefit of the presumption in reducing administrative burden is less relevant for those governments that are not likely to avail themselves of the standard allowance described above.

Consistent with these considerations, the final rule requires recipients to exclude revenue loss due to tax changes adopted after January 6, 2022. Eliminating revenue loss due to tax changes from the presumption is appropriate given the significance of tax revenue as a portion of all revenue for state and local governments, the direct impact of tax policy decisions on revenue collected, and the relative ease with which recipients can isolate the estimated effect of a tax change on revenue.²⁹⁶ Most state budgeting processes require a “budget score,” often developed through a consensus process with executive and legislative branch experts,²⁹⁷ and Treasury expects that larger localities, those most likely to utilize the revenue loss formula rather than the standard allowance, also regularly use revenue or budget estimates when considering changes to tax policies. As such, in many cases,

recipients already prepare estimates of the impact of tax changes on revenue, and as discussed below, Treasury will generally permit recipients to rely on such estimates in adjusting their revenue loss calculations.

Reductions in revenue that are not attributable to tax changes would continue to be subject to the presumption. A requirement that recipients evaluate the revenue effect of changes in discretionary policy actions other than tax changes would be more difficult for recipients than evaluating the changes attributable to tax changes given that state and local governments do not generally prepare estimates of the revenue effects of other actions. Finally, as noted above, taxes are the single largest source of revenue for state and local government recipients in the aggregate.

Revisions to Presumption To Address Tax Reductions

For these reasons, Treasury is providing in the final rule that changes in general revenue that are caused by tax cuts adopted after the date of adoption of the final rule (January 6, 2022) will not be treated as due to the public health emergency, and the estimated fiscal impact of such tax cuts must be added to the calculation of “actual revenue” for purposes of calculation dates that occur on or after April 1, 2022. Tax cuts include final legislative or regulatory action or a new or changed administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase and that the recipient assesses has had the effect of reducing tax revenue relative to current law. This includes the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the issuance of the final rule.

In assessing whether a tax change has had the effect of reducing tax revenue, recipients may either calculate the actual effect on revenue or rely on estimates prepared at the time the tax change was adopted. More specifically, recipients may rely on information typically prepared in the course of developing the budget (e.g., expected revenues) and/or considering tax changes (e.g., budget scores, revenue notes) to determine the amount of revenue that would have been collected in the absence of the tax cut, as long as those estimates are based on reasonable assumptions and do not use dynamic methodologies that incorporate the projected effects of macroeconomic growth, given that macroeconomic

²⁹⁴ See also sections 602(a)(1) and 603(a) of the Social Security Act (appropriating the funds for payment to recipients in order to “mitigate the fiscal effects stemming from the public health emergency”).

²⁹⁵ *U.S. Postal Service v. Postal Regulatory Comm’n*, 640 F.3d 1263 (D.C. Cir. 2011); see *Kimber v. Thiokol Corp.*, 196 F.3d 1092, 1100 (10th Cir. 1999); *Adams v. Director, OWCP*, 886 F.2d 818, 821 (6th Cir. 1989).

²⁹⁶ Treasury considered whether to also eliminate the presumption with respect to losses resulting from other changes in policy, such as decreases in user fees or fines. However, the effects of these changes are more minor overall and would be more challenging to accurately identify and quantify, so the administrability benefit of the presumption for recipients outweighs whatever distortion there might be as a result of not reflecting such changes.

²⁹⁷ See generally, National Association of State Budget Officers, *Budget Processes in the States*, (2021), available at https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-ofca152d64c2/UploadedImages/Budget%20Processes/NASBO_2021_Budget_Processes_in_the_States_S.pdf.

growth is accounted for in the counterfactual growth assumptions. Recipients that choose to calculate the actual effect of a tax change on revenue must similarly base their calculations on reasonable estimates that do not use dynamic methodologies. Recipients should apply this adjustment in determining their actual revenue totals at Step 3 in the revenue loss calculation described above.

Revisions to Presumption To Address Tax Increases

As noted above, the calculation methodology in the interim final rule implicitly assumed that recipients did not experience a reduction in revenue due to the public health emergency if they did not experience a reduction in aggregate revenue relative to the counterfactual estimate. Treasury recognizes that some recipients may have experienced a reduction in revenue due to the public health emergency that was offset by other revenue, particularly in the case of increases to tax revenue resulting from a tax increase. The final rule requires recipients that increased taxes to deduct the amount of increases to revenue attributable to such tax increase. This change is also consistent with the incorporation in the interim final rule and final rule of a counterfactual growth rate, which effectively permits recipients to count revenue losses due to the public health emergency that are offset by increased tax revenue resulting from organic growth.

For these reasons, Treasury is providing in the final rule that recipients must subtract from their calculation of actual revenue the effect of tax increases adopted after the date of adoption of this final rule (January 6, 2022) for purposes of calculation dates that occur on or after April 1, 2022. This change and the change to the final rule described above treat tax changes in a consistent manner: In the case of reduction in revenue resulting from a tax cut, a recipient must add the amount of that reduction to its calculation of actual revenue, and in the case of an increase in revenue resulting from a tax increase, a recipient must subtract the amount of additional revenue collected as a result of the tax increase from its calculation of actual revenue.²⁹⁸

²⁹⁸ The final rule does not permit recipients to reflect the effects of other changes in policy, such as increases in fees adopted after adoption of the final rule. Treasury understands that the main beneficiaries of such a change would be those recipients that will benefit from the standard allowance provided for in the final rule and that for other recipients the administrative burden on recipients needed to calculate these adjustments

As is the case with tax cuts, discussed above, tax increases that must be reflected in the calculation of revenue include final legislative or regulatory action or a new or changed administrative interpretation that increases any tax and that the recipient assesses has had the effect of increasing tax revenue relative to current law. In assessing whether a tax change has had the effect of increasing tax revenue, recipients may either calculate the actual effect on revenue or rely on estimates prepared at the time the tax change was adopted. Recipients may rely on information typically prepared in the course of developing the budget (e.g., expected revenues) and/or considering tax changes (e.g., budget scores, revenue notes) to determine the amount of revenue that was collected as a result of the tax increase as long as those estimates are based on reasonable assumptions and do not use dynamic methodologies that incorporate the projected effects of macroeconomic growth, given that macroeconomic growth is accounted for in the counterfactual growth assumptions. Recipients that choose to calculate the actual effect of a tax change on revenue must similarly base their calculations on reasonable estimates that do not use dynamic methodologies. Recipients should apply this adjustment in determining their actual revenue totals at Step 3 in the revenue loss calculation described above.

Previously Adopted Tax Changes

As discussed above, the final rule will not require recipients to reflect the revenue effects of tax increases or decreases adopted prior to the adoption of the final rule. Recipients that adopted a tax change in a previous period will not be required to recalculate the amount of revenue loss as of prior calculation dates or to reflect the fiscal impacts of such tax changes in calculation dates after the effective date of the final rule. However, the final rule will permit recipients to elect to reflect the revenue effects of their tax changes adopted between the beginning of the public health emergency and the adoption of the final rule.²⁹⁹ If a recipient elects to do so, it must do so with respect to all of its tax changes

would outweigh the benefit of having a somewhat larger amount of funds available for government services.

²⁹⁹ The final rule also addresses the possibility that some recipients may have fiscal years ending during the period between January 6, 2022 and April 1, 2022; such recipients' election to reflect tax changes from prior periods would also apply to changes during this period with respect to the calculation date in this period.

adopted between the beginning of the public health emergency and the adoption of the final rule. Treasury intends to revise its reporting requirements to permit recipients to amend their previously reported calculation periods to reflect such changes.

Determination of the Base Year

Under the ARPA and interim final rule, SLFRF funds may be used "for the provision of government services to the extent of the reduction in revenue . . . relative to revenues collected in the most recent full fiscal year" of the recipient. Therefore, the base year for the revenue loss calculation is the most recent full fiscal year prior to the COVID-19 public health emergency.

Public Comment: Treasury received multiple comments asking for flexibility in determining base year revenues. For instance, some commenters asked to use a different base year than the "most recent full fiscal year" prior to the pandemic for calculating revenue loss; others asked to be able to average prior years. Commenters stated that, for various reasons, revenue was artificially low in the last full fiscal year prior to the public health emergency, and, therefore, using revenue in that year as the base year did not accurately reflect expected revenue in a normal year. For example, several Tribes stated that unforeseeable weather events resulted in forced closure of casinos which, in turn, artificially deflated revenues in the base year. Other commenters indicated that one-time anomalies in the timing of tax collection in that year artificially pushed revenue into the following fiscal year. Similarly, a few commenters noted that tax changes that took effect in the middle of the base year may artificially skew the size of the revenue loss experienced by the recipient government.

Treasury Response: Treasury understands that recipients may have experienced events in the base year that led to lower or higher revenues than what they otherwise would have collected. The ARPA provides that revenue loss is to be determined with respect to revenue in the most recent full fiscal year prior to the pandemic, and therefore the final rule maintains its incorporation of the statutory definition.

In calculating revenue loss, recipients may use data on a cash, accrual, or modified accrual basis, provided that recipients are consistent in their choice of methodology throughout the covered period, which might help recipients adjust to certain delays in revenue receipt. Both the standard allowance and elements of the formula (e.g.,

counterfactual growth rate) incorporate generous assumptions to give recipients flexibility and to account for variation among recipients' experiences during the pandemic.

Government Services

The **SUPPLEMENTAL INFORMATION** to the interim final rule provided a non-exhaustive list of examples of services that are government services. The interim final rule also discussed why neither payment of debt service nor replenishing financial reserves constitutes government services, as these expenditures do not provide services but relate to the financing of such services. Similarly, government services under the interim final rule did not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, unless the judgment or settlement required the provision of government services.

Public Comment: Treasury received several comments requesting further clarification regarding the scope of government services, including asking for either a specific definition of government services or that a specific use be expressly deemed to be a government service. Some commenters disagreed with the exclusions from government services in the interim final rule. For instance, many of the comments Treasury received suggested that replenishing reserve funds and at least certain types of debt service should be treated as providing governmental services. Some commenters also suggested that a recipient should be able to use funds for costs incurred before March 3, 2021. Other commenters asked Treasury to maintain the prohibition on using the funds to pay debt service.

Treasury Response: Treasury continues to believe that the lists of activities that either are or are not providing government services are accurate but is clarifying here that, generally speaking, services provided by the recipient governments are "government services" under the interim final rule and final rule, unless Treasury has stated otherwise. Government services include, but are not limited to, maintenance or pay-go funded building³⁰⁰ of infrastructure, including roads; modernization of cybersecurity, including hardware,

software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services.

The aforementioned list of government services is not exclusive. However, recipients should be mindful that other restrictions may apply, including those articulated in the section Restrictions on Use. In the final rule, Treasury is maintaining the limitations on government services included in the interim final rule and has addressed and responded to public commenters on these issues in the section Restrictions on Use.

D. Investments in Water, Sewer, and Broadband Infrastructure

Summary of Interim Final Rule

Under the ARPA, recipients may use funds to make necessary investments in water, sewer, and broadband infrastructure. The interim final rule provided recipients with the ability to use funds for a broad array of uses within these categories.

The interim final rule discussed two general provisions that apply across all water, sewer, and broadband infrastructure investments. First, the interim final rule addressed the meaning of "necessary" investments as meaning those designed to provide an adequate minimum level of service and unlikely to be made using private sources of funds. Second, the interim final rule encouraged recipients to use strong labor standards in water, sewer, and broadband projects, as discussed below.

Necessary Investments

The statute limits investments to those that are necessary. As discussed in more detail below, Treasury determined that the types of water and sewer projects that were authorized under the interim final rule by reference to existing Environmental Protection Agency (EPA) programs would in all cases be necessary investments given the conditions applicable to such EPA programs. Similarly, the interim final rule's definition of eligible broadband projects as those designed to provide a certain standard of service to those households and businesses with limited existing service was based on the statutory requirement that investments in water, sewer, and broadband must be "necessary."

As discussed further below, Treasury has expanded the scope of what is an eligible water and sewer infrastructure project to include additional uses. In

particular, the final rule permits use of SLFRF funds for certain dam and reservoir restoration projects and certain drinking water projects to support population growth. The nature of these additional uses is such that additional factors must be considered in determining whether one of these additional uses is a necessary project. In addition, Treasury recognizes that there may be a need for improvements to broadband beyond those households and businesses with limited existing service as defined in the interim final rule. Treasury has replaced this specific requirement based on an understanding that broadband investments may be necessary for a broader set of reasons.

Given this expansion of what is considered in scope as a water, sewer, or broadband infrastructure project, the final rule provides a further elaboration of Treasury's understanding of the conditions under which an infrastructure project will be considered to be a necessary investment. Treasury considers a necessary investment in infrastructure to be one that is (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which may include a reasonable projection of increased need, whether due to population growth or otherwise and (2) a cost-effective means for meeting that need, taking into account available alternatives. In addition, given that drinking water is a resource that is subject to depletion, in the case of investments in infrastructure that supply drinking water in order to meet projected population growth, the project must be projected to be sustainable over its estimated useful life.

Not included in the list of criteria above is the requirement in the interim final rule that the project be unlikely to be made using private sources of funds. Given that it may be difficult to assess in a particular case what the probability of private investment in a project would be, Treasury has eliminated this standard from the meaning of necessary but still encourages recipients to prioritize projects that would provide the greatest public benefit in their respective jurisdictions.

Strong Labor Standards in Water, Sewer, and Broadband Construction

As stated in the Supplementary Information to the interim final rule, Treasury encourages recipients to carry out investments in water, sewer, or broadband infrastructure in ways that produce high-quality infrastructure, avert disruptive and costly delays, and

³⁰⁰ Pay-go infrastructure funding refers to the practice of funding capital projects with cash-on-hand from taxes, fees, grants, and other sources, rather than with borrowed sums.

promote efficiency.³⁰¹ Treasury encourages recipients to use strong labor standards, including project labor agreements (PLAs) and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also recommends that recipients prioritize in their procurement decisions employers who can demonstrate that their workforce meets high safety and training standards (e.g., professional certification, licensure, and/or robust in-house training), that hire local workers and/or workers from historically underserved communities, and who directly employ their workforce or have policies and practices in place to ensure contractors and subcontractors meet high labor standards. Treasury further encourages recipients to prioritize employers (including contractors and subcontractors) without recent violations of federal and state labor and employment laws.

Treasury believes that such practices will promote effective and efficient delivery of high-quality infrastructure projects and support the economic recovery through strong employment opportunities for workers. Such practices will also reduce the likelihood of potential project challenges like work stoppages or safety accidents, while ensuring a reliable supply of skilled labor and minimizing disruptions, such as those associated with labor disputes or workplace injuries. That will, in turn, promote on-time and on-budget delivery.

Furthermore, among other requirements contained in 2 CFR 200, Appendix II, all contracts made by a recipient or subrecipient in excess of \$100,000 with respect to water, sewer, or broadband infrastructure project that involve employment of mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704,

³⁰¹ Treasury received several comments related to its encouragement of certain wage and labor standards in the Supplementary Information to the interim final rule. Some commenters opposed this encouragement, arguing that even encouragement and reference to PLAs and prevailing wage laws could lead to confusion or make it more likely that recipients would apply labor standards in ways that would discourage competition and raise project costs. Conversely, some commenters supported the encouragement of the use of certain standards, including giving preference to employers that meet certain employment standards (e.g., those that maintain high safety and training standards) because it would support the goal of completing water, sewer, and broadband projects efficiently and safely. As in the interim final rule, this encouragement does not impose a legally binding restriction on recipients.

as supplemented by Department of Labor regulations (29 CFR part 5).

Treasury will continue to seek information from recipients on their workforce plans and water, sewer, and broadband projects undertaken with SLFRF funds. This reporting will support transparency and competition by enhancing available information on the services being provided. Since publication of the interim final rule, Treasury has provided recipients with additional guidance and instructions on the reporting requirements.³⁰²

Environmental and Other Generally Applicable Requirements

Treasury cautions that, as is the case with all projects engaged in using the SLFRF funds, all projects must comply with applicable federal, state, and local law. In the case of infrastructure projects in particular, this includes environmental and permitting laws and regulations. Likewise, as with all capital expenditure projects using SLFRF funds, projects must be undertaken and completed in a manner that is technically sound, meaning that they must meet design and construction methods and use materials that are approved, codified, recognized, fall under standard or acceptable levels of practice, or otherwise are determined to be generally acceptable by the design and construction industry.

1. Water and Sewer Infrastructure

Sections 602(c)(1)(D) and Section 603(c)(1)(D) of the Social Security Act provide that recipients may use the SLFRF funds “to make necessary investments in water [and] sewer . . . infrastructure.” The interim final rule permitted a broad range of necessary investments in projects that improve access to clean drinking water and improve wastewater and stormwater infrastructure systems. As discussed below, after review of comments received on the interim final rule, Treasury has made changes in the final rule to expand the scope of eligible water and sewer projects.

Summary of Interim Final Rule and Final Rule Structure

Background: In the interim final rule, Treasury aligned eligible uses of the SLFRF with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF) administered

by the Environmental Protection Agency (EPA). By referring to these existing programs, with which many recipients are already familiar, Treasury intended to provide flexibility to recipients to respond to the needs of their communities while facilitating recipients’ identification of eligible projects. Furthermore, by aligning SLFRF eligible uses with these existing programs, Treasury could ensure that projects using the SLFRF are limited to “necessary investments.”

Public Comment: Treasury received many comments responding to the water and sewer infrastructure provisions of the interim final rule from state, local, and Tribal governments, industry trade associations, public interest groups, private individuals, and other interested parties. Commenters requested that Treasury provide a wider set of eligible uses for water and sewer infrastructure beyond those uses articulated by the DWSRF and CWSRF, suggesting that Treasury expand the definition of necessary water and sewer infrastructure.

Treasury Response: In response to commenters, Treasury is expanding the eligible use categories for water and sewer infrastructure, discussed in further detail below. Because the interim final rule aligned the definition of necessary water and sewer infrastructure with the eligible uses included in the DWSRF and CWSRF, Treasury is reflecting in the final rule a revised standard for determining a necessary water and sewer infrastructure investment for eligible water and sewer uses beyond those uses that are eligible under the DWSRF and CWSRF.

Interpretation of Necessary Investments and Water and Sewer Infrastructure

Necessary Investments: As discussed above, Treasury considers an investment in infrastructure to be necessary if it is (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which for some eligible project categories may include a reasonable projection of increased need, whether due to population growth or otherwise and (2) a cost-effective means for meeting that need, taking into account available alternatives. In addition, in the case of investments in drinking water service infrastructure to supply drinking water to satisfy a projected increase in population, the project must also be projected to be sustainable over its estimated useful life. As detailed further below, DWSRF and CWSRF eligible projects continue to be presumed to be necessary investments under the final

³⁰² See U.S. Department of the Treasury, *Compliance and Reporting Guidance*, 21 (June 24, 2021), <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>.

rule, with the exception of projects for the rehabilitation of dams and reservoirs, which the EPA has permitted in certain circumstances under the DWSRF and, as discussed below, are addressed separately in the final rule.

In evaluating whether a project would respond to a need to achieve or maintain an adequate minimum level of service, a recipient should consider whether it would meet the needs of the population to be served and would satisfy applicable standards. For example, a drinking water project must be sized such that it provides an adequate volume of water to households and other customers and must meet applicable standards for drinking water quality under the Safe Drinking Water Act (SDWA). Similarly, a centralized wastewater treatment project should be designed to manage updated estimated flow rates and comply with Clean Water Act requirements. These requirements are already reflected in the eligibility criteria of the DWSRF and CWSRF, respectively.

In evaluating whether a project is a cost-effective means of providing the water or sewer service, the recipient should consider the need for the project, the costs and benefits of the project compared to alternatives, and the effectiveness of the project in meeting the identified need. Recipients are not required to conduct a full cost-benefit analysis; however, they should consider and analyze relevant factors. For example, a recipient may not use funds to pursue a costly dam rehabilitation to provide drinking water to a community if it could provide the same service with a significantly smaller investment by drawing water from another available reservoir, assuming that doing so would meet the other requirements of the final rule. As detailed further below, recipients are only required to assess cost-effectiveness of projects for the creation of new drinking water systems, dam and reservoir rehabilitation projects, or projects for the extension of drinking water service to meet population growth needs.

Certain DWSRF eligibilities are already subject to a cost-effectiveness test. Specifically, projects that create new drinking water systems must be a cost-effective solution to addressing the identified problem.³⁰³ The EPA also imposes a cost-effectiveness condition on dam and reservoir rehabilitation projects undertaken pursuant to its class deviation from the DWSRF rule. These projects are particularly expensive and, unlike in the case of other types of eligible projects, there are often

available alternatives to conducting these projects. Projects for the extension of drinking water service to meet population growth needs are also often particularly expensive, and there are often different ways to meet the needs of expanding populations. Treasury will accordingly require that recipients engage in a cost-effectiveness analysis when engaging in projects for the creation of new drinking water systems, dam and reservoir rehabilitation projects, or projects for the extension of drinking water service to meet population growth needs. Other types of eligible water or sewer projects will not be subject to this cost-effectiveness test, including lead line replacement and lead remediation.³⁰⁴

In the case of projects that expand drinking water service infrastructure to satisfy a projected increase in population, the project must also be sustainable, meaning that the project can continue providing the adequate minimum level of service for its estimated useful life, taking into account projected impacts of changes to the climate and other expected demands on the source of water. For example, a reservoir rehabilitation project may not be pursued if the reservoir will no longer be able to provide an adequate source of drinking water before the end of the estimated useful life of the improvements to the reservoir. In areas currently impacted by drought or where drought conditions are expected to be more frequent or more severe in the future, sources of drinking water may be diminished more quickly than in prior periods. In considering how much of a source of water will be available in the future for the drinking water project, a recipient must consider that a source of water may be drawn upon or otherwise used for other current and expected uses, including use by fish and other wildlife.

The final rule applies this sustainability condition to projects that expand drinking water service infrastructure to satisfy a projected increase in population but not to other drinking water projects. When a new source of water is required to remedy an existing threat to public health, as in the case of source projects eligible under the DWSRF, sustainability should be a consideration, but in some cases, the need to replace a contaminated source may mean that a less sustainable choice

may be made. When faced with such an issue, such as in the case of a contaminated well system, a project to replace the contaminated source can be said to be “necessary” even if the replaced source is not sustainable over the long term. Expediency may dictate that a shorter-term solution is pursued if it is cost-effective and will prevent health issues while a longer-term solution can be found. In contrast, an expansion to accommodate population growth cannot be said to be necessary if it is not sustainable over its estimated useful life.

Not included in the list of criteria above is the requirement in the interim final rule that the project be unlikely to be made using private sources of funds. Given that it may be difficult to assess in a particular case what the probability of private investment in a project would be, Treasury has eliminated this standard from the meaning of necessary but nevertheless encourages recipients to apply funds to projects that would provide the greatest public benefit.

Water and Sewer Infrastructure: As stated above, Congress provided that SLFRF funds are available for “necessary water, sewer, and broadband infrastructure.” Treasury interprets the reference to water and sewer uses consistent with the inclusion of broadband uses. Water, sewer, and broadband infrastructure all involve the provision of essential services to residents, businesses, and other consumers. As the pandemic has made clear, access to broadband has itself become essential for individuals and businesses to participate in education, commerce, work, and civic matters and to receive health care and social services.

Water and sewer services provided broadly to the public as essential services include the provision of drinking water and the removal, management, and treatment of wastewater and stormwater.³⁰⁵ Although governments are engaged in other infrastructure related to water, including irrigation projects, transportation projects, and recreation projects, such projects go beyond the scope of what is provided to all residents as an essential service. Provision of drinking water and removal, management, and treatment of

³⁰⁵ In many jurisdictions, stormwater flows into the sewer system rather than into a separate stormwater system. The separate inclusion of “water” and “sewer” infrastructure also makes clear that “water” in this context cannot refer to all uses relevant to water. Given that sewer systems carry wastewater (and often stormwater), if water infrastructure were to refer to all water-related infrastructure in this context, it would make the inclusion of sewer infrastructure redundant.

³⁰³ See 40 CFR 35.3520(b)(2)(vi).

³⁰⁴ In such cases, either the projects are presumptively cost-effective (e.g., lead projects would always be considered cost-effective given the costs imposed by lead poisoning) or a cost-effectiveness test is less relevant given the lack of available alternatives or the relatively low cost of the project.

wastewater and stormwater are the typical responsibilities of “water and sewer” authorities throughout the country, and there is a tremendous need for improvements to the ability of state, local, and Tribal governments to provide such services, including to address the consequences of deferred maintenance and additional resiliency needed to adapt to changes to the climate.³⁰⁶

Although the meaning of water and sewer infrastructure for purposes of sections 602(c)(1)(D) and 603(c)(1)(D) of the Social Security Act does not include all water-related uses, Treasury has made clear in this final rule that investments to infrastructure include a wide variety of projects. Treasury interprets the word “infrastructure” in this context broadly to mean the underlying framework or system for achieving the given public purpose, whether it be provision of drinking water or management of wastewater or stormwater.³⁰⁷ As discussed below, this can include not just storm drains and culverts for the management of stormwater, for example, but also bioretention basins and rain barrels implemented across a watershed, including on both public and private property, that together reduce the amount of runoff that needs to be managed by traditional infrastructure.

Further, Treasury understands that investments in infrastructure include

improvements that increase the capacity of existing infrastructure and extend the useful life of existing infrastructure. Accordingly, water and sewer infrastructure investment projects include those that conserve water, thereby reducing pressure on infrastructure for the provision of drinking water, and that recycle wastewater and stormwater, thereby reducing pressure on the infrastructure for treating and managing wastewater and stormwater.

As with other infrastructure projects and capital expenditure projects that are permitted as responses to the public health emergency and its negative economic impacts, costs for planning and design and associated pre-project costs are eligible uses of SLFRF funds. Costs for the acquisition of land are also eligible, but only if needed for the purposes of locating eligible project components. Recipients should ensure that they have the technical, financial, and managerial capability to ensure compliance with the requirements of the SDWA, or that the assistance will ensure compliance and the owners or operators of the systems will undertake feasible and appropriate changes in operations to ensure compliance over the long-term.

Drinking Water State Revolving Fund and Clean Water State Revolving Fund

Background: As stated above, in the interim final rule, Treasury included eligible uses of the DWSRF and the CWSRF as eligible uses of the SLFRF in the water and sewer infrastructure category. By providing that projects eligible under the DWSRF and the CWSRF are also eligible uses of SLFRF funds, the interim final rule permitted a broad range of projects that improve drinking water infrastructure, such as building or upgrading facilities and transmission, distribution, and storage systems, including replacement of lead service lines. With respect to clean water and wastewater infrastructure, the interim final rule provided that recipients may use SLFRF funds to construct publicly owned treatment infrastructure, manage and treat stormwater or subsurface drainage water, and facilitate water reuse, among other uses. Consistent with the DWSRF and the CWSRF, the interim final rule provided that SLFRF funds may be used for cybersecurity needs to protect water or sewer infrastructure, such as developing effective cybersecurity practices and measures at drinking water systems and publicly owned treatment works.

Use of DWSRF and CWSRF to Support Climate Change Adaptations. Many of

the types of projects eligible under either the DWSRF or CWSRF also support efforts to address climate change. For example, by taking steps to manage potential sources of pollution and preventing these sources from reaching sources of drinking water, projects eligible under the DWSRF and CWSRF may reduce energy required to treat drinking water. Similarly, projects eligible under the DWSRF and CWSRF include measures to conserve and reuse water, for example through projects to reuse or recycle wastewater, stormwater, or subsurface drainage water. Treasury encourages recipients to consider green infrastructure investments and projects to improve resilience to the effects of climate change. For example, more frequent and extreme precipitation events combined with construction and development trends have led to increased instances of stormwater runoff, water pollution, and flooding. Green infrastructure projects that support stormwater system resiliency could include bioretention basins that provide water storage and filtration benefits, and green streets, where vegetation, soil, and engineered systems are combined to direct and filter rainwater from impervious surfaces. In cases of a natural disaster, recipients may also use SLFRF funds for water infrastructure to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought.

Public Comment: Many commenters expressed support for the interim final rule’s alignment of the use of funds for water and sewer infrastructure under the SLFRF with the project categories provided through the EPA’s DWSRF and CWSRF programs.

Many commenters also provided recommendations about the specific types of water infrastructure projects that should be eligible under the final rule. In many of these cases, commenters recommended that Treasury include project types that are already eligible under the DWSRF and CWSRF and thus eligible under the interim final rule and final rule. For example, several commenters requested that aquifer recharge projects, or other groundwater protection and restoration projects, be included as eligible uses of SLFRF when certain aquifer recharge projects that (1) implement a nonpoint source pollution management program³⁰⁸ or (2) constitute reuse of

³⁰⁶ In addition, Treasury interprets the eligible uses of SLFRF funds against the background of the Coronavirus Relief Fund (CRF), for which the SLFRF funds are, in part, a successor. CRF recipients expressed great interest in using the CRF to pursue water infrastructure projects, including provision of drinking water and internal plumbing on Tribal lands and in Alaskan villages, and broadband projects throughout the country; Treasury permitted these projects given the connection to the public health emergency (see Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR 4182, 4190, 4192 (Jan. 15, 2021)), but the short deadline for use of funds made it difficult to use CRF funds in this way. Congress’ inclusion of the water, sewer, and broadband clause in the ARPA, along with the SLFRF funds’ longer eligible use date, is responsive to this unmet need. As discussed below, Congress in the Infrastructure Investment and Jobs Act amended sections 602(c) and 603(c) of the Social Security Act to add a new paragraph as sections 602(c)(4) and 603(c)(5), respectively, providing that SLFRF funds may be used to meet non-federal matching requirements of any authorized Bureau of Reclamation project. This authority was added as a separately enumerated eligible use regardless of whether the underlying project would be an eligible use of SLFRF funds under the water and sewer infrastructure eligible use category.

³⁰⁷ See, e.g., section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362), defining “green infrastructure” as “the range of measures that use plant or soil systems, permeable pavement or other permeable surfaces or substrates, stormwater harvest and reuse, or landscaping to store, infiltrate, or evapotranspire stormwater and reduce flows to sewer systems or to surface waters.”

³⁰⁸ Specifically, this would include desalination projects that decrease the burden on aquifers where there is causal relationship between aquifer withdrawals and saltwater intrusion if the projects implement a nonpoint source pollution

Continued

wastewater, stormwater, or subsurface drainage water are in fact eligible uses under the CWSRF. Furthermore, under the DWSRF, eligible projects include certain aquifer storage and recovery systems for water storage.

Treasury Response: Eligible projects articulated in the DWSRF and CWSRF continue to be eligible uses of SLFRF funds under the final rule. Recognizing that recipients have faced challenges interpreting eligible use categories under the interim final rule or cross-referencing EPA program materials to interpret eligible project types, Treasury is including in this Supplementary Information additional information on the types of projects eligible under the DWSRF and CWSRF. Treasury emphasizes that this further clarification does not represent a change in eligibility. Treasury encourages recipients to reference EPA handbooks for the DWSRF and CWSRF, which provide further information and detail about the types of projects eligible under those programs and thus under the final rule.

Eligible projects under the DWSRF. Eligibilities under the DWSRF, the interim final rule, and the final rule include projects that address present or prevent future violations of health-based drinking water standards. These include projects needed to maintain compliance with existing national primary drinking water regulations for contaminants with acute and chronic health effects. Projects to replace aging infrastructure are also eligible uses if they are needed to maintain compliance or further the public health protection objectives of section 1452 of the SDWA.³⁰⁹ The following project categories are eligible under the DWSRF, were eligible under the interim final rule, and continue to be eligible under the final rule:

(i) *Treatment projects*, including installation or upgrade of facilities to

management program under section 319 of the Clean Water Act. This could include projects in which desalinated seawater is injected into the aquifer to mitigate or prevent salt water intrusion, as well as projects in which brackish water is removed from an aquifer, desalinated, and returned to the aquifer.

³⁰⁹ See 42 U.S.C. 300j–12(a)(2)(B) (limiting financial assistance used by a public water system to expenditures (including expenditures for planning, design, siting, and associated preconstruction activities, or for replacing or rehabilitating aging treatment, storage, or distribution facilities of public water systems, but not including monitoring, operation, and maintenance expenditures of a type or category which the Administrator of the EPA has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under 42 U.S.C. 300g–1 or otherwise significantly further the health protection objectives of the SDWA); See also 40 CFR 35.3520(b).

improve the quality of drinking water to comply with primary or secondary standards and point of entry or central treatment under section 1401(4)(B)(i)(III) of the SDWA.

(ii) *Transmission and distribution projects*, including installation or replacement of transmission and distribution pipes to improve water pressure to safe levels or to prevent contamination caused by leaks or breaks in the pipes.

(iii) *Source projects*, including rehabilitation of wells or development of eligible sources to replace contaminated sources.

(iv) *Storage projects*, including installation or upgrade of eligible storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering a public water system.

(v) *Consolidation projects*, including projects needed to consolidate water supplies where, for example, a supply has become contaminated or a system is unable to maintain compliance for technical, financial, or managerial reasons.

(vi) *Creation of new systems*, including those that, upon completion, will create a community water system to address existing public health problems with serious risks caused by unsafe drinking water provided by individual wells or surface water sources. Eligible projects are also those that create a new regional community water system by consolidating existing systems that have technical, financial, or managerial difficulties. Projects to address existing public health problems associated with individual wells or surface water sources must be limited in scope to the specific geographic area affected by contamination. Projects that create new regional community water systems by consolidating existing systems must be limited in scope to the service area of the systems being consolidated.

Ineligible projects under the DWSRF. Federally-owned public water systems and for-profit noncommunity water systems are not eligible to receive DWSRF funds and therefore SLFRF funds.³¹⁰ The acquisition of water rights, laboratory fees for routine compliance monitoring, and operation and maintenance expenses are not costs associated with investments in infrastructure and thus would not be eligible under the final rule.³¹¹ Projects needed primarily to serve future population growth are also ineligible under the DWSRF; the treatment of such projects under the final rule is discussed

separately below under “Expansion of Drinking Water Service.” Projects eligible under the DWSRF must be sized only to accommodate a reasonable amount of population growth expected to occur over the useful life of the project.

Eligible projects under the CWSRF.

The final rule continues to allow the use of SLFRF funds for projects eligible under the CWSRF, consistent with the interim final rule. Under the CWSRF, a project must meet the criteria of one of the following CWSRF eligibilities to be eligible for assistance. Section 603(c) of the Clean Water Act (CWA)³¹² provides that the CWSRF can provide assistance:

(i) to any municipality, intermunicipal, interstate, or state agency for construction of publicly owned treatment works (as defined in section 212 of the CWA);³¹³

(ii) for the implementation of a management program established under section 319 of the CWA;³¹⁴

(iii) for the development and implementation of a conservation and management plan under section 320 of the CWA;³¹⁵

(iv) for the construction, repair, or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage. Eligible projects include, but are not limited to, the construction of new decentralized systems (e.g., individual onsite systems and cluster systems), as well as the upgrade, repair, or replacement of existing systems.

(v) for measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water. Publicly and privately owned, permitted and unpermitted projects that manage, reduce, treat, or recapture stormwater or subsurface drainage water are eligible. For example, projects that are specifically required by a Municipal Separate Storm Sewer System (MS4) permit are eligible, regardless of ownership. Projects may include, but are not limited to green roofs, bioretention basins, roadside plantings, porous pavement, and rainwater harvesting.

(vi) to any municipality, intermunicipal, interstate, or state agency for measures to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse. Eligible projects include, but are not limited to, the installation, replacement, or upgrade of water meters; plumbing fixture retrofits or replacement; and gray water recycling. Water audits and water conservation plans are also eligible.

³¹² 33 U.S.C. 1383(c).

³¹³ 33 U.S.C. 1292.

³¹⁴ 33 U.S.C. 1329.

³¹⁵ 33 U.S.C. 1330.

³¹⁰ See 40 CFR 35.3520(d)(1).

³¹¹ See *id.* at § 35.3520(e)(2)–(4).

Equipment to reuse effluent (e.g., gray water, condensate, and wastewater effluent reuse systems) is eligible.

(vii) for the development and implementation of watershed projects meeting the criteria set forth in section 122 of the CWA.³¹⁶ Projects that develop or implement a watershed pilot project related to at least one of the six areas identified in section 122 of the CWA are eligible: Watershed management of wet weather discharges, stormwater best management practices, watershed partnerships, integrated water resource planning, municipality-wide stormwater management planning, or increased resilience of treatment works.

(viii) to any municipality, intermunicipal, interstate, or state agency for measures to reduce the energy consumption needs for publicly owned treatment works. Projects may include, but are not limited to, the installation of energy efficient lighting, HVAC, process equipment, and electronic equipment and systems at publicly owned treatment works. Planning activities, such as energy audits and optimization studies are also eligible.

(ix) for reusing or recycling wastewater, stormwater, or subsurface drainage water. Projects involving the reuse or recycling of wastewater, stormwater, or subsurface drainage water are eligible. This includes, as part of a reuse project, the purchase and installation of treatment equipment sufficient to meet reuse standards. Other eligible projects include, but are not limited to, distribution systems to support effluent reuse, including piping the effluent on the property of a private consumer, recharge transmission lines, injection wells, and equipment to reuse effluent (e.g., gray water, condensate, and wastewater effluent reuse systems).

(x) for measures to increase the security of publicly owned treatment works. Security measures for publicly owned treatment works might include, but are not limited to, vulnerability assessments, contingency/emergency response plans, fencing, security cameras/lighting, motion detectors, redundancy (systems and power), secure chemical and fuel storage, laboratory equipment, securing large sanitary sewers, and tamper-proof manholes. The CWSRF cannot fund operations and maintenance activities. Therefore, maintaining a human presence (i.e., security guards) and monitoring activities are not eligible.

Other Clarifications of DSWRF and CWSRF Eligible Project Categories

Public Comment: Several commenters requested that Treasury provide clarification of the requirements associated with use of SLFRF funds for necessary investments in water and sewer infrastructure.

Treasury Response: After release of the interim final rule, Treasury clarified in further guidance that, while recipients must ensure that water and sewer infrastructure projects pursued are eligible under the final rule, recipients are not required to obtain project pre-approval from Treasury or any other federal agency when using SLFRF funds for necessary water and sewer infrastructure projects unless otherwise required by federal law. For projects that are being pursued under the eligibility categories provided through the DWSRF or CWSRF programs, project eligibilities are based on federal project categories and definitions for the programs and not on each state's eligibility or definitions. While reference in the final rule to the DWSRF, CWSRF, or other federal water programs is provided to assist recipients in understanding the types of water and sewer infrastructure projects eligible to be funded with SLFRF, recipients do not need to apply for funding from the applicable state programs or through any federal water program. Similarly, besides eligible project categories, the final rule does not incorporate other program requirements or guidance that attach to the DWSRF, CWSRF, or other federal water programs. However, as noted above, recipients should be aware of other federal or state laws or regulations that may apply to construction projects or water and sewer projects, independent of SLFRF funding conditions, and that may require pre-approval from another federal or state agency.

Expanded Eligible Uses for Water and Sewer Infrastructure

Summary

Public Comment: Many commenters requested broader flexibility in the use of SLFRF funds for water and sewer infrastructure projects that are not eligible under the DWSRF and CWSRF. These commenters argued that localities are best situated to identify the highest-need water and sewer projects in their communities. Several Tribal government commenters noted that Tribes have different water and sewer infrastructure needs than states and localities and that additional flexibility in the use of funds would lift current

barriers to improving infrastructure on Tribal lands.

To achieve additional flexibility, commenters suggested a range of options for broadening the eligible use of SLFRF funds for necessary water and sewer infrastructure. For example, several commenters suggested Treasury broaden the eligibilities provided under the interim final rule to include project types eligible under other federal water and sewer programs.

Treasury Response: Treasury agrees that additional flexibility for use of SLFRF funds is warranted and is providing expanded eligibilities as described below, several of which address specific areas of need outlined by Tribal and rural communities.

As discussed below, Treasury has incorporated into the final rule projects that are eligible under certain programs established by the EPA under the Water Infrastructure Improvements for the Nation Act (WIIN Act). Other water-related grant programs cited by commenters include projects that are otherwise already covered by the final rule, for example because they are covered as eligible under the DWSRF or the CWSRF, or projects that are ineligible under the final rule because they are beyond the scope of the meaning of water and sewer projects for purposes of ARPA. To minimize the need for recipients of SLFRF funds to cross reference eligibilities across multiple federal programs, which may exacerbate current challenges to understanding eligibility under SLFRF, Treasury is providing detailed information related to expanded eligibilities within the text of this **SUPPLEMENTARY INFORMATION** for the final rule.

Stormwater Infrastructure

Public Comment: Several commenters requested that additional stormwater infrastructure projects be included as eligible uses of SLFRF funds under the final rule. Commenters suggested that culvert repair and resizing and replacement of storm sewers is necessary to address increased rainfall brought about by a changing climate. Other commenters noted that rural communities that do not manage their own sewer systems may rely on this type of water infrastructure.

Treasury Response: The CWSRF includes a broad range of stormwater infrastructure projects, and as such these projects were eligible under the interim final rule and continue to be eligible under the final rule. These projects include gray infrastructure projects, such as traditional pipe, storage, and treatment systems. Projects

³¹⁶ 33 U.S.C. 1274.

that manage, reduce, treat, or recapture stormwater or subsurface drainage water are also eligible, including real-time control systems for combined sewer overflow management, and sediment control. Culvert infrastructure projects are eligible under the CWSRF if they (1) implement a nonpoint source management plan, (2) implement National Estuary Program Comprehensive Conservation and Management Plan, or (3) implement a stormwater management plan with the goal of providing a water quality benefit. Stormwater projects under the CWSRF also encompass a number of eligible green infrastructure categories, such as green roofs, green streets, and green walls, rainwater harvesting collection, storage, management, and distribution systems, real-time control systems for harvested rainwater, infiltration basins, constructed wetlands, including surface flow and subsurface flow (e.g., gravel) wetlands, bioretention/bioswales (e.g., bioretention basins, tree boxes), permeable pavement, wetland, riparian, or shoreline creation, protection, and restoration, establishment or restoration of urban tree canopy, and replacement of gray infrastructure with green infrastructure including purchase and demolition costs.

In addition to the eligible uses under the CWSRF, Treasury is expanding the eligible uses under the final rule to include stormwater system infrastructure projects regardless of whether there is an expected water quality benefit from the project. Treasury anticipates that this eligible use will allow recipients to manage increased volumes of stormwater as a result of changes to the climate. For example, the final rule now permits the use of SLFRF funds for the repair, replacement, or removal of culverts or other road-stream crossing infrastructure to the extent the purpose of the project is to manage stormwater. In addition, Treasury understands that the repair, replacement, or removal of culverts may necessitate the repair or upgrade of roads. As noted in guidance issued after the interim final rule, recipients may use SLFRF funds for road repairs and upgrades that interact directly with an eligible stormwater infrastructure project. All stormwater infrastructure projects undertaken should incorporate updated design features and current best practices.

Private Wells and Septic Systems

Public Comment: Several commenters requested that the scope of eligible projects be expanded to allow for the expenditure of SLFRF funds on private wells or septic systems. Commenters

noted that wells may be contaminated with dangerous substances, including arsenic, lead, radon, and PFAS (per- and polyfluoroalkyl). Commenters also suggested that, because rural and underserved communities are often reliant on these infrastructure types for their drinking water or wastewater needs, lack of appropriate funding to maintain these systems could present health and safety issues that disproportionately affect certain communities.

Treasury Response: Consistent with the CWSRF, the installation, repair, or replacement of private septic units continues to be an eligible use of SLFRF funds under the final rule. For example, eligible projects include those that address groundwater contamination resulting from faulty septic units and those that would connect failing septic systems to centralized wastewater treatment. Consistent with the DWSRF, connecting homes served by a private well to a public water system is an eligible use of SLFRF funds.

In addition, Treasury has provided in the final rule that recipients may use SLFRF funds for an expanded set of infrastructure projects that improve access to and provision of safe drinking water for individuals served by residential wells. Eligible projects under this category include rehabilitation of private wells, testing initiatives to identify contaminants in wells, and treatment activities and remediation strategies that address contamination.

Remediating Lead in Water

Public Comment: Several commenters emphasized the need to fully remediate lead contamination, especially in structures that serve the public or populations like children that are particularly vulnerable to the effects of lead exposure, such as schools and daycares. Many American households and an estimated 400,000 schools and childcare centers currently lack safe drinking water.³¹⁷

Treasury Response: The replacement of lead service lines, up to premise plumbing, is an eligible use under the DWSRF and continues to be an eligible use of SLFRF funds. Such projects are eligible regardless of the pipe material of the replacement lines and ownership of the property on which the service line is located. Lead service line replacement projects can serve households, schools, or any other

entities. Given the lifelong impacts of lead exposure for children and the widespread prevalence of lead service lines, Treasury encourages recipients to consider projects to replace lead service lines.

In addition, Treasury is providing in the final rule that for lead service line replacement projects, recipients must replace the full length of the service line, and not just a partial portion of the service line. Some water utilities, when replacing service lines, will only replace the “public portion” of the service line and physically slice through the lead service line at the public/private line. This action can result in elevated drinking water lead levels for some period of time after replacement, suggesting the potential for harm, rather than benefit during that time period.³¹⁸ Requiring replacement of the full length of the service line is also consistent with the requirements of the EPA’s Lead and Copper Rule Revisions for water systems that have an action level exceedance for lead³¹⁹ and certain other water systems.³²⁰

Treasury is expanding eligible uses of SLFRF funds to include infrastructure projects eligible under EPA grant programs authorized by the WIIN Act.³²¹ Eligible projects under these programs include the installation or re-optimization of corrosion control treatment, replacing lead service lines, replacing galvanized pipes downstream of a lead service line (other than lead pipes within a home as discussed below), and maintaining an inventory of the drinking water system’s service lines. Water quality testing, compliance monitoring, and remediation activities in schools and other childcare facilities, as well as activities necessary to respond to a contaminant, are eligible uses of SLFRF funds.³²² Remediation

³¹⁸ See EPA Science Advisory Board, Evaluation of the Effectiveness of Partial Lead Service Line Replacements, (September 2011), <https://www.epa.gov/sdwa/science-advisory-board-evaluation-effectiveness-partial-lead-service-line-replacements> (advising against partial lead service line replacement).

³¹⁹ Environmental Protection Agency, *supra* note 188.

³²⁰ Environmental Protection Agency, National Primary Drinking Water Regulations: Lead and Copper Rule Revisions, 86 FR 4198, 40 CFR 141.84, and preamble at 4215, January 15, 2021, <https://www.federalregister.gov/d/2020-28691>; scheduled to become effective December 16, 2021, Environmental Protection Agency, 86 FR 31939, <https://www.federalregister.gov/d/2021-12600>.

³²¹ Eligible uses of funds include those eligible under the Small, Underserved, and Disadvantaged Communities Grant (Section 2104), Reduction in Lead Exposure via Drinking Water Grant Program (Section 2105) and Lead Testing in School and Child Care Program Drinking Water Grant Program (Section 2107).

³²² Such testing and remediation programs would be an eligible use of SLFRF funds given that they

³¹⁷ The White House, Updated Fact Sheet: Bipartisan Infrastructure Investment and Jobs Act (August 2, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/02/updated-fact-sheet-bipartisan-infrastructure-investment-and-jobs-act/>.

activities such as replacement of faucets, internal plumbing, and fixtures in schools and childcare facilities are also an eligible use of SLFRF funds.

Consistent with the EPA programs, replacement of lead pipes within a home is not eligible under the final rule because the vast majority of lead contamination cases can be solved by replacing lead service lines (including on public and private property) and faucets and fixtures themselves. As such, replacement of lead pipes within a home would not be considered a cost-effective means for achieving the desired level of service and thus would not be a "necessary" investment. The provision of bottled water is also not an eligible use of SLFRF funds under this eligible use category, as it is not an investment in infrastructure. However, bottled water in areas with an action level exceedance for lead in water may be an eligible use of SLFRF funds under a separate eligible use category for "remediation of lead paint and other lead hazards;" see Assistance to Households in Public Health and Negative Economic Impacts.

Water filtration systems are eligible under the EPA grant programs and the final rule as long as they are installed as a permanent part of a facility's system and not intended for temporary use. Conducting remediation, follow-up monitoring, and conducting public education and outreach about the availability of infrastructure programs, such as water testing and fixture replacement programs funded with SLFRF funds or otherwise, are also eligible projects. Finally, recipients should note that "remediation of lead paint and other lead hazards" is a separate eligible use category and a broader range of programs and services may be eligible under that section, including investments that are not infrastructure; see the eligible use for "remediation of lead paint and other lead hazards" in section Assistance to Households in Public Health and Negative Economic Impacts.

Dams and Reservoirs

Public Comment: Many commenters requested that Treasury broaden eligibilities to include dams and reservoirs, infrastructure that commenters noted may in its current state be unsafe and could put surrounding communities at risk. Some

would help a recipient determine whether an infrastructure project, such as a lead line replacement, is necessary. In contrast, as mentioned above, the costs of continual testing that is part of a drinking water or wastewater facilities' operating costs would not be considered part of an infrastructure project.

commenters argued that dams and reservoirs play an important role in providing municipal water supply and water to irrigate farmland, including in areas impacted by recent droughts. Other commenters noted that a large number of dams are currently classified as high-hazard structures, the failure of which would have severe consequences for public safety and the local environment. With respect to reservoirs, commenters articulated that changing climate conditions have necessitated upgrades to reservoir infrastructure to ensure existing facilities can meet the local water needs of a community. Commenters noted that communities facing drought may also need to adjust or enhance reservoirs to maintain adequate water supply.

In contrast, several commenters suggested that infrastructure projects related to dams and reservoirs should not be considered eligible uses of SLFRF funds. These commenters noted that alternate sources of funding exist for dam and reservoir projects and that dams and reservoir infrastructure could result in negative impacts to Tribal communities and negative environmental impacts, including harm to wildlife habitats.

Treasury Response: Treasury understands that many dams and reservoirs in need of rehabilitation are dams and reservoirs whose primary purpose is to provide drinking water. As discussed above, SLFRF funds are available for projects related to the provision of drinking water. Moreover, since issuance of the interim final rule, the EPA has adopted a class deviation from the DWSRF regulations that permits such dam and reservoir rehabilitation projects in certain circumstances.³²³ In approving this class deviation, the EPA recognized that many dams used for drinking water are aging and deteriorating and pose a public health risk to communities; that current dam conditions do not meet state safety standards; and that reservoir capacity has diminished and requires dredging to meet drinking water needs of the existing population.

Treasury's final rule provides that funds may be used for rehabilitation of dams and reservoirs if the primary purpose of the dam or reservoir is for drinking water supply and the rehabilitation project is necessary for continued provision of drinking water

supply. In considering whether a dam or reservoir project is necessary for the provision of drinking water supply, a recipient may take into consideration future population growth in certain circumstances, as discussed under "Expansion of Drinking Water Service Infrastructure" below, but the project must in any case be designed to support no more than a reasonable level of projected increased need. The recipient must also determine that the project is cost-effective, *i.e.*, that there are not significantly superior alternatives that are available, taking into consideration the relative costs and benefits of the project as compared to those alternatives.

This change to the final rule would permit a wide variety of projects.³²⁴ The limitation in the final rule to rehabilitation of existing dams and reservoirs reflects the scope of the EPA class deviation referenced above and Treasury's understanding of the significant need for investments in rehabilitation to address deterioration of dams and the diminished capacity of reservoirs. Further, Treasury expects that in many cases it would be considerably more difficult to demonstrate that construction of a new dam or reservoir would be necessary for the purpose of the provision of drinking water than is the case for rehabilitation of dams and reservoirs already serving that purpose for a particular population, particularly given opportunities to meet drinking water needs through water reuse and conservation efforts. For these reasons, and given that the relatively short period of availability of the funds makes new dam and reservoir construction with these funds less likely, Treasury has limited the scope of the final rule to dam and reservoir rehabilitation projects.

As discussed above, Treasury has determined that ARPA does not authorize the use of SLFRF funds for uses other than the provision of drinking water and the management of wastewater and storm water. As such, the final rule does not include infrastructure projects related to dams and reservoirs as eligible uses of SLFRF funds unless they meet the conditions discussed above.

³²⁴ As noted in the EPA's class deviation, examples of dam rehabilitation projects include spillway reconstruction or repair; dam resurfacing, patching, or other structural repairs, including minimal height increases if needed to maintain the structural integrity of the dam; grouting for seepage control or liquefaction remediation (*e.g.*, epoxy resin, asphalt, or rock); repair or replacement of drainage systems; and seismic stability efforts (*e.g.*, anchors). Examples of reservoir rehabilitation projects include sedimentation dredging and reservoir lining.

³²³ See EPA, Approval of Class Exception from the Regulatory Prohibitions on the Use of Drinking Water State Revolving Fund for Rehabilitation of Dams and Reservoirs (July 14, 2021), available at https://www.epa.gov/system/files/documents/2021-07/dwsrf-class-deviation-dam-reservoir-rehab-2021_0.pdf.

Public Comment: Several commenters requested that the removal of dams and associated habitat restoration should be eligible uses of SLFRF funds, noting that in some cases, dam removal will improve water quality while removing long-term operational expenses for the recipient.

Treasury Response: Dam removal projects and associated stream and habitat restoration projects are eligible uses of the CWSRF and continue to be eligible under the final rule when the removal implements either a nonpoint source management program plan or a National Estuary Program Comprehensive Conservation and Management Plan or when the removal will provide a water quality benefit. Habitat restoration projects more generally may also be eligible under the CWSRF and the final rule if they constitute a form of stormwater infrastructure.

Expansion of Drinking Water Service Infrastructure

Public Comment: Commenters asked for the ability to use funds for drinking water projects for the purpose of meeting needs arising from future growth, which, given the restrictions applicable to the DWSRF, was not permitted under the interim final rule.

Treasury Response: As provided for in the SDWA, the DWSRF is meant to serve the public health needs of the existing population. The EPA regulation implementing the DWSRF program provides that projects needed primarily to serve future population growth are not eligible uses of the DWSRF. A project that is intended primarily to address public health or regulatory compliance issues for the existing service population may be sized for a “reasonable” amount of population growth over the useful life of the project.³²⁵

ARPA does not include the same limitation as the SDWA. Accordingly, the final rule provides that recipients may use SLFRF funds for projects that are needed to support increased population in certain cases. ARPA limits projects to those investments that are “necessary.” As discussed above, Treasury interprets this to mean that the investments must be (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which for some eligible project categories may include a reasonable projection of increased need, whether due to population growth or otherwise and (2) a cost-effective means for meeting that need, taking into account

available alternatives. For this eligible use category, expansion of drinking water service infrastructure, the project must also be projected to be sustainable over its estimated useful life.

Investments must be determined to be necessary when they are initiated. Accordingly, Treasury is clarifying in the final rule that the need identified for a water or sewer project may include a need arising from reasonable expectations of future population growth, provided that it is necessary at the time the investment is initiated for the recipient to make the investment to meet this growth. For example, a recipient expecting increased population during the period of performance may install a drinking water treatment plant to meet that growth. In addition, a recipient expecting increased population growth outside the period of performance may install the treatment plant if the planning and construction timeline for the project would require work to begin during the performance period in order to meet the expected population growth. A recipient may install transmission lines as part of the development of new housing occurring during the period of performance. In this case, the housing development must be in progress; a recipient may not use the SLFRF funds to install a water main, for example, to an undeveloped tract in the expectation that in the future that tract will be developed with housing, because there would be no need for that investment to be made at the time it is initiated.

For the reasons discussed above, if a project is undertaken to address expected growth in population, the project must also be sustainable, meaning that the project can continue providing the adequate minimum level of service for its estimated useful life, taking into account projected impacts of changes to the climate and other expected demands on the source of water. In considering how much of a source of water will be available in the future for the drinking water project, a recipient must consider that a source of water may be drawn upon or otherwise used for other current and expected uses, including use by fish and other wildlife. A drinking water project that is designed to address a growing population cannot be considered a necessary investment if the source of drinking water will cease to be available to meet the population’s needs before the end of the estimated useful life of the project. In such a case, a recipient should consider alternative sources for drinking water. See “Interpretation of Necessary Investments and Water and

Sewer Infrastructure” above for more information.

Non-Federal Matching Requirements for Authorized Bureau of Reclamation Projects

The Infrastructure Investment and Jobs Act amends sections 602(c) and 603(c) of the Social Security Act to add an additional eligible use of SLFRF funds, providing that SLFRF funds “may be used for purposes of satisfying any non-Federal matching requirement required for [an authorized Bureau of Reclamation project].”³²⁶

This amendment permits the use of SLFRF funds to meet non-federal matching requirements of any authorized Bureau of Reclamation project, regardless of whether the underlying project would be an eligible use of SLFRF funds under the water and sewer infrastructure eligible use category. These amendments are effective as of March 11, 2021, as if included in the ARPA at the time of its enactment.³²⁷ Treasury will provide further guidance to recipients on the scope of Bureau of Reclamation water projects and expenses covered by this provision.

Floodplain Management and Flood Mitigation Projects

Public Comment: Several commenters requested that projects to address floodwater, including floodplain management and flood mitigation projects, be included as an eligible use of SLFRF funds. Within this category of floodplain management and flood mitigation infrastructure, several commenters requested that the installation of levees, flood walls, sea walls, elevation projects, dredging, or nature-based flood mitigation projects be included as eligible projects.

Treasury Response: Treasury notes that some floodplain management and flood mitigation infrastructure projects, including green infrastructure designed to protect treatment works from flood waters and flood impact are currently eligible under the CWSRF and therefore continue to be eligible under the final rule.

Treasury has not included floodplain management and flood mitigation projects more generally as eligible under the final rule. Although floodplain management and flood mitigation are functions of many state and local governments, they are not the sort of generally-provided essential services included within the meaning of water

³²⁵ See 40 CFR 35.3520(e)(5).

³²⁶ See Public Law 117–58, 40909(a)–(b) (Nov. 15, 2021).

³²⁷ See Public Law 117–58 § 40909(c).

and sewer projects under the ARPA, as discussed above.

Irrigation

Public Comment: Some commenters requested that irrigation projects be an eligible use because they consider such projects to be critical infrastructure. Several commenters supported this request by noting that irrigation systems may be used to replenish aquifers and recharge wells, in addition to delivering water for irrigation. One commenter also noted that the national irrigation system is antiquated and in need of repair.

Treasury Response: Some irrigation projects were eligible under the interim final rule and continue to be eligible under the final rule as a result of their inclusion as eligible projects under the CWSRF. For example, water efficient irrigation equipment that reduces the runoff of nutrients and implements a management program established under section 319 of the CWA and/or a conservation and management plan under section 320 of the CWA are eligible uses under the CWSRF and therefore continue to be an eligible use of SLFRF funds under the final rule. Likewise, projects to receive and distribute reclaimed water for irrigation systems or other agricultural use are eligible under the CWSRF and therefore continue to be an eligible use under the final rule. Unlike projects for the improvement of irrigation systems generally, these reclaimed water projects are related to wastewater treatment and stormwater management, which are within the scope of the meaning of water and sewer infrastructure for purposes of ARPA.

Treasury considered commenter requests for inclusion of additional irrigation infrastructure and determined that irrigation projects more generally are not permitted under the final rule. Although these types of projects may be water-related infrastructure, they are not the sort of generally-provided essential services included within the meaning of water and sewer projects under ARPA, as discussed above.

Consumer Incentive Programs

Public Comment: One commenter requested that consumer incentive programs in the areas of water use efficiency, conservation, green infrastructure, reuse, and other distributed solutions be an allowable use of SLFRF.

Treasury Response: The DWSRF and CWSRF eligibilities include the development and implementation of incentive and educational programs that address and promote water conservation, source water protection,

and efficiency related to infrastructure improvements, e.g., incentives such as rebates to install green infrastructure such as rain barrels or promote other water conservation activities. Treasury clarifies that such project types were eligible under the interim final rule and continue to be eligible under the final rule.

2. Broadband Infrastructure

Under the ARPA, recipient governments may use SLFRF funds to make “necessary investments in . . . broadband infrastructure.” In the Supplementary Information to the interim final rule, Treasury interpreted necessary investments in infrastructure as investments “designed to provide an adequate minimum level of service and [that] are unlikely to be made using private sources of funds.” Treasury explained that, with respect to broadband specifically, such necessary investments include projects that “establish [] or improve [] broadband service to underserved populations to reach an adequate level to permit a household to work or attend school, and that are unlikely to be met with private sources of funds.”

Summary of Interim Final Rule, Public Comments, and Treasury Response

Summary of Interim Final Rule: In implementing the ARPA, the interim final rule provided that eligible broadband infrastructure investments are limited to those that are designed to provide service to unserved or underserved households or businesses, defined as those that lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload. The interim final rule also provided that eligible projects under the SLFRF are limited to those that are designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. In instances where it would not be practicable for a project to deliver such service speeds because of the geography, topography, or excessive costs associated with such a project, the interim final rule provided that the project would be required to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds.

In addition, Treasury, in the Supplementary Information to the interim final rule, encouraged recipients to pursue a number of other objectives.

First, Treasury encouraged recipients to prioritize investments in fiber-optic infrastructure wherever feasible and focus on projects that deliver a physical broadband connection by prioritizing projects that achieve last-mile connections. Second, Treasury encouraged recipients to integrate affordability options into their program design. Third, Treasury encouraged recipients to prioritize support for local networks owned, operated, or affiliated with local governments, nonprofits, and cooperatives. Fourth, Treasury encouraged recipients to avoid investing in locations with existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, in order to avoid duplication of efforts and resources. Finally, following release of the interim final rule, Treasury provided further guidance clarifying some aspects of broadband infrastructure eligibility, specifically on flexibility for recipients to determine eligible areas to be served,³²⁸ middle-mile projects,³²⁹ pre-project development costs,³³⁰ broadband connections to schools or libraries,³³¹ and the applicability of the National Environmental Policy Act (NEPA) and the Davis-Bacon Act.³³²

Summary of Public Comments: Treasury received several comments on the interim final rule’s requirements regarding eligible areas for investment and build-to speed standards, as well as Treasury’s encouragements in the Supplementary Information to the interim final rule. Many commenters found the interim final rule’s requirement to limit projects to those designed to provide service to unserved or underserved households or businesses to be appropriately focused on hard-to-reach areas. In contrast, other commenters argued that this requirement was too restrictive and that it would limit the ability for some recipients, particularly local governments, to invest in broadband infrastructure.

Separately, some commenters supported the interim final rule’s requirement that eligible projects be built to reliable speeds of 100 Mbps symmetrical, with an exception for areas where it was impracticable, and encouragement that projects be built with fiber-optic infrastructure, while a

³²⁸ See FAQ 6.8, 6.9, 6.11. Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

³²⁹ See FAQ 6.10. *Id.*

³³⁰ See FAQ 6.12. *Id.*

³³¹ See FAQ 6.16. *Id.*

³³² See FAQ 6.4, 6.17. *Id.*

few others argued that the interim final rule should remain technology-neutral and that lower speed standards would be more appropriate for today's usage needs.

Summary of Treasury Response: In response to the comments, the final rule expands eligible areas for investment by requiring recipients to invest in projects designed to provide service to households and businesses with an identified need for additional broadband infrastructure investment, which would include but not be limited to a lack of broadband service reliably delivering certain speeds. In addition, as discussed further below, the final rule further supports the expansion of affordable access to broadband service for households by requiring that recipients use a provider that participates in a qualifying affordability plan. Treasury encourages recipients to prioritize projects that are designed to provide service to locations not currently served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed.

The final rule maintains the interim final rule's requirement that eligible projects be designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds. As was the case under the interim final rule, in cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, eligible projects may be designed to reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed. Treasury continues to encourage recipients to prioritize investments in fiber-optic infrastructure wherever feasible and to focus on projects that will achieve last-mile connections, whether by focusing directly on funding last-mile projects or by ensuring that funded middle-mile projects have commitments in place to support new and/or improved last-mile service.

The final rule requires recipients to address the affordability needs of low-income consumers in accessing broadband networks funded by SLFRF, given that such a project cannot be considered a necessary investment in broadband infrastructure if it is not affordable to the population the project would serve. Recipients must require the service provider for a completed broadband infrastructure investment project that provides service to households to either participate in the

Federal Communications Commission's (FCC) Affordable Connectivity Program (ACP), or otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP.

Treasury also recognizes the importance of affordable broadband access for all consumers beyond those that are low-income. As part of their project selection process, recipients are encouraged to consult with the community on the general affordability needs of the target markets in the proposed service area. Additionally, recipients are encouraged to require that services provided by a broadband infrastructure project include at least one low-cost option offered without data usage caps and at speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning. Recipients will be required to report speed, pricing, and any data allowance information as part of mandatory reporting to Treasury.

The final rule also clarifies that subsidies to households and communities impacted by the pandemic to access the internet, broadband adoption programs, digital literacy programs, and device programs are eligible programs to respond to the public health and negative economic impacts of the pandemic under sections 602(c)(1)(A) and 603(c)(1)(A). See section Assistance to Households in Negative Economic Impacts.

Treasury continues to encourage recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and cooperatives. In addition, to the extent recipients are considering deploying broadband to locations where there are existing enforceable federal or state funding commitments for reliable service at speeds of at least 100 Mbps download speed and 20 Mbps upload speed, recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investment that is not met by existing federal or state funding commitments. Recipients must also ensure that SLFRF funds will not be used for costs that will be reimbursed by the other federal or state funding streams. Further, Treasury highlights that recipients are subject to the prohibition on use of grant funds to procure or obtain certain telecommunications and video surveillance services or equipment as outlined in 2 CFR 200.216 and 2 CFR

200.471 and clarifies that modernization of cybersecurity for existing and new broadband networks are eligible uses of funds under sections 602(c)(1)(D) and 603(c)(1)(D).

Finally, this Supplementary Information to the final rule incorporates and confirms guidance issued by Treasury following the interim final rule regarding middle-mile projects,³³³ pre-project development costs,³³⁴ broadband connections to schools or libraries,³³⁵ and applicability of the National Environmental Policy Act (NEPA) and Davis-Bacon Act.³³⁶

The remainder of this section provides additional details on the final rule. Specifically, these sections address: (1) Eligible areas for investment; (2) build-to speed standards; (3) affordability; (4) public networks; (5) duplication of efforts and resources; (6) cybersecurity; and (7) use of funds to meet non-federal match under the Infrastructure Investment and Jobs Act.

Eligible Areas for Investment

The interim final rule limited eligible broadband investments to projects focused on delivering service to unserved or underserved locations, defined as households or businesses that lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload. This targeted approach was generally consistent with certain speed thresholds used in other federal programs to identify eligible areas for federal investment in broadband infrastructure, such as the FCC's Rural Digital Opportunity Fund (RDOF) program and the National Telecommunication and Information Administration's (NTIA's) Broadband Infrastructure Program, and generally aligns with the FCC's benchmark for an "advanced telecommunications capability" for wireline broadband services.

Public Comment: Many commenters discussed the disadvantages of such an approach. Some commenters, including several local government recipients, argued that limiting investments to locations without access to reliable wireline 25/3 Mbps³³⁷ was too

³³³ See FAQ 6.10. Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

³³⁴ See FAQ 6.12. *Id.*

³³⁵ See FAQ 6.16. *Id.*

³³⁶ See FAQ 6.4, 6.17. *Id.*

³³⁷ In the remainder of this Supplementary Information, "25/3 Mbps" refers to broadband infrastructure that is designed to reliably meet or exceed at least 25 Mbps download speeds and 3

restrictive because some urban jurisdictions are already mostly or entirely covered by a network with at least 25/3 Mbps speeds yet lack widespread broadband adoption for various reasons. Commenters suggested that recipients would benefit from greater flexibility to provide necessary investments in broadband access in areas that are nominally covered by speeds of at least 25/3 Mbps, such as to provide affordable broadband access in low-income areas or to address service quality and reliability issues. Further, commenters argued that Treasury's requirement that new projects meet minimum reliable speeds of 100 Mbps symmetrical was inconsistent with the requirement that broadband infrastructure projects focus on those with access to significantly lower speeds, and further noted that several states have already expanded the focus of their broadband programs beyond those without reliable access to speeds of 25/3 Mbps. Commenters argued that if the limitation to unserved and underserved households and businesses were maintained, the definition of unserved and underserved households and businesses should be revised to include households and businesses currently served by higher standards. Commenters proposed a number of alternative cutoff speeds, including 25/25 Mbps, 50/10 Mbps, and 100 Mbps symmetrical. Others expressed support for providing flexibility for recipients to make their own determination on eligible areas for investment. These commenters referenced studies indicating that 25/3 Mbps is inadequate for today's modern household or business needs.

Some commenters advocated for unserved and underserved areas to be prioritized while providing flexibility for recipients to serve areas beyond those designated as unserved or underserved. Reflecting the perceived restrictiveness of the interim final rule approach, some commenters asked for assurance that projects conducted under other categories of SLFRF eligible uses, specifically to respond to the public health and negative economic impacts of the pandemic under sections 602(c)(1)(A)–(C) and 603(c)(1)(A)–(C), were not barred by the presence of 25/3 Mbps service, including “gap networks,” which are networks designed to offer low-cost or no-cost internet access for lower-income

Mbps upload speeds. “100 Mbps” symmetrical refers to broadband infrastructure that is designed to reliably meet or exceed at least 100 Mbps download speeds and 100 Mbps upload speeds.

households with low broadband adoption rates.

Commenters suggested additional factors to be incorporated in the consideration of locations that are eligible to be served. Many commenters suggested that affordability should be considered a key factor when determining whether a community has access to broadband, as the presence of 25/3 Mbps service does not necessarily mean the service is financially accessible to the area's residents. Commenters noted that surveys indicate that affordability, not lack of coverage, is the most significant barrier for most Americans who do not have robust broadband service in their households. Some advocated that the final rule allow for investments in areas with existing reliable wireline access at or above 25/3 Mbps as long as existing broadband service has been unaffordable for a certain segment of the population; others advocated that Treasury presume eligibility when investments are made in certain areas, such as Qualified Census Tracts or neighborhoods with persistent poverty, or are made by Tribal governments. Separately, some commenters noted that Treasury should provide more clarification on what constitutes a “reliable” connection, including providing details as to latency, jitter, and other technical specifications that would meet that standard, and what it means for certain technologies, such as copper and other outdated technologies, to be deemed presumptively unreliable.

Other commenters supported the interim final rule's approach on eligible areas for investment or suggested tightening eligibility even further. They argued that higher speed thresholds beyond 25/3 Mbps would likely lead to investments in or building of new broadband infrastructure in areas already served by broadband at speeds these commenters considered sufficient; these areas, commenters suggested, are less in need of federal assistance and permitting investments here could divert funding away from rural areas to more densely populated areas.

Treasury Response: The final rule expands eligible areas for investment by requiring recipients to invest in projects designed to provide service to households and businesses with an identified need for additional broadband infrastructure investment. Recipients have flexibility to identify a need for additional broadband infrastructure investment: Examples of need include lack of access to a connection that reliably meets or exceeds symmetrical 100 Mbps download and upload speeds, lack of

affordable access to broadband service, or lack of reliable broadband service. Recipients are encouraged to prioritize projects that are designed to provide service to locations not currently served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed, as many commenters indicated that those without such service constitute hard-to-reach areas in need of subsidized broadband deployment.

Households and businesses with an identified need for additional broadband infrastructure investment do not have to be the only ones in the service area served by an eligible broadband infrastructure project. Indeed, serving these households and businesses may require a holistic approach that provides service to a wider area, for example, in order to make ongoing service of certain households or businesses within the service area economical.

Consistent with further guidance issued by Treasury,³³⁸ in determining areas for investment, recipients may choose to consider any available data, including but not limited to documentation of existing broadband internet service performance, federal and/or state collected broadband data, user speed test results, interviews with community members and business owners, reports from community organizations, and any other information they deem relevant.

In evaluating such data, recipients may take into account a variety of factors, including whether users actually receive internet service at or above the speed thresholds at all hours of the day, whether factors other than speed such as latency, jitter, or deterioration of the existing connections make their user experience unreliable, and whether the existing service is being delivered by legacy technologies, such as copper telephone lines (typically using Digital Subscriber Line technology) or early versions of cable system technology (DOCSIS 2.0 or earlier),³³⁹ and other factors related to

³³⁸ See FAQ 6.11. Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRFAQ.pdf>.

³³⁹ Legacy technologies such as copper telephone lines (typically using Digital Subscriber Line technology) and early versions of cable system technology (DOCSIS 2.0 or earlier) typically lag on speeds, latency, and other factors, as compared to more modern technologies like fiber-optic. See, e.g., https://www.fcc.gov/sites/default/files/tech_transitions_network_upgrades_that_may_affect_your_service.pdf (comparing copper to fiber and noting that copper wire networks have “limited speeds,” are “susceptible to signal interference/loss,” and have a “relatively short life”); <https://>

Continued

the services to be provided by the project. In addition, recipients may consider the actual experience of current broadband customers when making their determinations; whether there is a provider serving the area that advertises or otherwise claims to offer broadband at a given speed is not dispositive.

Build-To Speed Standards

The interim final rule provided that a recipient may use funds to make investments in broadband infrastructure that is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds. In cases where it is not practicable, because of the excessive cost of the project or the geography or topography of the area to be served by the project, eligible projects may be designed to reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, so long as it is scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed. Relatedly, Treasury in the **SUPPLEMENTARY INFORMATION** to the interim final rule encouraged recipients to prioritize investments in fiber-optic infrastructure wherever feasible and to prioritize projects that achieve last-mile connections.

Public Comment: Many commenters discussed the advantages of setting minimum symmetrical download and upload speeds of reliable 100 Mbps as the speed threshold for new projects. Some commenters indicated support for the interim final rule's standard as it takes into account growing demands on internet use resulting from pandemic broadband usage and suggested that such a standard will help to ensure that networks built with SLFRF funds remain valuable for years to come, even as demands continue to accelerate, particularly on upload speeds. Some also indicated that the interim final rule standard has the effect of prioritizing the use of fiber-optic infrastructure to deliver such speeds, which some noted was a "gold standard" future-proof technology, although some commenters noted that other technologies like fixed wireless have been shown to deliver such speeds in certain circumstances.

Other commenters suggested that 100 Mbps symmetrical speeds were unnecessary given current broadband

usage needs and that such high standards may have the potential to slow down expansion to unserved or underserved rural areas. Some argued that setting this symmetrical threshold may limit the type of technologies that can be used, thereby decreasing competition and limiting flexibility to recipients whose communities might be better served by technologies such as wireless solutions or inexpensive gap networks. Commenters suggested alternate minimum speeds, ranging from 25/3 Mbps (which some argued best balances reaching all communities and maximizing the impact of federal funds) to 100/20 Mbps (which some argued best serves the typical broadband usage patterns of households and businesses, including new pandemic-driven needs). A few commenters suggested a higher minimum speed, such as gigabit speeds, advocating that such speeds were necessary for a network to last at least a decade.

Many commenters supported the interim final rule's lower speed standards for projects where it is impracticable to meet minimum reliable speeds of 100 Mbps symmetrical, as it provides flexibility for recipients to invest in hard-to-reach areas, such as those in mountainous regions. A few commenters indicated that Treasury should more clearly define the characteristics of a location eligible for this exception. Some indicated that the minimum standard for all new projects should be 100 Mbps symmetrical. In contrast, others argued that scalability to 100 Mbps symmetrical should not be a requirement to meet today's demands, particularly in hard-to-reach areas.

Some commenters requested that Treasury clarify eligibility for middle-mile projects as these projects potentially provide connectivity to far-reaching areas, while other commenters suggested that last-mile projects generally require more capital investment and are therefore most in need of government support.

Treasury Response: The final rule maintains the interim final rule's requirement that eligible projects be designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds, with the interim final rule's exception for projects where it is impracticable to build to such speeds due to excessive cost, geography, or topography of the area to be served by the project. Given the build time associated with broadband infrastructure projects, these standards will enable SLFRF funds to fund lasting infrastructure that will be able to accommodate increased network demand once the network is

complete,³⁴⁰ while providing flexibility for certain locations to meet lower speed standards where 100 Mbps symmetrical speeds are impracticable.

To illustrate the accelerating need for higher upload speeds, by one measure, mean upload speeds as of October 2021 increased to 75.21 Mbps as compared to 62.11 Mbps a year earlier.³⁴¹ Jurisdictions are increasingly responding to the growing demands of their communities for high speeds; for example, Illinois requires 100 Mbps symmetrical service as the construction standard for their state broadband grant programs. The 100 Mbps symmetrical standard accounts for increased pandemic internet usage and provides adequate upload speeds for individuals and businesses to accommodate interactive applications such as virtual learning and videoconferencing, while also helping ensure that funding is responsibly used to provide a true and lasting benefit for years to come. Treasury continues to encourage recipients to prioritize investments in fiber-optic infrastructure wherever feasible, as such advanced technology enables the next generation of application solutions for all communities and is capable of delivering superior, reliable performance and is generally most efficiently scalable to meet future needs.³⁴² In designing these projects, recipients should ensure that the broadband infrastructure provides "reliable" service at required speeds and are not required to rely on providers' advertised speeds in their assessments.

Consistent with further guidance issued by Treasury,³⁴³ while recipients are permitted to make investments in "middle-mile" connections that otherwise satisfy the requirements of the final rule, Treasury continues to encourage recipients to focus on

³⁴⁰ Using the Federal Communications Commission (FCC) Broadband Speed Guide, a household with two telecommuters and two to three remote learners today is estimated to need 100 Mbps download to work simultaneously. See Federal Communications Commission, Broadband Speed Guide, available at <https://www.fcc.gov/consumers/guides/broadband-speed-guide> (last visited October 28, 2021).

³⁴¹ United States' Mobile and Broadband Internet Speeds—Speedtest Global Index, available at <https://www.speedtest.net/global-index/united-states#fixed>.

³⁴² Bennett Cyphers, The Case for Fiber to the Home, Today: Why Fiber is a Superior Medium for 21st Century Broadband, Electronic Frontier Foundation (October 16, 2019), <https://www.eff.org/wp/case-fiber-home-today-why-fiber-superior-medium-21st-century-broadband>.

³⁴³ See FAQ 6.10, Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

data.fcc.gov/download/measuring-broadband-america/2020/2020-Fixed-Measuring-Broadband-America-Report.pdf (comparing fiber with DSL and cable technologies on a number of dimensions); <https://www.eff.org/wp/case-fiber-home-today-why-fiber-superior-medium-21st-century-broadband> (providing a technical background comparing fiber technology to other legacy technologies).

projects that will achieve last-mile connections—whether by focusing directly on funding last-mile projects or by ensuring that funded middle-mile projects have commitments in place to support new and/or improved last-mile service.

Affordability

The interim final rule encouraged recipients to consider ways to integrate affordability options into their program design but did not require recipients to take particular actions. The interim final rule also provided that assisting households with internet access and digital literacy is an eligible use of SLFRF funds under sections 602(c)(1)(A) and 603(c)(1)(A) to respond to the negative economic impacts of COVID-19.

Public Comment: Many commenters suggested that Treasury provide recipients with a broader set of tools to tackle what the commenters characterized as an affordability crisis in the broadband sector. As noted above, some commenters proposed that Treasury consider affordability when determining whether an area is unserved or underserved by broadband. Some commenters indicated that the final rule should allow for the construction of broadband networks in low-income neighborhoods including low-cost or no-cost gap networks, even in areas with existing service at the speeds required under the interim final rule. Other commenters voiced support for direct subsidies to low-income communities to afford broadband service, which would provide additional incentives for providers to serve these communities.

Treasury Response: In response to many commenters that highlighted the importance of affordability in providing meaningful access to necessary broadband infrastructure, the final rule provides additional requirements to address the affordability needs of low-income consumers in accessing broadband networks funded by SLFRF. Recipients must require the service provider for a completed broadband infrastructure investment project that provides service to households to:

- Participate in the Federal Communications Commission's (FCC) Affordable Connectivity Program (ACP); or
- Otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP.

Recipients must require providers to participate in or provide access to these programs through the life of the ACP. This requirement will no longer apply once the SLFRF-funded broadband infrastructure is no longer in use.

Furthermore, Treasury also recognizes the importance of affordable broadband access for all consumers beyond those that are low income. As part of their project selection process, recipients are encouraged to consult with the community on the general affordability needs of the target markets in the proposed service area. Additionally, recipients are encouraged to require that services provided by a broadband infrastructure project include at least one low-cost option offered without data usage caps at speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning. Treasury will require recipients to report speed, pricing, and any data allowance information as part of their mandatory reporting to Treasury.

Further, Treasury is clarifying that, as a response to the public health and negative economic impacts of the pandemic, recipients may provide households and communities impacted by the pandemic with subsidies to help pay for internet service, digital literacy programs, broadband adoption programs, and device programs that provide discounted or no-cost devices for low-income households to access the internet. For further discussion of this eligible use category, see the section internet Assistance in Assistance to Households in Public Health and Negative Economic Impacts.

Public Networks

The interim final rule encouraged recipients to prioritize support for local networks owned, operated, or affiliated with local governments, nonprofits, and cooperatives.

Public Comment: Many commenters voiced their support for Treasury's encouragement that recipients work with governmental or community entities to establish local networks, arguing that they have been shown to effectively provide broadband access to areas that would otherwise be left with unaffordable or insufficient service. These commenters suggested that, since these entities are less driven by financial returns to investment than private providers, in some circumstances they may be able to provide robust service at a lower price as compared to private providers, along with potentially increasing local competition in a service area.

Other commenters argued against Treasury's encouragement, remarking that private businesses have a robust track record of serving hard-to-reach customers. These commenters argued that commercial providers have greater technical and operational expertise in deploying and operating broadband networks and may be able to construct broadband networks with greater efficiency. Additionally, some commenters argued that providing what they considered an unfair competitive advantage for government- or community-owned or operated networks may hurt consumers over time.

Treasury Response: The final rule maintains the interim final rule's encouragement for recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and cooperatives, given that these networks have less pressure to generate profits and a commitment to serve entire communities.³⁴⁴ This encouragement provides flexibility for recipients to select providers that best fit their needs, while noting the critical role that networks owned, operated, or affiliated with local governments and community organizations can play in providing sufficient coverage, affordable access, or increased competition in the broadband sector.

Duplication of Efforts and Resources

Public Comment: Some commenters raised concerns that Treasury's encouragement in the interim final rule that recipients avoid funding projects in locations with an existing agreement to provide service that reliably delivers 100/20 Mbps by December 31, 2024 was too restrictive. Commenters noted that many plans do not always lead to a successful and complete deployment, as issues may arise that prevent such infrastructure from deploying on time or at all, and that several existing federal grants were designed and awarded before the onset of the COVID-19 pandemic and do not meet the critical broadband needs highlighted by the pandemic. Other commenters argued that Treasury's encouragement to avoid duplication of resources should be strengthened, as investing in areas with existing agreements would be an inefficient duplication of efforts.

Treasury Response: Given the final rule's revised requirements on eligible areas for investment, this

³⁴⁴ The Executive Office of the President, Community-Based Broadband Solutions (January 2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/community-based_broadband_report_by_executive_office_of_the_president.pdf.

Supplementary Information to the final rule also modifies the interim final rule's requirements around duplication of resources. Since recipients must ensure that the objective of the broadband projects is to serve locations with an identified need for additional broadband investment, the final rule provides that, to the extent recipients are considering deploying broadband to locations where there are existing enforceable federal or state funding commitments for reliable service at speeds of at least 100 Mbps download speed and 20 Mbps upload speed, recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investment that is not met by existing federal or state funding commitments. Recipients must also ensure that SLFRF funds will not be used for costs that will be reimbursed by the other federal or state funding streams.

Cybersecurity

Public Comment: Several commenters expressed concern about the cybersecurity of new broadband projects funded with SLFRF funds and urged Treasury to prohibit recipients from utilizing SLFRF funds to procure equipment from certain providers from the People's Republic of China that may pose a national security risk. These commenters pointed out that the 2019 National Defense Authorization Act (NDAA) and the FCC's Universal Service Fund have similar prohibitions. Further, several commenters requested that Treasury explicitly include cybersecurity costs as an eligible use for broadband infrastructure investment given the growing threat of cyber-attacks and cyber-intrusions into the nation's infrastructure.

Treasury Response: Treasury highlights that investments in broadband infrastructure must be carried out in ways that comply with applicable federal laws, including the 2019 NDAA. Among other requirements contained in 2 CFR part 200, 2 CFR 200.216 implements certain provisions of the NDAA and contains prohibitions on the use of federal financial assistance to procure or obtain certain telecommunications and video surveillance services or equipment provided or produced by designated entities, including certain entities owned or controlled by the People's Republic of China. In addition, 2 CFR 200.471 provides that certain telecommunications and video surveillance costs associated with 2 CFR 200.216 are unallowable.

Further, the final rule allows for modernization of cybersecurity for existing and new broadband infrastructure as an eligible use under sections 602(c)(1)(D) and 603(c)(1)(D) as such investments are necessary for the reliability and resiliency of broadband infrastructure.³⁴⁵ Recipients may provide necessary investments in cybersecurity, including modernization of hardware and software, for existing and new broadband infrastructure regardless of their speed delivery standards. The final rule maintains the interim final rule's provision that allows for broader modernization of cybersecurity, including hardware, software, and protection of critical infrastructure as an eligible provision of government services, to the extent of revenue loss due to the pandemic, under sections 602(c)(1)(C) and 603(c)(1)(C).

Use of Funds To Meet Non-Federal Match Under the Infrastructure Investment and Jobs Act

The Infrastructure Investment and Jobs Act specifies that, except as otherwise provided, an entity using funding under section 60102 of the law for broadband deployment "shall provide, or require a subgrantee to provide, a contribution, derived from non-Federal funds (or funds from a Federal regional commission or authority) . . . of not less than 25 percent of project costs."³⁴⁶ It further states that the matching contribution may include funds provided to an eligible entity or subgrantee under the American Rescue Plan Act for the purpose of deployment of broadband service, which includes funds provided under the SLFRF program.

SLFRF and the program established under section 60102 of the Infrastructure Investment and Jobs Act are separate programs with separate requirements. While section 60102 allows states and other eligible entities to use SLFRF funds as the source of matching funds for broadband deployment, the requirements of the SLFRF program still apply. As such, recipients that use SLFRF funds to meet the section 60102 matching requirement will continue to be subject to the requirements of the SLFRF program.

³⁴⁵ For more on the importance of cybersecurity to the reliability and resiliency of broadband networks, see: Federal Communications Commission, <https://docs.fcc.gov/public/attachments/FCC-10-63A1.doc>; Brookings Institute, Protecting the Cybersecurity of America's Networks (February 11, 2021), <https://www.brookings.edu/blog/techtank/2021/02/11/protecting-the-cybersecurity-of-americas-networks/>.

³⁴⁶ See Infrastructure Investment and Jobs Act, Public Law 117–58 (2021).

III. Restrictions on Use

While recipients have considerable flexibility to use funds to address the diverse needs of their communities, some restrictions on use of funds apply. The ARPA includes two statutory provisions that further define the boundaries of the statute's eligible uses. First, section 602(c)(2)(A) of the Social Security Act provides that states and territories may not "use the funds . . . to either directly or indirectly offset a reduction in . . . net tax revenue . . . resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax . . . or delays the imposition of any tax or tax increase." Second, sections 602(c)(2)(B) and 603(c)(2) prohibit all recipients, except Tribal governments, from using funds for deposit into any pension fund. These restrictions support use of funds only for the congressionally permitted purposes described in the Eligible Uses section by providing a backstop against the use of funds for purposes outside of the eligible use categories provided for in the statute.

In addition to the restrictions on use of funds provided for in the ARPA statute, the interim final rule noted that several uses of funds would be ineligible under any eligible use category, including as a response to the public health and negative economic impacts of the pandemic or as a "government service" under the revenue loss eligible use category. Specifically, use of funds for debt service, to replenish financial reserves, or to satisfy an obligation arising from a judicial settlement or judgment were ineligible uses of funds under the eligible use categories for public health and negative economic impacts and revenue loss. These restrictions apply to all recipients.

Recipients should note that restrictions on use of funds for debt service, to replenish financial reserves, or to satisfy an obligation arising from a judicial settlement or judgment apply to all eligible use categories, not just the eligible use categories in which they were discussed in the interim final rule.

Recipients are also subject to other restrictions on use of funds in the ARPA, the Award Terms and Conditions, and other federal laws. As discussed further below, uses of funds may not conflict with the overall statutory purpose of the ARPA to reduce the spread of COVID–19. Per the Award Terms and Conditions, recipients must adopt and abide by policies to prevent conflicts of interest. Finally, recipients are reminded that other federal laws

also apply to uses of funds, including environmental and civil rights laws.

To enhance clarity, this **SUPPLEMENTARY INFORMATION** for the final rule consolidates these restrictions on use of funds into one section and makes clear that they apply to all eligible use categories and any use of funds under the program by recipients to whom each specific restriction applies.

This section discusses the aforementioned restrictions, public comments received, and Treasury's response to these comments. For clarity, Treasury has divided the following discussion into (A) statutory restrictions under the ARPA, which include (1) offsetting a reduction in net tax revenue, and (2) deposits into pension funds, and (B) other restrictions on use, which include (1) debt service and replenishing reserves, (2) settlements and judgments, and (3) general restrictions.

A. Ineligible Uses of Funds Under the ARPA Statute

1. Offset a Reduction in Net Tax Revenue

For states and territories (recipient governments³⁴⁷), section 602(c)(2)(A)—the offset provision—prohibits the use of SLFRF funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation³⁴⁸ during the covered period. If a state or territory uses SLFRF funds to offset a reduction in net tax revenue resulting from a change in law, regulation, or interpretation, the ARPA provides that the state or territory must repay to Treasury an amount equal to the lesser of (i) the amount of the applicable reduction attributable to the impermissible offset and (ii) the amount of SLFRF funds received by the state or territory. A state or territory that uses SLFRF funds to offset a reduction in net tax revenue does not forfeit its entire allocation of SLFRF funds (unless it misused the full allocation to offset a reduction in net tax revenue) or any non-SLFRF funding.

The interim final rule implements these conditions by establishing a framework for states and territories to determine the cost of changes in law, regulation, or interpretation that reduce tax revenue and to identify and value

the sources of funds that will offset—*i.e.*, cover the cost of—any reduction in net tax revenue resulting from such changes. The interim final rule recognizes three sources of funds that may offset a reduction in net tax revenue other than SLFRF funds: Organic revenue growth, increases in revenue due to policy changes (*e.g.*, an increase in a tax rate), and certain cuts in spending.

Specifically, the interim final rule establishes a step-by-step process for determining whether, and the extent to which, SLFRF funds have been used to offset a reduction in net tax revenue, based on information reported by the recipient government:

- First, each year, each recipient government will identify and value the changes in law, regulation, or interpretation that would result in a reduction in net tax revenue, as it would in the ordinary course of its budgeting process. The sum of these values in the year for which the government is reporting is the amount it needs to “pay for” with sources other than SLFRF funds (total value of revenue reducing changes).

- Second, the interim final rule recognizes that it may be difficult to predict how a change would affect net tax revenue in future years and, accordingly, provides that if the total value of the changes in the year for which the recipient government is reporting is below a de minimis level, as discussed below, the recipient government need not identify any sources of funding to pay for revenue reducing changes and will not be subject to recoupment.

- Third, a recipient government will consider the amount of actual tax revenue recorded in the year for which it is reporting. If the recipient government's actual tax revenue is greater than the amount of tax revenue received by the recipient for the fiscal year ending 2019, adjusted annually for inflation, the recipient government will not be considered to have violated the offset provision because there will not have been a reduction in net tax revenue.

- Fourth, if the recipient government's actual tax revenue is less than the amount of tax revenue received by the recipient government for the fiscal year ending 2019, adjusted annually for inflation, in the reporting year the recipient government will identify any sources of funds that have been used to permissibly offset the total value of covered tax changes other than SLFRF funds. These are:

- State or territory tax changes that would increase any source of general

fund revenue, such as a change that would increase a tax rate; and

- Spending cuts in areas not being replaced by SLFRF funds.

The recipient government will calculate the value of revenue reduction remaining after applying these sources of offsetting funding to the total value of revenue reducing changes—that is, how much of the tax change has not been paid for. The recipient government will then compare that value to the difference between the baseline and actual tax revenue. A recipient government will not be required to repay to Treasury an amount that is greater than the recipient government's actual tax revenue shortfall relative to the baseline (*i.e.*, fiscal year 2019 tax revenue adjusted for inflation). This “revenue reduction cap,” together with Step 3, ensures that recipient governments can use organic revenue growth to offset the cost of revenue reductions.

- Finally, if there are any amounts that could be subject to recoupment, Treasury will provide notice to the recipient government of such amounts along with an explanation of such amounts. This process is discussed in greater detail in section Remediation and Recoupment of this Supplementary Information.

Together, these steps allow Treasury to identify the amount of reduction in net tax revenue that both is attributable to covered changes and has been directly or indirectly offset with SLFRF funds.

Overview of Comments: Many commenters supported the framework established under the interim final rule. These commenters argued that the offset provision, and the interim final rule's implementation of the offset provision, was essential to ensuring SLFRF funds are used in a manner consistent with the statute's defined eligible uses and, in particular, to support the use of SLFRF funds to build public sector capacity. Several commenters argued that the framework should be made more restrictive; for example, some comments advocated that the offset provision be applied to local governments.

Other commenters argued that the offset provision and the interim final rule's implementation of the offset provision is too restrictive, with some asserting that the offset provision prohibits states from making changes to reduce taxes. Many of these commenters argued that the offset provision presents constitutional concerns. These commenters asserted that the offset provision is ambiguous and the restriction is unrelated to the purpose of the ARPA. These commenters also

³⁴⁷ In this sub-section, “recipient governments” refers only to states and territories. In other sections, “recipient governments” refers more broadly to eligible governments receiving funding from the SLFRF.

³⁴⁸ For brevity, this phrase is referred to as “changes in law, regulation, or interpretation” for the remainder of this **SUPPLEMENTARY INFORMATION**.

argued that the generous amount of SLFRF funds provided to those governments gave recipient governments little choice as to whether to accept the SLFRF funds and, as a result, the offset provision is coercive. In describing these concerns and arguments, several of these commenters referenced litigation regarding the offset provision.³⁴⁹ Many of these commenters also expressed concern regarding the interim final rule's implementation of the offset provision. Some of these commenters argued that Treasury lacked the authority to implement the provision, asserting that the significance of the provision required Congress to make an explicit delegation of rulemaking authority and provide clearer principles by which Treasury should implement the provision. Finally, one commenter argued that the offset provision should only apply if the recipient expressly and intentionally uses SLFRF funds to offset a reduction in revenue, arguing that the term "offset" implies a deliberate use SLFRF funds to "pay for" a tax cut.

As discussed in the interim final rule, the offset provision does not prevent a recipient government from enacting a broad variety of tax changes. Rather, the offset provision prevents a recipient government from using SLFRF funds to offset a revenue reduction resulting from a tax cut. A recipient government would only be considered to have used SLFRF funds to offset a reduction in net tax revenue resulting from changes in law, regulation, or interpretation if, and to the extent that, the recipient government could not identify sufficient funds from sources other than SLFRF funds to offset the reduction in net tax revenue. Only if sufficient funds from other sources cannot be identified to cover the full cost of the reduction in net tax revenue resulting from changes in law, regulation, or interpretation, will the remaining amount not covered by these sources be considered to have been offset by SLFRF funds, in contravention of the offset provision. Consistent with the statutory text, the approach taken in the interim final rule recognizes that, because money is fungible, even if SLFRF funds are not explicitly or directly used to cover the costs of changes that reduce net tax revenue, those funds may be used in a manner inconsistent with the statute by indirectly being used to substitute for the state's or territory's funds that

would otherwise have been needed to cover the costs of the reduction. As discussed below, the scope of changes in law, regulation, or interpretation is further limited to those that the recipient government voluntarily enacted during the covered period.

Congress has the authority under the Spending Clause in Article I, section 8 of the Constitution to specify the permissible and impermissible uses of federal grants. The Supreme Court has repeatedly "upheld Congress's authority to condition the receipt of funds on the States' complying with restrictions on the use of those funds, because that is the means by which Congress ensures that the funds are spent according to its view of the 'general Welfare.'" ³⁵⁰ "The power to keep a watchful eye on expenditures . . . is bound up with congressional authority to spend in the first place." ³⁵¹ Assertions that the amount of SLFRF funds are sufficiently large to be coercive are inconsistent with the Supreme Court's reasoning in *NFIB*, which distinguished between conditions placed on new federal funds and conditions placed on existing federal funds and not based on the size of funds.³⁵² Further, the conditions placed on the use of SLFRF funds under the ARPA—both the eligible uses and additional limitations on deposits into pension funds and the offset provision—were well known to recipient governments prior to recipient governments requesting to receive SLFRF funds. Finally, the ARPA provides Treasury with the express authority "to issue such regulations as may be necessary or appropriate to carry out" section 602, which includes the offset provision.

A number of commenters expressed concern regarding the burden associated with complying with the offset provision and the interim final rule. Similarly, other commenters argued that the framework provided in the interim final rule complicated implementation

of the offset provision. Treasury took several steps to minimize burden for recipient governments in the interim final rule. For example, the interim final rule incorporates the types of information and modeling already used by states and territories in their own fiscal and budgeting processes. By incorporating existing budgeting processes and capabilities, states and territories will be able to assess and evaluate the relationship of tax and budget decisions to uses of SLFRF funds based on information they likely have or can readily obtain. This approach ensures that recipient governments have the information they need to understand the implications of their decisions regarding the use of SLFRF funds—and, in particular, whether they are using the funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or interpretation, making the funds potentially subject to recoupment. To further reduce burden, Treasury is considering whether the scope of reporting requirements can be further tailored.

As described in greater detail below, Treasury is finalizing its implementation of the offset provision largely without change. This approach is consistent with the text of the ARPA. The remainder of this section discusses and responds to comments on specific aspects of the framework.

1. Definitions

Covered change. The offset provision is triggered by a reduction in net tax revenue resulting from "a change in law, regulation, or administrative interpretation." Consistent with this language, the interim final rule defines a "covered change" to include any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period. Thus, the offset provision applies only to actions for which the change in policy occurs during the covered period; it excludes regulations or other actions that implement a change or law substantively enacted prior to March 3, 2021. For example, covered changes do not include a change in rate that is triggered automatically and based on statutory or regulatory criteria in effect prior to the covered period.³⁵³ Changed

³⁴⁹ See, e.g., *State of West Virginia v. U.S. Department of the Treasury*, No. 7:21-cv-00465-LSC, 2021 WL 2952863 (N.D. Ala. Jul. 14, 2021); *State of Ohio v. Yellen*, No. 1:21-cv-181, 2021 WL 2712220 (S.D. Ohio Jul. 1, 2021).

³⁵⁰ *National Fed'n of Indep. Bus. v. Sebelius* (*NFIB*), 567 U.S. 519, 580 (2012) (plurality opinion); see, e.g., *South Dakota v. Dole*, 483 U.S. 203, 206–208 (1987); *Gruver v. Louisiana Bd. of Supervisors for Louisiana State Univ. Agric. & Mech. Coll.*, 959 F.3d 178, 183 (5th Cir.), cert. denied, 141 S. Ct. 901 (2020). For additional discussion of these issues, see, e.g., *Brief Reply for Appellants, Ohio v. Yellen*, No. 21–3787 (6th Cir. Oct. 26, 2021).

³⁵¹ *Sabri v. United States*, 541 U.S. 600, 608 (2004).

³⁵² The new federal funds offered by the Affordable Care Act totaled \$100 billion per year. Even the dissenting Justices agreed that "Congress could have made just the new funding provided under the ACA contingent on acceptance of the terms of the Medicaid Expansion," although they disagreed with the majority about whether that funding condition was severable. *NFIB* at 687–688 (joint dissent).

³⁵³ For example, a state law that sets its earned income tax credit (EITC) at a fixed percentage of the federal EITC will see its EITC payments automatically increase—and thus its tax revenue reduced—because of the federal government's expansion of the EITC in the ARPA. See, e.g., Tax

administrative interpretations would not include corrections to replace prior inaccurate interpretations; such corrections would instead be treated as changes implementing legislation enacted or regulations issued prior to the covered period. The operative change in those circumstances is the underlying legislation or regulation that occurred prior to the covered period. Moreover, only changes within the control of the state or territory are considered covered changes. Finally, covered changes do not include changes that simply conform with recent changes in federal law (including those to conform to recent changes in federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program).

Scope of Covered Changes

Public Comment: Several commenters argued that the definition of covered change, and thus the limitations of the offset provision, should apply to subsidies for businesses. Similarly, other commenters requested that Treasury clarify that the offset provision applies to tax abatements and reductions in corporate taxes, even if administered by a sub-unit of the recipient government. Citing to empirical research and other evidence, these commenters argued that these types of economic development policies were poorly administered, reduced public sector capacity, and were ineffective at achieving stated objectives of creating jobs, increasing income, and increasing economic growth. On the other hand, some commenters argued that, because subsidies were economically similar to some tax cuts, neither action should be considered a covered change and subject to the offset provision. Finally, other commenters requested that Treasury clarify whether covered changes must be broad-based policies or whether administrative decisions applicable to individuals would be considered covered changes.

Treasury Response: Section 602(c)(2)(A) applies to any change that “reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise or delays the imposition of any tax or tax increase.” Accordingly, and consistent with this statutory text, the final rule applies to covered changes that reduce any tax, which can include tax abatements, but does not apply to loans,

grants, or other types of interventions that do not reduce tax revenue.³⁵⁴ In addition, by including changes in regulation or administrative interpretation, in addition to changes in law, within the scope of the offset provision, the ARPA recognizes that a recipient government may make a covered change through its legislature or may delegate the authority to make a covered change including, but not limited to, to a sub-unit of government. Treasury has revised the definition of “covered change” in the final rule using the statutory language above to make clear that the offset provision only applies to such changes in law, regulation, or administrative interpretation. With respect to the question of whether covered changes could include administrative decisions applicable to individuals, as discussed above, a covered change includes a change in law, regulation, or administrative interpretation that reduces any tax. Such changes may apply to one or more individuals or entities, provided that—consistent with the statutory text—they result from a change in law, regulation, or administrative interpretation.

Prior Enactment and Phase-In

Public Comment: A number of commenters expressed concern, or requested clarification, regarding changes that were enacted prior to the covered period but take effect or phase-in during the covered period. Several commenters argued that the definition of covered change should include changes that were made prior to the covered period but that phase-in during the covered period.

Treasury Response: As discussed above, the offset provision is triggered by a reduction in net tax revenue resulting from “a change in law, regulation, or administrative interpretation” made during the covered period. Consistent with the statutory text, “covered change” is defined to include any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period.

Conformity

Public Comment: A number of commenters requested clarification on the scope of covered changes. Specifically, several commenters

requested clarification on the scope of changes that would be considered as conforming to recent changes in federal law. These commenters requested that Treasury clarify whether actions to selectively conform with federal law would be considered covered changes and requested clarification regarding the extent to which changes would be considered “recent.” For example, these commenters requested clarification regarding conformance with the Global Intangible Low-Taxed Income provision of the 2017 Tax Cuts and Jobs Act. Some commenters further argued that changes that selectively conform or decouple from the Internal Revenue Code should be included within scope of covered changes and thus subject to the offset provision.

Treasury Response: The final rule maintains the treatment of changes that simply conform with recent changes in federal law, such as those to conform to recent changes in federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program³⁵⁵ and including other changes over the past several years. Regardless of the particular method of conformity and the effect on net tax revenue, Treasury views such changes as permissible under the offset provision.

Accordingly, and for the reasons discussed above, Treasury is maintaining the definition of covered change without change.

Tax revenue. The interim final rule’s definition of “tax revenue” is based on the Census Bureau’s definition of taxes, used for its Annual Survey of State Government Finances.³⁵⁶ It provides a consistent, well-established definition with which states and territories will be familiar and is consistent with the approach taken in section Revenue Loss of this **SUPPLEMENTARY INFORMATION** describing the implementation of sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act regarding revenue loss. A number of commenters expressed concern and requested clarification regarding the definition of “tax revenue.” These comments and responses are discussed in section Revenue Loss of this Supplemental Information and, for the reasons discussed above, Treasury is finalizing the definition of tax revenue without

Policy Center, How do state earned income tax credits work?, <https://www.taxpolicycenter.org/briefing-book/how-do-state-earned-income-tax-credits-work/> (last visited May 9, 2021).

³⁵⁴ Assistance must be consistent with eligible uses of SLFRF funds. See section Eligible Uses of this **SUPPLEMENTARY INFORMATION**.

³⁵⁵ See Statement on State Fiscal Recovery Funds and Tax Conformity, April 7, 2021, available at <https://home.treasury.gov/news/press-releases/jy0113>.

³⁵⁶ U.S. Census Bureau, Annual Survey of State and Local Government Finances Glossary, <https://www.census.gov/programs-surveys/state/about/glossary.html> (last visited Apr. 30, 2021).

change and maintaining a consistent definition of “tax revenue.”³⁵⁷

Baseline. For purposes of measuring a reduction in net tax revenue, the interim final rule measures actual changes in tax revenue relative to a revenue baseline (baseline). The baseline is calculated as fiscal year 2019 (FY 2019) tax revenue indexed for inflation in each year of the covered period, with inflation calculated using the Bureau of Economic Analysis’s Implicit Price Deflator.³⁵⁸

Public Comment: Some commenters expressed concern regarding the choice of FY 2019 as the baseline, arguing that the choice lacked justification and would make the offset provision more restrictive as applied to recipient governments that experienced a decline in revenue independent of making any covered changes.

Treasury Response: Measuring a “reduction” in net tax revenue requires identification of a baseline. In other words, a “reduction” can be assessed only by comparing two amounts. The Act defines “covered period” to begin on March 3, 2021, and thus the baseline year must end prior to March 3, 2021. As discussed in the interim final rule, FY 2019 is the last full fiscal year prior to the COVID–19 public health emergency, and thus is consistent with the statutory definition and does not include the extraordinary effects of the pandemic that began in 2020. Further, as discussed above, the interim final rule recognizes three potential ways that a recipient government may offset or “pay for” a reduction in net tax revenue due to a covered change: Increases in taxes, decreases in spending, and organic revenue growth. U.S. gross domestic product rebounded to exceed its pre-pandemic level in 2021,³⁵⁹ suggesting that an FY 2019 pre-

pandemic baseline is a reasonable comparator for future revenue levels and provides recipients with flexibility to identify organic growth as a permissible offset. Finally, this baseline year is consistent with the approach directed by sections 602(c)(1)(C) and 603(c)(1)(C), which identify the “most recent full fiscal year of the [state, territory, or Tribal government] prior to the emergency” as the comparator for measuring revenue loss. For these reasons, Treasury is finalizing the definition of “baseline” without change.

The interim final rule includes several other definitions that are applicable to the implementation of the offset provision, such as the term “reporting year.”³⁶⁰ Commenters did not express concern regarding other definitions in the interim final rule.

2. Framework

The interim final rule provides a step-by-step framework, to be used in each reporting year, to determine whether a state or territory used SLFRF funds to offset a reduction in net tax revenue. Consistent with section 602(c)(2) and the interim final rule, the final rule applies to states and territories:

(1) *Covered changes that reduce tax revenue.* Under the interim final rule, a recipient government identifies and values covered changes that the recipient government predicts will have the effect of reducing tax revenue in a given reporting year, similar to the way it would in the ordinary course of its budgeting process. The interim final rule states that the value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government’s existing approach for measuring the effects of fiscal policies, and that measures these effects relative to a current law baseline. If the recipient would prefer, the covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s).³⁶¹ Further, estimation approaches may not use dynamic methodologies that incorporate the

projected effects of macroeconomic growth because macroeconomic growth is accounted for separately in the framework.

Estimation

Public Comment: A number of commenters expressed concern that estimating the value of covered changes required a number of assumptions and that the actual effects of covered changes on tax revenue would be difficult to predict. Several commenters expressed support for the interim final rule’s approach to dynamic scoring methodologies, and one commenter argued that the final rule should prohibit the use of prior cash balances in calculations of permissible tax cuts.

Treasury Response: Treasury recognizes that estimating the effects of covered changes requires assumptions and that many other factors influence the amount of tax revenue received. The interim final rule addresses these concerns in several ways. First, in general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities. In addition, by relying on scoring methodologies that do not incorporate projected effects of macroeconomic growth, the estimation of the value of covered changes relies on fewer assumptions and thus provide greater consistency among states and territories. Finally, as discussed below, the interim final rule includes a de minimis threshold, below which the sum of covered changes will be deemed not to have any revenue-reducing effects.

Timing of the Impact of Covered Changes

Public Comment: Several commenters expressed concern that recipient governments, to evade the offset provision, may backload the costs of certain covered changes outside of the covered period, and advocated that covered changes be instead evaluated as the net present value in the year that the covered change is enacted. These commenters argued that some tax cuts could have effects on tax revenue for many decades or could be structured to take effect after the end of the covered period.

Treasury Response: As discussed in section Timeline for Use of SLFRF Funds, SLFRF funds must be used to cover costs incurred prior to December 31, 2024. Accordingly, SLFRF funds

³⁵⁷ As discussed in section Revenue Loss of this Supplementary Information, for purposes of measuring revenue lost due to the pandemic under sections 602(c)(1)(C) and 603(c)(1)(C), recipients must adjust the amount of revenue lost to reflect changes that resulted from a tax increase or decrease. These adjustments do not apply to or affect the definition of tax revenue.

³⁵⁸ U.S. Department of Commerce, Bureau of Economic Analysis, GDP Price Deflator, <https://www.bea.gov/data/prices-inflation/gdp-price-deflator> (last visited Apr. 30, 2021). The FY 2019 baseline revenue is adjusted annually for inflation to allow for direct comparison of actual tax revenue in each year (reported in nominal terms) to baseline revenue in common units of measurement; without inflation adjustment, each dollar of reported actual tax revenue would be worth less than each dollar of baseline revenue expressed in 2019 terms.

³⁵⁹ Economy Statement by Catherine Wolfram, Acting Assistant Secretary for Economy Policy, for the Treasury Borrowing Advisory Committee November 1, 2021 (Nov. 1, 2021), available at <https://home.treasury.gov/news/press-releases/jy0453>.

³⁶⁰ One commenter requested clarification that references to fiscal year refer to the fiscal year of the recipient. “Reporting year” is defined in the interim final rule and final rule to mean “a single year or partial year within the covered period, aligned to the current fiscal year of the State or Territory during the covered period.”

³⁶¹ By permitting recipient governments to use actual or estimated values, the interim final rule and final rule provide flexibility to recipients and thus minimizes burden.

generally would not be able to offset a reduction in net tax revenue occurring after December 31, 2024.

For these reasons, Treasury is maintaining this element of the interim final rule without change.

(2) *In excess of the de minimis.* Under the framework established in the interim final rule, after establishing that a covered change occurred, the recipient government next calculates the total value of all covered changes in the reporting year resulting in revenue reductions, identified in Step 1. If the total value of the revenue reductions resulting from these changes is below the de minimis level, the recipient government is deemed not to have any revenue-reducing changes for the purpose of determining the recognized net reduction. If the total is above the de minimis level, the recipient government must identify sources of in-year revenue to cover the full costs of changes that reduce tax revenue. Under the interim final rule, the de minimis level is calculated as 1 percent of the reporting year's baseline.

Public Comment: Many commenters supported the inclusion of the de minimis, noting that the de minimis protects recipients from penalty resulting from minor or incidental changes, minimizes administrative burden, and enhances predictability of the application of the offset provision. Some commenters expressed concern that the fixed threshold could result in cliff effects.

Treasury Response: A clear de minimis threshold supports recipient governments' compliance with the offset provision. A de minimis level recognizes the inherent challenges and uncertainties that recipient governments face, and thus allows relatively small reductions in tax revenue without consequence. In other words, states and territories may make many small changes to alter the composition of their tax revenues or implement other policies with marginal effects on tax revenues. They may also make changes based on projected revenue effects that turn out to differ from actual effects, unintentionally resulting in minor revenue changes that are not fairly described as "resulting from" tax law changes. However, a de minimis does not automatically result in consequences under the offset provision, since a recipient government could demonstrate that other, non-SLFRF funds to offset a net reduction in tax revenue. Accordingly, any cliff effects associated with a clear de minimis threshold are mitigated by other aspects of the framework.

Public Comment: Commenters expressed a range of views regarding the amount of the de minimis. Some commenters argued that the de minimis was too generous, noting that the choice of 1 percent could, in some cases, permit reductions in net tax revenue of hundreds of millions of dollars. These commenters advocated that the de minimis be lowered (e.g., to 25 basis points) or be tied to a fixed amount. Other commenters argued that the choice of de minimis was not well supported by the statute, advocated for a larger de minimis and suggested that the amount be tied to the recipient government's total expenditures in the prior fiscal year.

Treasury Response: Treasury adopted a de minimis threshold as an administrative accommodation for the reasons discussed above. As discussed in the interim final rule, Treasury determined that the 1 percent de minimis level reflects the historical reductions in revenue due to minor changes in state fiscal policies and was determined by assessing the historical effects of state-level tax policy changes in state EITCs implemented to effect policy goals other than reducing net tax revenues.³⁶²

For these reasons, Treasury is adopting the 1 percent de minimis without change.

(3) *Safe harbor.* Next, under the interim final rule, if the revenue reduction caused by the covered changes exceeds the 1 percent de minimis threshold, the recipient government compares the reporting year's actual tax revenue to the baseline. If actual tax revenue is greater than the baseline, Treasury will deem the recipient government not to have any recognized net reduction for the reporting year, and therefore to be in a safe harbor and outside the ambit of the offset provision. This approach is consistent with the ARPA, which contemplates recoupment of SLFRF funds only in the event that such funds are used to offset a reduction in net tax revenue. If net tax revenue has not been reduced, the offset provision does not apply. In the event that actual tax revenue is above the baseline, the organic revenue growth that has occurred, plus any other revenue-raising changes, by definition must have been enough to offset the in-year costs of any covered changes. One commenter argued that the offset for organic growth be adjusted to reflect population growth. To minimize administrative burden, and

for the reasons discussed above, Treasury is maintaining the measurement of actual tax revenue without adjustment for population growth.

(4) *Consideration of other sources of funding.* The recipient government will then identify and calculate the total value of changes that could pay for revenue reduction due to covered changes and sum these items. This amount can be used to pay for up to the total value of revenue-reducing changes in the reporting year. These changes consist of two categories:

(a) *Tax and other increases in revenue.* The recipient government must identify and consider covered changes in policy that the recipient government predicts will have the effect of increasing general revenue in a given reporting year. Recipient governments should use the same approach to identify and value covered changes that increase tax revenue as applied to covered changes that reduce tax revenue. For the reasons discussed above, Treasury is adopting these aspects of identifying and valuing covered changes without change.

(b) *Covered spending cuts.* A recipient government also may cut spending in certain areas to pay for covered changes that reduce tax revenue, up to the amount of the recipient government's net reduction in total spending as described below. These changes must be reductions in government outlays in an area where the recipient government has not spent SLFRF funds. To better align with existing reporting and accounting, the interim final rule considers the department, agency, or authority from which spending has been cut and whether the recipient government has spent SLFRF funds on that same department, agency, or authority. If the recipient government has not spent SLFRF funds in a department, agency, or authority, the full amount of the reduction in spending counts as a covered spending cut, up to the recipient government's net reduction in total spending. If they have spent SLFRF funds in such department, agency, or authority, the SLFRF funds generally would be deemed to have replaced the amount of spending cut and only reductions in spending above the amount of SLFRF funds spent on the department, agency, or authority would count. This approach—allowing only spending reductions in areas where the recipient government has not spent SLFRF funds to be used as an offset for a reduction in net tax revenue—aims to prevent recipient governments from using SLFRF funds to supplant state or territory funding in the eligible use

³⁶² Data provided by the Urban-Brookings Tax Policy Center for state-level EITC changes for 2004–2017.

areas, and then using those state or territory funds to offset tax cuts. Such an approach helps ensure that SLFRF funds are not used to “indirectly” offset revenue reductions due to covered changes.

Department, Agency, or Authority

Public Comment: Several commenters supported the interim final rule’s approach to considering spending cuts at the department, agency, or authority level, on the basis that this approach is supported by the statutory language prohibiting SLFRF funds from being used to “directly or indirectly” offset a reduction in net tax revenue. On the other hand, some commenters argued that the methodology for identifying offsetting spending cuts was too restrictive; specifically, that measurement at the agency or department-level may not adequately account for the size and various programs that could occur in one agency or department. One commenter argued that recipient governments should instead be permitted to consider spending cuts on a more granular sub-unit of a department but noted that this additional flexibility would come at the cost of transparency and clarity.

Treasury Comment: Treasury recognizes that some recipients may vary in their budgeting processes, with some budgeting on a department level and others budgeting at more or less granular sub-units of government. Relying on spending at a department, agency, or authority level allows recipient governments to report how SLFRF funds have been spent using reporting units already incorporated into their budgeting process.

Spending Cuts Baseline

Under the interim final rule, to calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient government must first consider whether there has been a reduction in total net spending, excluding SLFRF funds (net reduction in total spending). This approach ensures that reported spending cuts actually create fiscal space, rather than simply offset other spending increases. A net reduction in total spending is measured as the difference between total spending in each reporting year, excluding SLFRF funds spent, relative to total spending for the recipient’s fiscal year ending in 2019, adjusted for inflation. Measuring reductions in spending relative to 2019 reflects the fact that the fiscal space created by a spending cut persists so long as spending remains below its original

level, even if it does not decline further, relative to the same amount of revenue.

Public Comment: Several commenters expressed concern regarding the measurement of spending cuts relative to the recipient’s FY 2019, for example arguing that the choice did not take into account increases in spending in 2020. As one commenter noted, the fiscal year 2020 required extraordinary intervention by recipient governments and the ongoing public health emergency continues to require extraordinary intervention.

Treasury Response: FY 2019 provides a reasonable and relatively generous baseline for considering spending because it is the last full fiscal year prior to the COVID-19 public health emergency and governments’ extraordinary efforts to address the impact of the pandemic. This approach also aligns with the FY 2019 baseline for measuring revenue loss. Measuring spending cuts from year to year would, by contrast, not recognize any available funds to offset revenue reductions unless spending continued to decline, failing to reflect the actual availability of funds created by a persistent change and limiting the discretion of states and territories.

For the reasons discussed above, Treasury is adopting the approach taken in the interim final rule without change.

(5) *Identification of amounts subject to recoupment.* If a recipient government (i) reports covered changes that reduce tax revenue (Step 1); (ii) to a degree greater than the de minimis (Step 2); (iii) has experienced a reduction in net tax revenue (Step 3); and (iv) lacks sufficient revenue from other, permissible sources to pay for the entirety of the reduction (Step 4), then the recipient government will be considered to have used SLFRF funds to offset a reduction in net tax revenue, up to the amount that revenue has actually declined. That is, the maximum value of the reduction revenue due to covered changes that a recipient government must cover is capped at the difference between the baseline and actual tax revenue.³⁶³ In the event that the baseline is above actual tax revenue but the difference between them is less than the sum of revenue reducing changes that are not paid for with other, permissible sources, organic revenue growth has implicitly offset a portion of the reduction. The revenue reduction cap implements this approach for

permitting organic revenue growth to cover the cost of tax cuts.

Finally, a recipient government may request reconsideration of any amounts identified in a notice from Treasury as subject to recoupment under this framework. Comments and responses to the recoupment process are discussed in section Remediation and Recoupment of this Supplemental Information.

3. Reporting

To facilitate the implementation of the framework above, and in addition to reporting required on eligible uses, recipient governments are required to report certain information. The interim final rule indicated that Treasury would provide additional guidance at a later date and that, on an annual basis, it expected each recipient government would be required to provide the following information:

- Actual net tax revenue for the reporting year;
- Each revenue-reducing change made to date during the covered period and the in-year value of each change;
- Each revenue-raising change made to date during the covered period and the in-year value of each change; and
- Each covered spending cut made to date during the covered period, the in-year value of each cut, and documentation demonstrating that each spending cut is covered as prescribed under the interim final rule.

Since the adoption of the interim final rule, Treasury has provided guidance on reporting regarding eligible uses and has required recipient governments to indicate whether they have made covered changes and the value of such changes.³⁶⁴

Reporting Burden

Public Comment: Some commenters argued that the framework for identifying and reporting impermissible offsets was burdensome and that the burdens should be accounted for under Executive Order 13132 (Federalism, August 4, 1999).

Treasury Response: Taking into consideration comments received regarding burden, Treasury is considering a tiered approach to reporting on the offset provision. Specifically, under this approach, a recipient would only be required to report information to the extent needed to determine whether SLFRF funds had been used to offset a reduction in net tax revenue. For example, a recipient government would be required to report

³⁶³ This cap is applied in section 35.8(c) of the final rule, calculating the amount of funds used in violation of the tax offset provision.

³⁶⁴ See Reporting Guidance, Section C.11, available at <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>.

information regarding permissible offsets only if it had also reported covered changes that were in excess of the de minimis and had reported a net reduction in tax revenue. Treasury will provide additional guidance and instructions on the reporting requirements at a later date.

As discussed in section Regulatory Analyses of this Supplemental Information, Treasury maintains that the final rule does not have federalism implications within the meaning of Executive Order 13132 (Federalism, August 4, 1999). In the ARPA, Congress requires states and territories to repay the Secretary for amounts used in violation of the prohibition on using SLFRF funds to offset reductions in net tax revenue, and it authorizes the Secretary to issue regulations to carry out this limitation and other requirements of the statute. Section 6(b) of Executive Order 13132 contemplates that certain regulations will be required by statute, as is the case with the interim final rule and the final rule, in which case section 6(b)(2)(B)'s requirement to include a federalism summary impact statement in the Supplementary Information to the regulation does not apply. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected state, local, and Tribal government officials and associations in the process of developing the interim final rule.

Reporting Transparency

Public Comment: Several commenters argued that information supporting the net tax offset calculation should be publicly available. Some of these commenters requested that reporting be made available in a machine-readable format, and others advocated that recipient governments disclose this information on their local budget agency's website. These commenters argued that making information regarding tax changes publicly available would increase transparency and accountability. Further, several commenters suggested that Treasury provide a mechanism for citizens to register their concerns about particular tax actions.

Treasury Response: As discussed in other sections, reporting requirements promote transparency and accountability for the general public and constituents of recipient governments to understand how state, local, and Tribal governments have used SLFRF funds. Since the publication of the interim final rule, Treasury issued supplementary reporting guidance in the Compliance and Reporting Guidance

and in the User Guide: Treasury's Portal for Recipient Reporting (User Guide), which addresses the particular content and form of required reporting. Treasury will continue to issue updated guidance prior to each reporting period clarifying any modifications to requested report content and will continue to consider how reporting can best support transparency and accountability while minimizing recipient administrative burden. Further, as discussed in the section Remediation and Recoupment, Treasury may address potential violations of this final rule based on both information submitted from recipients, either through quarterly reports or self-reporting, and from other sources of information (e.g., information submitted from the public).

2. Deposit Into Pension Funds

Background: Subsection 602(c)(2)(B) of the Social Security Act provides that "[n]o State or territory may use funds made available under this section for deposit into any pension fund." Similarly, subsection 603(c)(2) of the Social Security Act provides that "[n]o metropolitan city, nonentitlement unit of local government, or county may use funds made available under this section for deposit into any pension fund."

For purposes of this restriction on pension deposits, the interim final rule defined deposit to mean "an extraordinary payment of an accrued, unfunded liability." The interim final rule also specified that a deposit does not include routine contributions made as part of a payroll obligation, such as the normal cost component of a pension contribution or the component that consists of amortization of unfunded liabilities calculated by reference to the employer's payroll costs. The interim final rule applied the restriction on pension deposits to all recipients.

Public Comment: Several commenters observed that the statutory restriction on deposits into pension funds does not apply to Tribal governments.

Treasury Response: In response, Treasury is clarifying in the final rule that the pension restriction does not apply to Tribal governments.

Public Comment: Treasury also received a comment expressing concern that the interim final rule permitted recipients to make a larger than usual pension contribution, so long as the timing of that contribution aligns with the historical timing of contributions.

Treasury Response: The interim final rule prohibited the use of SLFRF funds from the ARPA to make extraordinary payments, and the **SUPPLEMENTARY INFORMATION** to the interim final rule said that a payment would be an

extraordinary payment if it reduces a liability incurred prior to the start of the COVID-19 public health emergency and occurs outside the recipient's regular timing for making the payment. At the same time, however, as suggested by the comment Treasury received, a payment made at the regular time for pension contributions may very well be an extraordinary payment, for example, if it is larger than a regular payment would have been. Such a payment would be a restricted use.

Public Comment: Other commenters asked which pension contributions are permitted.

Treasury Response: To be an eligible use of SLFRF funds, a use must (1) be eligible under one of the eligible use categories and (2) not contravene any of the applicable restrictions on uses of funds. Some pension contributions may be eligible because they both fit within an eligible use category and do not contravene the restriction on deposits into pension funds (i.e., they are not an extraordinary payment of an accrued, unfunded liability). For example, payroll and covered benefits for public health and safety staff responding to COVID-19 are an eligible use of funds to respond to the public health and negative economic impacts of the pandemic; routine pension contributions as part of an employee's regular covered benefits are permissible under that eligible use category.

B. Other Restrictions on Use of Funds

1. Debt Service and Replenishing Financial Reserves

The **SUPPLEMENTARY INFORMATION** to the interim final rule provided that debt service is not an eligible use of funds either to respond to the public health emergency or its negative economic impacts or as a provision of government services to the extent of revenue loss.³⁶⁵ The interim final rule also provided that replenishing financial reserves (e.g., rainy day funds) is not an eligible use of funds either to respond to the public health emergency or its negative economic impacts or as a provision of

³⁶⁵ "[G]overnment services would not include interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or fees or issuance costs associated with the issuance of new debt. For the same reasons, government services would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, except if the judgment or settlement required the provision of government services." 86 FR 26796-97 (May 17, 2021).

government services to the extent of revenue loss.³⁶⁶

As explained in greater detail below, Treasury, in the final rule, has retained these restrictions and is clarifying that these restrictions on the use of SLFRF funds apply to all eligible use categories.

Public Comments

Several commenters suggested that debt service and reserve replenishment should qualify as the provision of a government service and be an eligible use of funds, up to the amount of revenue loss due to the pandemic. Many commenters indicated that they had been forced to borrow money or dip into reserve funds to continue providing government services during the public health emergency and that using SLFRF funds for resulting debt service or reserve replenishment costs should therefore be considered a government service.

Many comments from Tribal governments noted that their governments depend on revenue from Tribal enterprises to pay government debts and provide services. The comments suggest that it should be an eligible use of SLFRF to replace lost revenue from these enterprises that would typically be used to pay debt service costs. Other commenters argued that paying the interest or principal on debt should in some cases be considered provision of government services and an eligible use of funds as such expenditures facilitate the provision of government services.

Some commenters argued that debt costs or reserve drawdowns during the public health emergency constitute a negative economic impact to recipient governments, and thus debt service or reserve replenishment should be an eligible use to respond to that negative economic impact. For example, several commenters suggested that there should be a specific carve-out allowing the use of SLFRF funds for debt service on debt incurred for government services after January 27, 2020, the start of the public health emergency, or short-term debt incurred for this purpose. Others suggested that recipient governments should be able to service debt, up to the amount of debt incurred in direct response to the pandemic. These commenters generally reasoned that the cost of responding to the public health emergency and its negative economic impacts prior to APRA's passage

constitutes a negative economic impact of the pandemic.

Some commenters argued that the specific impacts of the pandemic on the travel, tourism, and hospitality sector had affected their ability to meet debt service costs. For example, some commenters explained that specific tax streams (e.g., hotel room taxes) or revenue sources (e.g., hospitality generally) are tied to specific debt instruments and that these revenue sources had declined during the public health emergency; commenters argued that this constitutes a negative economic impact that SLFRF funds should be permitted to address.

Finally, some commenters questioned why servicing debt incurred after March 3, 2021 for an otherwise eligible project (e.g., a broadband infrastructure project) would not be an eligible use of funds.

On the other hand, many commenters expressed support for the interim final rule's prohibition on use of funds for debt service and reserve replenishment. These commenters largely argued that SLFRF funds should be used to provide current services to communities in response to the public health emergency and that use of funds for debt service or reserve replenishment represented, respectively, payment for past costs or savings for potential future costs. In addition to the prohibition on debt service and reserve replenishment, some commenters suggested that the final rule should also prevent funds from being used for state UI trust fund replenishment or for paying off debt owed through UI trust funds. One commenter argued that Treasury should further restrict recipient governments, for example by preventing recipients from making cuts to an allowable budget item, filling the budget gap with SLFRF funds, and then using the savings from the initial cut for debt service or reserve replenishment.

Treasury Response

The final rule maintains the restriction on the use of funds for debt service or reserve replenishment for the reasons described below and clarifies that this restriction applies to all eligible use categories.

First, debt service and reserve replenishment costs do not constitute the provision of services to constituents. As noted in the interim final rule, financing expenses—such as issuance of debt or payment of debt service—do not provide services or aid to citizens. Similarly, contributions to rainy day funds and similar financial reserves constitute savings for future spending needs. As such, these expenses do not respond to the current and ongoing

public health and negative economic impacts of the pandemic, nor do they provide a government service.

Second, payments from the SLFRF are intended to be used prospectively (see section Timeline for Use of SLFRF Funds). The interim final rule provided that funds may be used for costs incurred beginning on March 3, 2021, which Treasury has maintained in the final rule. Use of funds for debt service on indebtedness issued prior to March 3, 2021 necessarily entails using funds for costs incurred during prior time periods, rather than the present response to the public health emergency and its negative economic impacts or to provide government services.

Third, SLFRF funds provide recipients with substantial latitude to use funds to support the diverse needs in their communities. With SLFRF resources available, recipients have less need to incur debt for otherwise-eligible SLFRF uses.

Finally, given the strong performance of overall revenues and low municipal bond yields, state and local governments generally do not face high levels of fiscal stress. Limits on debt service or replenishment of reserves would not have a substantial impact on recipients' ability to provide services. The ratio of state and local debt-to-GDP, which spiked briefly during the pandemic, has recovered to its pre-pandemic level and remains well below levels seen during the Great Recession.³⁶⁷

2. Settlements and Judgments

The interim final rule also provided that satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding would not be an eligible use of funds to respond to the public health and negative economic impacts of the pandemic or as a government service provided under the revenue loss eligible use category. However, if the judgment or settlement requires the recipient to provide services that are otherwise eligible under an SLFRF eligible use category, specifically if the settlement or judgment requires the recipient to provide services to respond to the COVID-19 public health emergency or its negative economic impacts or to provide government services, then those costs are eligible uses of SLFRF funds.

³⁶⁶ "In addition, replenishing financial reserves (e.g., rainy day or other reserve funds) would not be considered provision of a government service, since such expenses do not directly relate to the provision of government services."

³⁶⁷ Table Z.1 of the Financial Accounts of the United States, Board of Governors of the Federal Reserve System, and Table 1.1.5 of National Income and Product Accounts, Bureau of Economic Analysis.

In other words, satisfaction of a settlement or judgment itself is not itself an eligible use of funds, unless the settlement requires the recipient to provide services or incur other costs that are eligible uses of SLFRF funds.

In the final rule, Treasury is maintaining the interim final rule approach and clarifying that it applies to all eligible use categories and any use of funds under the SLFRF program.

3. General Restrictions

In addition to the above restrictions, there are three general restrictions that apply to SLFRF funds. These restrictions, which reflect existing laws and regulations, the Award Terms and Conditions, and application of the ARPA statute, applied under the interim final rule, and they continue to apply under the final rule.

A primary purpose of the SLFRF in the ARPA is to support efforts to stop the spread of COVID-19.³⁶⁸ As discussed above, recipients of SLFRF funds are required to comply with the Award Terms and Conditions established for the use of such funds. The interim final rule and final rule implement this objective by, in part, providing that recipients may use SLFRF funds for COVID-19 mitigation and prevention.³⁶⁹ See section Public Health in Public Health and Negative Economic Impacts.

The CDC has provided recommendations and guidelines to help mitigate and prevent COVID-19 and has identified vaccines and masks as two of the best tools to prevent the spread of COVID-19. The interim final rule and final rule help support recipients in stopping the spread of COVID-19 through these recommendations and guidelines. Consistent with the purpose of the ARPA and as implemented through the interim final rule and final rule, a recipient may not use SLFRF funds for a program, service, or capital expenditure that includes a term or condition that undermines efforts to stop the spread of COVID-19. A program or service that imposes conditions on participation or acceptance of the service that would undermine efforts to stop the spread of COVID-19 or discourage compliance with recommendations and guidelines in CDC guidance for stopping the spread of COVID-19 is not a permissible use of SLFRF funds.

In other words, recipients may not use funds for a program that undermines

practices included in the CDC's guidelines and recommendations for stopping the spread of COVID-19. This includes programs that impose a condition to discourage compliance with practices in line with CDC guidance (e.g., paying off fines to businesses incurred for violation of COVID-19 vaccination or safety requirements), as well as programs that require households, businesses, nonprofits, or other entities not to use practices in line with CDC guidance as a condition of receiving funds (e.g., requiring that businesses abstain from requiring mask use or employee vaccination as a condition of receiving SLFRF funds).

Second, a recipient may not use SLFRF funds in violation of the conflict of interest requirements contained in the Award Terms and Conditions or the Office of Management and Budget's Uniform Guidance, including any self-dealing or violation of ethics rules. Recipients are required to establish policies and procedures to manage potential conflicts of interest.³⁷⁰ Treasury may provide further guidance on the types of activities or conflicts that the recipient's policies and procedures must cover.

Lastly, recipients should also be cognizant that federal, state, and local laws and regulations, outside of SLFRF program requirements, may apply. Recipients may not use revenue loss funds, for instance, to violate other background laws that limit the scope of activities that may be conducted as "government services," including other state and federal laws. State and local procurement, contracting, and conflicts-of-interest laws and regulations may include applicable requirements, including, for example, required procurement processes for contractor selection or competitive price setting. Furthermore, recipients are also required to comply with other federal, state, and local background laws, including environmental laws³⁷¹ and federal civil rights and nondiscrimination requirements, which include prohibitions on discrimination on the basis of race, color, national origin, sex, (including sexual orientation

and gender identity), religion, disability, or age, or familial status (having children under the age of 18).

IV. Program Administration Provisions

The interim final rule included several sections that described the processes and requirements for administering the program on an ongoing basis, specifically: Distribution of funds, transfer of funds, use of funds for program administration, reporting on the use of funds, and remediation and recoupment of funds used for ineligible purposes.

To enhance clarity, this **SUPPLEMENTARY INFORMATION** for the final rule organizes these issues into one section on Program Administration Provisions. Recipients should also consult Treasury's Compliance and Reporting Guidance for additional information on program administration processes and requirements, including the applicability of the Uniform Guidance.

A. Payments in Tranches to Local Governments and Certain States

Section 602(b)(6)(A)(ii) of the Social Security Act authorizes the Secretary to withhold payment of up to 50 percent of the amount allocated to each state and territory for a period of up to 12 months from the date on which the state or territory provides its statutorily-required certification to the Secretary. The Social Security Act requires any such withholding be based on the unemployment rate in the state or territory as of the date of the certification.

Under the interim final rule, Treasury provided that it would withhold 50 percent of the amount allocated from any state that had an unemployment rate less than two percentage points above its unemployment rate in February 2020 as of the date the state submitted its initial certification for payment of funds pursuant to section 602(d)(1) of the Social Security Act. Based on data available at the time of the issuance of the interim final rule, this threshold was expected to result in a majority of states being paid in two tranches. Treasury did not split the payments of any territories.

Public Comment: One commenter asked Treasury to allow a state to request release of the portion of the state's second tranche payment after the state could demonstrate that it had allocated the entirety of the first tranche, a need to continue ongoing programs, and a desire to avoid borrowing costs. Another commenter asked Treasury to clarify whether states that received half their funding in the

³⁶⁸ See Sec. 602(a)(1); 603(a)(1); 602(c)(1); 603(c)(1).

³⁶⁹ See 35.6(b); Coronavirus State and Local Fiscal Recovery Funds, 86 FR at 26786.

³⁷⁰ Specifically, the Award Terms and Conditions provide that "[r]ecipient understands and agrees it must maintain a conflict of interest policy consistent with 2 CFR 200.318(c), and that such conflict-of-interest policy is applicable to each activity funded under this award. Recipients and subrecipients must disclose in writing to Treasury or the pass-through agency, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 CFR 200.112."

³⁷¹ An exception is statutes that do not apply unless explicitly stated, including, e.g., the National Environmental Policy Act and the Davis-Bacon Act.

first payment would receive their second half payment within 12 months. Similarly, some recipients requested clarification on whether they could obligate second tranche funds before receipt or use second tranche funds for costs incurred prior to receipt.

Treasury Response: The final rule maintains the approach in the interim final rule with two modifications. As described in the interim final rule, splitting payments for most states provides consistency with payments to local governments and encourages states to adapt their use of funds to developments that arise in the course of the economic recovery. Moreover, SLFRF funds may be used for costs incurred during the period of performance. Recipients may use their jurisdiction's budgeting and procurement practices and laws to determine how and when second tranche funds may be obligated.

The final rule makes two adjustments for operational purposes. First, the final rule provides that Treasury expects to make all second tranche payments to states available beginning 12 months from the date that funding was first made available by Treasury (May 10, 2021) regardless of when each individual state submitted its initial certification. This should increase clarity and consistency on the timing of second tranche payments for both states and Treasury. Second, also to ease recipient states' administrative burden, the final rule strikes a requirement from the interim final rule that states must certify for their second tranche payments and file all required reports at least 30 days prior to the date on which their second payment is made available. The final rule simply requires that states certify for their second tranche payment and file all required reports before receiving their second tranche payment, with no 30 day wait period required.

B. Payments to Nonentitlement Units of Local Government (NEUs) and Units of Local Government (UGLGs) Within Non-UGLG Counties

The interim final rule established requirements related to distributions of SLFRF funds by states and territories to NEUs and UGLGs within non-UGLG counties. Specifically, the interim final rule provided that the total distribution to an NEU cannot exceed 75 percent of the most recent budget for the NEU (the 75 percent budget cap); a requirement set forth in section 603(b)(2)(C)(iii) of the Social Security Act. The interim final rule **SUPPLEMENTARY INFORMATION** defined the NEU's budget for purposes of calculating the 75 percent budget cap as the NEU's "most recent annual total

operating budget, including its general fund and other funds, as of January 27, 2020." The interim final rule further provided that states and territories must permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the 75 percent budget cap. Further, the interim final rule prohibited states and territories from placing additional conditions or requirements on distributions to NEUs beyond those required by the statute, the interim final rule, or Treasury's guidance and from offsetting any debt owed by such NEUs against such distributions.

Commenters predominantly focused on the definition of an NEU's budget for purposes of calculating the 75 percent budget cap, NEU allocations and eligibility, and the prohibition on states and territories imposing additional conditions or requirements in the NEU distribution process.

Definition of NEU Budget

Public Comment: Commenters suggested that Treasury provide greater clarification on the definition of an NEU's "most recent budget" for purposes of the 75 percent budget cap calculation. Treasury provided updated guidance on its interpretation of the 75 percent budget cap on June 30, 2021, and a commenter suggested that Treasury incorporate such updated interpretation into the **SUPPLEMENTARY INFORMATION** of the final rule.

Treasury Response: Consistent with the Update on Interpretation for the 75 Percent Budget Cap Calculation published on June 30, 2021,³⁷² the **SUPPLEMENTARY INFORMATION** of the final rule defines an NEU's budget for purposes of calculating the 75 percent budget cap as its total annual budget, including both operating and capital expenditure budgets, in effect as of January 27, 2020. The guidance also gives states and territories flexibility to provide further guidance to their NEUs to operationalize the 75 percent budget cap. Given the variance in local financial accounting, this updated definition will better facilitate states' and territories' distribution of SLFRF funds to NEUs.

Allocations and Eligibility

Public Comment: Many commenters provided feedback on specific allocation calculations and eligibility of local governments for NEU funding.

³⁷² Treasury's Update on Interpretation for the 75 Percent Budget Cap Calculation can be found at: <https://home.treasury.gov/system/files/136/NEU-Update-75-Percent-Budget-Cap.pdf>.

Commenters addressed how a locality was classified as an NEU or metropolitan city, deviations between Treasury's allocation calculations and earlier estimates from other sources, treatment of unincorporated areas, sources for population data, and Treasury's allocation of NEU funding to states and territories based on the population of a state and territory outside of its metropolitan cities. Two commenters proposed that Treasury provide an appeal process for localities that were not identified on the List of Local Governments used by states and territories as part of the process in which a state or territory determines the eligibility of an NEU in accordance with Treasury guidance, or for Minor Civil Divisions (MCDs) that were denied funding as part of a facts-and-circumstances test undertaken by a weak-MCD state.

Treasury Response: Neither the interim final rule nor the final rule addresses eligibility or allocations issues, and comments on these topics are outside the scope of this rulemaking. These questions are addressed in other Treasury guidance, including the Guidance on Distribution of Funds to Non-entitlement Units of Local Government and Non-entitlement Unit of Local Government Definitional and Data Methodology guidance documents available on Treasury's website.³⁷³ Because Treasury interpreted the definition of an NEU³⁷⁴ in accordance with the statute and established an NEU distribution process in May 2021, the final rule does not incorporate an appeals process regarding the definitions or the facts-and-circumstances test used for eligibility determinations.

Prohibition on Additional Conditions or Requirements in the NEU Distribution Process

Public Comment: One commenter expressed support for Treasury's prohibition on states and territories

³⁷³ The Guidance on Distribution of Funds to Nonentitlement Units of Local Government can be found at this link: https://home.treasury.gov/system/files/136/NEU_Guidance.pdf. The Nonentitlement Unit of Local Government Definitional and Data Methodology can be found at this link: https://home.treasury.gov/system/files/136/NEU_Methodology.pdf.

³⁷⁴ Treasury has interpreted NEU to generally include both incorporated places and MCDs with active functioning governments, subject to the state determining, in the case of weak-MCD States, that a weak MCD has the legal and operational capacity to accept SLFRF funds and provides a broad range of services that would constitute eligible uses under ARPA. More details can be found in the Nonentitlement Unit of Local Government Definitional and Data Methodology, available at https://home.treasury.gov/system/files/136/NEU_Methodology.pdf.

placing additional conditions or requirements on distributions to NEUs. This prohibition restricts states and territories from imposing limitations on NEUs' use of SLFRF funds based on an NEU's proposed spending plan or other policies, offsetting any debt owed by an NEU against the NEU's distribution, or providing funding on a reimbursement model. In particular, the commenter noted that a reimbursement model would lead to inequities in accessing SLFRF funds.

Treasury Response: The final rule maintains and finalizes the prohibition on states and territories placing additional conditions or requirements on distributions to NEUs as well as to any UGLGs within counties that are non-UGLGs. Such conditions or requirements may contravene the statutory requirement that states and territories make distributions based on population and within the statutorily defined timeframe.

Other Provisions

Treasury did not receive substantive comments on the requirement that states and territories permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the 75 percent budget cap, or Treasury's interpretation of the 75 percent budget cap applying only to a consolidated government's NEU allocation under section 603(b)(2) but not to a consolidated government's county allocation under section 603(b)(3). Further, Treasury did not receive substantive comments on the interim final rule's allowance that states and territories be able to use SLFRF funds under section 602(c)(1)(A) to fund expenses related to administering payments to NEUs and units of general local government. As such, the final rule maintains these provisions as written in the interim final rule without modification.

Treasury received some comments that are not addressed because they are beyond the scope of the NEU provision of the interim final rule or not authorized by the statute, including comments related to state accounting practices, re-allocations of NEU allocations that exceed the 75 percent budget cap, and concerns around eligible uses under SLFRF that small local governments may find particularly salient.

C. Timeline for Use of SLFRF Funds

The interim final rule provided that "[a] recipient may only use funds to cover costs incurred during the period

beginning March 3, 2021 and ending December 31, 2024." The interim final rule also provides that the period of performance will run until December 31, 2026, which will provide recipients an additional two years during which they may expend funds for costs incurred (*i.e.*, obligated).

As explained in more detail below, in the final rule Treasury is maintaining these time periods. Treasury will retain March 3, 2021 as the first date when costs may be incurred, to provide for forward-looking or prospective use of funds and to align with the start date of the "covered period" as such term is used in section 602(c)(2)(A). The deadline for costs to be incurred—which the final rule clarifies means obligated—December 31, 2024, is specified in the ARPA statute, and Treasury will retain 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.

Public Comments. Some commenters expressed concerns about costs incurred before March 3, 2021 not being covered and recommended the "start date" be changed to January 2020 to coincide with the declaration of the public health emergency. These commenters argued that recipient governments began incurring costs to respond to COVID-19 and its economic impacts in January 2020 and that prior federal fiscal relief, such as relief provided in the Coronavirus Aid, Relief, and Economic Security Act, did not fully compensate recipient governments for these costs. These commenters recommended that costs incurred before March 3, 2021 that otherwise fit within eligible use categories for SLFRF should be permissible uses of funds.

Some commenters asked Treasury to clarify whether local governments are subject to the same covered period as states and territories beginning March 3, 2021. Commenters noted that section 603(g) of the Social Security Act does not contain the same definition of "covered period" as section 602(g)(1) of the Social Security Act, which references a statutory provision that only applies to states and territories.

Many commenters requested that the deadline for costs to be incurred and the period of performance be extended due to the longer timeline for completing water and sewer projects. One commenter requested that recipients be able to split projects into different phases so that funds could be expended on larger, longer term projects (*e.g.*, by obligating funds on one portion of the project by the statutory deadline). One commenter recommended that the

period of performance be extended for at least two additional years beyond the expenditure deadline set forth in the interim final rule, *i.e.*, until December 31, 2028. One commenter wrote that the final rule should allow for extended projects (*e.g.*, over a time horizon of more than ten years) for recipients working to develop long-term water supplies to prepare for extreme drought.

Treasury Response. In the final rule, Treasury is maintaining March 3, 2021 as the date when recipients may begin to incur costs using SLFRF funds. As described in the interim final rule, use of SLFRF funds is forward looking and the eligible use categories provided by statute are all prospective in nature. While recipients may identify and respond to negative economic impacts that occurred during 2020, the costs incurred to respond to these impacts remain prospective. Further, Treasury considers the beginning of the covered period for purposes of determining compliance with section 602(c)(2)(A) to be a relevant reference point for this purpose that provides some flexibility for recipients that began incurring costs in the anticipation of enactment of the ARPA or in advance of the issuance of the interim final rule and receipt of payment.

Finally, establishing an earlier start date would permit governments to use funds received in 2021 to satisfy obligations incurred in 2020. This use raises a substantial risk of SLFRF funds being used to supplant other recipient funds previously used to pay for such 2020 obligations, freeing funds for recipients to use for any purpose rather than eligible uses of SLFRF funds under the ARPA. Permitting such usage would undermine the provisions setting forth permissible and impermissible uses in the statute. Therefore, a reading of the statute permitting use of funds prior to March 3, 2021 would be inconsistent with the statutory structure.

In the final rule, Treasury is also maintaining the deadlines by which funds must be obligated (*i.e.*, December 31, 2024) and by which such obligations must be liquidated (*i.e.*, December 31, 2026). The December 31, 2024 deadline by which eligible costs must be incurred is established by statute. Treasury is finalizing its interpretation of "incurred" to be equivalent to the definition of "obligation," based on the definition used for purposes of the Uniform Guidance. Treasury is also maintaining the period of performance, which will run through December 31, 2026, and provides the deadline by which recipients must expend obligated funds. Most recipients received SLFRF funds in the spring and summer of 2021,

meaning that 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.

D. Transfers of Funds

Under section 602(c)(3) of the Social Security Act, a state, territory, or Tribal government may transfer SLFRF funds to a “private nonprofit organization . . . a Tribal organization . . . a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of state or local government.” Similarly, section 603(c)(3) authorizes a local government to transfer SLFRF funds to the same entities (other than Tribal organizations). Separately, section 603(c)(4) authorizes a local government to transfer SLFRF funds to the state in which it is located.

Entities Eligible for a Transfer Under Sections 602(c)(3) and 603(c)(3)

Regarding transfers permitted under sections 602(c)(3) and 603(c)(3) of the Act, the interim final rule Supplementary Information clarified that the lists of transferees in these sections are not exclusive and that state, local, territorial, and Tribal governments may transfer funds to other constituent units of government or private entities beyond those specified in the statute.

Public Comment: Several commenters supported Treasury’s interpretation of eligible transferees in sections 602(c)(3) and 603(c)(3) as nonexclusive. However, many commenters asked for greater clarity as to whether specific entities not listed in Treasury’s examples of eligible subrecipients, such as nonprofits and Tribal governments, were eligible transferees. One commenter also asked whether a recipient may transfer SLFRF funds to a higher level of government, such as a locality to the county in which it is located.

Treasury Response: The final rule clarifies that, in addition to the entities enumerated in sections 602(c)(3) and 603(c)(3), 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 at 2 CFR 200.331–200.333. Eligible subrecipients include, but are not limited to, other units of government (including Tribal governments), nonprofits and other civil society organizations, and private entities. Further, the final rule clarifies that transfers may be made to both constituent or non-constituent units of

government. For example, county A may transfer SLFRF funds to county B as long as county B abides by the use restrictions applicable to county A and the transfer would constitute an eligible use of the funds by county A. County A must receive a benefit proportionate to the amount transferred.

As detailed in the interim final rule Supplementary Information, once transfers are received, the transferee must abide by the restrictions on use applicable to the transferor under the ARPA and other applicable law, regulations, and program guidance. Further, the transferor remains responsible for monitoring and overseeing the subrecipient’s use of SLFRF funds and other activities related to the award to ensure that the subrecipient complies with the statutory and regulatory requirements and the Award Terms and Conditions. Recipients also remain responsible for reporting to Treasury on their subrecipients’ use of payments from the SLFRF for the duration of the award.

Pooling Funds

Public Comment: Several commenters asked for clarification about whether they may pool SLFRF funds for a project with other recipients, including when doing so involves a transfer to another entity, such as a regional organization or government that undertakes projects on behalf of a number of local governments. Commenters also asked for clarification on the oversight and reporting obligations that would result from such transfers.

Treasury Response: Consistent with guidance issued following the interim final rule,³⁷⁵ the final rule clarifies that recipients may pool SLFRF funds for projects, provided that the project is itself an eligible use of SLFRF funds for each recipient that is contributing to the pool of funds and that recipients are able to track the use of funds in line with the reporting and compliance requirements of the SLFRF. In general, when pooling funds for regional projects, recipients may expend funds directly on the project or transfer funds to another government or other entity that is undertaking the project on behalf of multiple recipients. To the extent recipients undertake regional projects via transfer to another organization or government, recipients would need to comply with the rules on transfers specified in the final rule

SUPPLEMENTARY INFORMATION. A

³⁷⁵ Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRFAQ.pdf>.

recipient may transfer funds to a government outside its boundaries (e.g., county transfers to a neighboring county), provided that the transferor can document that the transfer constitutes an eligible expense of the transferor government and that its jurisdiction receives a benefit proportionate to the amount transferred.

Blending and Braiding of Funds

Treasury is clarifying in the final rule that, consistent with further guidance issued by Treasury following the interim final rule,³⁷⁶ recipients may fund a project with both SLFRF funds and other sources of funding, provided that the costs are eligible costs under each source program and are compliant with all other related statutory and regulatory requirements and policies. The recipient must comply with applicable reporting requirements for all sources of funds supporting the SLFRF projects and with any requirements and restrictions on the use of funds from the supplemental funding sources and the SLFRF program. Specifically,

- All funds provided under the SLFRF program must be used for projects, investments, or services that are eligible under the SLFRF program. SLFRF funds may not be used to fund an activity that is not, in its entirety, an eligible use under the SLFRF program. For example:

- SLFRF funds may be used in conjunction with other sources of funds to make an investment in water infrastructure that is eligible under section 602 or 603 of the Social Security Act and the final rule.

- SLFRF funds could *not* be used to fund the entirety of a water infrastructure project that was partially, although not entirely, an eligible use under Treasury’s final rule. However, the recipient could use SLFRF funds only for a smaller component project that does constitute an eligible use, while using other funds for the remaining portions of the larger planned water infrastructure project that do not constitute an eligible use. In this case, the “project” for SLFRF purposes under this program would be only the eligible use component of the larger project.

- In addition, because SLFRF funds must be obligated by December 31, 2024, and recipients must expend all funds under the award no later than December 31, 2026, recipients must be able to, at a minimum, determine and report to Treasury on the amount of SLFRF funds obligated and expended and when such funds were obligated and expended.

³⁷⁶ See FAQ 4.10. *Id.*

Scope of a 603(c)(4) Transfer

Unlike in the case of a transfer under sections 602(c)(3) or 603(c)(3), the interim final rule **SUPPLEMENTARY INFORMATION** specified that transfers from a local government to the state under section 603(c)(4) will result in a cancellation or termination of the award on the part of the transferor local government and a modification of the award to the transferee state.

Public Comment: Two commenters suggested that Treasury expand section 603(c)(4) beyond transfers from localities to the state to include transfers from counties to their constituent local governments, which would incentivize counties to augment funds to address the needs of local governments. These commenters noted that counties are disincentivized to make transfers under section 603(c)(3), as is currently allowed, as such transfers would require that counties provide oversight and monitoring over its subrecipients.

Treasury Response: Section 603(c)(4), by its terms, applies only to transfers from local governments to states. Accordingly, the final rule must maintain the interim final rule's limitation of section 603(c)(4) transfers as applicable only to transfers from local governments to states. Expansions of section 603(c)(4) transfer authority beyond transfers from local governments to states were not explicitly authorized by Congress. As such, transfers under section 603(c)(4) may only be made by local governments to the state in which they are located.

Congress enumerated two separate transfer provisions for local governments—section 603(c)(3) and section 603(c)(4)—that use different language and were intended to operate differently. Section 603(c)(4) contains prefatory language (“Notwithstanding paragraph (1)”—a reference to the eligible SLFRF uses) that section 603(c)(3) does not. In other words, section 603(c)(4) transfers are not required to constitute an eligible use of the funds from the perspective of the transferor local government, but section 603(c)(3) transfers are required to constitute an eligible use. A transfer to accomplish an eligible use fits within the recipient-subrecipient framework.

Further, treating section 603(c)(3) transfers as leading to a cancellation of the award for the transferor local government would result in scenarios that are inconsistent with the statutory language. An award cancellation pursuant to a section 603(c)(3) transfer would result in either (1) non-governmental entities becoming award recipients under the program, which

would contravene the purpose of SLFRF or (2) transfers to governmental and non-governmental entities being treated in a distinct and inconsistent manner. That is, section 603(c)(3) transfers to governmental entities would lead to award cancellation but section 603(c)(3) transfers to non-governmental entities would lead to a recipient-subrecipient relationship. Therefore, in the final rule, Treasury maintains its distinct treatment of a section 603(c)(3) transfer and section 603(c)(4) transfer.

The final rule clarifies that a transfer under section 603(c)(4) will result in a modification, termination, or cancellation of the award on the part of the transferor local government and a modification of the award to the transferee state or territory. As detailed in the **SUPPLEMENTARY INFORMATION** to the interim final rule, the transferor must provide notice of the transfer to Treasury in a format specified by Treasury. Until the local government provides such notice and Treasury provides confirmation of its acceptance of the notice, the local government will remain responsible for ensuring that the SLFRF award is being used in accordance with the Award Terms and Conditions, section 602 or 603 of the Social Security Act, the final rule, and program guidance including reporting on such uses of the award funds to Treasury.

A state that receives a transfer from a local government under section 603(c)(4) will be bound, by statute, by all of the use restrictions set forth in section 602(c) with respect to the use of those SLFRF funds, including the prohibitions on use of such SLFRF funds to offset certain reductions in taxes or to make deposits into pension funds. The state will be responsible as the prime recipient for the use and reporting on any funds transferred under section 603(c)(4) by the local government. Such transferred funds will be subject to the Award Terms and Conditions previously accepted by the state in connection with its SLFRF award.

Subrecipient Transfers

Public Comment: Commenters sought clarification as to how funds may be transferred from a recipient to another entity. For instance, one commenter requested that recipients be able to advance funds to subrecipients as opposed to reimbursing subrecipients for expenses incurred.

Treasury Response: Treasury did not specify in the interim final rule whether recipients may advance funds to subrecipients. This omission was not intended to prevent recipients from

advancing funds to subrecipients, consistent with the various methods permitted under the Uniform Guidance. Given the broad flexibility that recipients have in selecting eligible uses and the broad variety of potential subrecipients, Treasury believes that specifying a single method of advancement or reimbursement would add unnecessary administrative difficulty to program administration. Recipients may determine the optimal payment structure for the transfer of funds (e.g., advance payments, reimbursement basis, etc.) from recipients to subrecipients. Ultimately, recipients must comply with the eligible use requirements and any other applicable laws or requirements and are responsible for the actions of their subrecipients.

E. Administrative Expenses

The interim final rule permitted, under the heading “[e]xpenses to improve efficacy of public health or economic relief programs,” use of funds for “[a]dministrative costs associated with the recipient’s COVID-19 public health emergency assistance programs, including services responding to the COVID-19 public health emergency or its negative economic impacts, that are not federally funded.”

Following release of the interim final rule, Treasury issued Compliance and Reporting Guidance that provided that “recipients may use funds for administering the SLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements. Further, costs must be reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405. Pursuant to the SLFRF Award Terms and Conditions, recipients are permitted to charge both direct and indirect costs to their SLFRF award as administrative costs. Direct costs are those that are identified specifically as costs of implementing the SLFRF program objectives, such as contract support, materials, and supplies for a project. Indirect costs are general overhead costs of an organization where a portion of such costs are [sic] allocable to the SLFRF award such as the cost of facilities or administrative functions like a director’s office.”³⁷⁷ Several commenters

³⁷⁷ U.S. Department of the Treasury, Recipient Compliance and Reporting Responsibilities, as of November 5, 2021; <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal->

Continued

requested clarity on which administrative expenses are permissible uses of funds and how recipients should structure administrative costs.

In the final rule, Treasury is clarifying that direct and indirect administrative expenses are permissible uses of SLFRF funds and are a separate eligible use category from “[e]xpenses to improve efficacy of public health or economic relief programs,” which refers to efforts to improve the effectiveness of public health and economic programs through use of data, evidence, and targeted consumer outreach. For details on permissible direct and indirect administrative costs, recipients should refer to Treasury’s Compliance and Reporting Guidance.³⁷⁸ Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect costs.

F. Treatment of Loans

The interim final rule allowed recipients to use SLFRF funds to make loans for uses that are otherwise eligible (for example, for small business assistance). Subsequent guidance clarified how recipients must track and dispose of program income from loans, consistent with the statutory requirements for the timing of SLFRF expenditures.

SLFRF funds must be used to cover “costs incurred” by the recipient between March 3, 2021 and December 31, 2024. The interim final rule provided that SLFRF funds must be obligated by December 31, 2024 and expended by December 31, 2026. In using SLFRF funds to make loans, recipients must be able to determine the amount of funds used to make a loan and must comply with restrictions on the timing of the use of funds and with restrictions in the Uniform Guidance.

When SLFRF funds are used as the principal for loans, there is an expectation that a significant share of the loaned funds will be repaid. Thus, recipients may not simply consider the full amount of loaned funds to be permanently expended and must appropriately account for the return of loaned funds.

For loans that mature or are forgiven on or before December 31, 2026, the recipient must account for the use of funds on a cash flow basis, consistent with Treasury’s guidance regarding loans made by recipients using payments from the Coronavirus Relief

Fund.³⁷⁹ Recipients may use SLFRF funds to fund the principal of the loan and in that case must track repayment of principal and interest (*i.e.*, “program income,” as defined under 2 CFR 200). When the loan is made, recipients must report the principal of the loan as an expense.

Repayment of principal may be re-used only for eligible uses and is subject to restrictions on the timing of the use of funds. Interest payments received prior to the end of the period of performance will be considered an addition to the total award and may be used for any purpose that is an eligible use of funds under the statute and final rule. Recipients are not subject to restrictions under 2 CFR 200.307(e)(1) with respect to such payments.

For loans with maturities longer than December 31, 2026, the recipient must estimate the cost to the recipient of extending the loan over the life of the loan. In other words, at origination, the recipient must measure the projected cost of the loan and may use SLFRF funds for the projected cost of the loan. Recipients have two options for estimating this amount: They may estimate the subsidy cost (*i.e.*, net present value of estimated cash flows) or the discounted cash flow under current expected credit losses (*i.e.*, CECL method). See further guidance issued by Treasury for further explanation.³⁸⁰

Public Comment: Many commenters asked for further clarification on the treatment of loans and the calculation of “costs incurred.” Some commenters requested that grants made for eligible activities prior to December 31, 2024 to a revolving loan fund, an economic development corporation, a land bank, or a similar facility should be considered obligated and expended at the time of the grant. This would allow funds to be expended by the grantee beyond the covered period and for funds returned to the grantee to be re-invested in further uses outside of the covered period.

Treasury Response: The final rule maintains the treatment of loans from the interim final rule and subsequent guidance, as discussed above. This approach is consistent with the statutory requirement that funds be used for costs incurred for eligible purposes by December 31, 2024 and is consistent

with standard accounting practices and the Uniform Guidance.

G. Use of Funds for Match or Cost-Share Requirements

As a general matter and as referenced in the **SUPPLEMENTARY INFORMATION** to the interim final rule, funds provided under one federal program may not be used by a recipient to meet the non-federal match or cost-share requirements of another federal program.

However, Treasury has since determined that, consistent with this general principle and the requirements of the Uniform Guidance at 2 CFR 200.306(b)(5), the funds available under sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act for the provision of government services, up to the amount of the recipient’s reduction in revenue due to the public health emergency, generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. Federal funds that constitute revenue sharing to state and local governments may generally be used to meet non-federal match requirements.³⁸¹ The broad eligible uses of the SLFRF funds available under sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act, combined with the purpose of these provisions (which is to provide general fiscal assistance to governments facing revenue losses due to the public health emergency), demonstrate that these funds are revenue sharing. They thus should generally be permitted to be used to meet the non-federal match and cost-share requirements of other federal programs. As such, the SLFRF funds available for the provision of government services, up to the amount of the recipient’s reduction in revenue due to the public health emergency, may be used to meet the non-federal match requirements of the Drinking Water State Revolving Fund and Clean Water State Revolving Fund programs administered by the EPA, for example.

Pursuant to 2 CFR 200.306(b) of the Uniform Guidance, if funds are legally available to meet the match or cost-share requirements of an agency’s federal program, such awarding agency is required to accept such funds for the purpose of that program’s match or cost-share requirements except in the circumstances enumerated in that section. The Office of Management and Budget has authority under 2 CFR

recovery-funds/recipient-compliance-and-reporting-responsibilities.

³⁷⁸ *Id.*

³⁷⁹ Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR at 4192.

³⁸⁰ See FAQ 4.11. Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

³⁸¹ See U.S. Government Accountability Office, *Principles of Federal Appropriations Law, Third Edition, Volume II*, p. 10–99, GAO–06–382SP (February 2006), <https://www.gao.gov/assets/gao-06-382sp.pdf>.

200.102 of the Uniform Guidance to issue waivers of this requirement on request of the relevant awarding agency. Analogous requirements and waiver authorities may be present in other regulations. If a recipient seeks to use SLFRF funds to satisfy match or cost-share requirements for a federal grant program, it should first confirm with the relevant awarding agency that no waiver has been granted for that program, that no other circumstances enumerated under 2 CFR 200.306(b) would limit the use of SLFRF funds to meet the match or cost-share requirement, and that there is no other statutory or regulatory impediment to using the SLFRF funds for the match or cost-share requirement. Note that SLFRF funds may not be used as the non-federal share for purposes of a state's Medicaid and CHIP programs because the Office of Management and Budget has approved a waiver as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations.

SLFRF funds beyond those that are available under sections 602(c)(1)(C) or 603(c)(1)(C) of the Social Security Act for the provision of government services may not be used to meet the non-federal match or cost-share requirements of other federal programs other than as specifically provided for by statute. For example, as discussed in other sections of this final rule, section 40909 of the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-federal match requirements of any authorized Bureau of Reclamation project, and section 60102 of the Infrastructure Investment and Jobs Act provides that the SLFRF may be used to meet the non-federal match requirements of the broadband infrastructure program authorized under that section (see sections Water and Sewer Infrastructure and Broadband Infrastructure).

H. Reporting

The interim final rule established Treasury's authority to collect information from recipients through requested reports and any additional requests for information. The interim final rule also provided Treasury flexibility to extend or accelerate reporting deadlines and to modify requested content for the Interim Report, Project and Expenditure reports, and Recovery Plan Performance reports.

The **SUPPLEMENTARY INFORMATION** of the interim final rule provided initial guidance on the reporting requirements for the SLFRF funds. States (defined to include the District of Columbia), territories, metropolitan cities, counties,

and Tribal governments were required to submit one interim report and quarterly Project and Expenditure reports thereafter. Non-entitlement units of local government were not required to submit an interim report. States, territories, and metropolitan cities and counties with a population greater than 250,000 residents were also required to submit an annual Recovery Plan Performance report to Treasury. The Supplementary Information of the interim final rule provided guidance on the deadlines and content required for each type of report.

Public Comment: Treasury received many comments on the content and specific data elements required of program reporting. Some commenters expressed enthusiasm for including particular details in reporting to promote transparency. Other commenters requested that Treasury streamline reporting requirements to avoid imposing undue administrative burdens and compliance costs. Many commenters requested further clarification on or amendments to particular elements of reporting content. Some commenters requested that reports and specific reporting elements be public, including a request for a public website with a number of programmatic data metrics about the use of SLFRF funds. Some commenters sought clarification and guidance for using the reporting portal, which allows recipients to upload the required information, or requested user modifications to the portal. Finally, some commenters requested that Treasury provide example materials and reporting metrics to aid recipient understanding.

Treasury Response: Since the publication of the interim final rule, Treasury issued supplementary reporting guidance in the Compliance and Reporting Guidance and in the User Guide: Treasury's Portal for Recipient Reporting (User Guide).³⁸² Treasury has addressed many of these comments in the Compliance and Reporting Guidance and User Guide and will continue to issue updated guidance prior to each reporting period clarifying any modifications to requested report content. Treasury notes that the interim final rule did not address the specific content and data elements required in reporting, the reporting portal or submission process, and the specific

form of reporting (e.g., example templates, machine readability); comments on these topics are outside the scope of the final rule and, as noted, are addressed instead in Compliance and Reporting Guidance.

Reporting Deadlines

Public Comment: Treasury received comments requesting various changes to reporting deadlines to ease compliance burdens. For example, Treasury received several comments requesting that Treasury delay early reporting deadlines for various reasons, including to align with the timeline for issuing a final rule and to allow for more time for recipients to determine SLFRF allocations. Commenters also requested changes to the immediacy of reporting, for example requesting that Treasury allow expenses to be reported with a lag instead of the quarter in which they were accrued or that reports be due 90 days after period close instead of 30 days after the close of a reporting period. Some commenters requested changes to the reporting frequency, for example to report biannually rather than quarterly.

Treasury Response: Treasury has clarified reporting deadlines in the Compliance and Reporting guidance.³⁸³ Treasury is retaining the reporting deadline of 30 days after the close of the reporting period to ensure timely accounting of the use of SLFRF funds; this timeline also aligns with practices in many other federal programs. The final rule maintains Treasury's discretion to extend or delay reporting deadlines.

Administrative Costs for Reporting and Compliance

Public Comment: Many commenters sought clarification about whether various administrative costs related to reporting and compliance were eligible uses of funds and asked for clarification on the limits of such use.

Treasury Response: Treasury notes that administrative costs are generally allowable uses of SLFRF funds, including for reporting. For additional information on administrative expenses, please see section Administrative Expenses under Program Administration Provisions.

Uniform Guidance

Public Comment: The **SUPPLEMENTARY INFORMATION** of the interim final rule clarified that SLFRF funds were generally subject to the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit

³⁸² U.S. Department of the Treasury, Recipient Compliance and Reporting Responsibilities, as of November 5, 2021; <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities>.

³⁸³ *Id.*

Requirements for Federal Awards (2 CFR part 200) (the Uniform Guidance), including the cost principles and restrictions on general provisions for selected items of cost. Treasury received many comments requesting clarification about or modifications to the applicability of the Uniform Guidance on various issues.

For example, one commenter requested that Treasury remove requirements that expenditures of funds be made in conformance with the Uniform Guidance, particularly in case of expenditures made during period from March 3, 2021 to the release of the interim final rule, while other comments requested that Treasury raise the single-audit threshold from \$750,000 to \$5 million. Commenters sought clarification on items such as: The applicability of the Uniform Guidance for funds that are used for the provision of government services, the applicability of particular sections of the cost principles provided in subpart E of the Uniform Guidance, the applicability of the procurement provisions of the Uniform Guidance, and requirements for subrecipient reporting.

Treasury Response: Recipients of SLFRF funds are subject to the provisions of the Uniform Guidance (2 CFR part 200) from the date of award to the end of the period of performance on December 31, 2026 unless otherwise specified in this rule or program-specific guidance. Costs must follow the requirements in 2 CFR 200 Subpart E, Cost Principles, including procurement standards. Recipients that receive an aggregate amount of federal financial assistance in a given fiscal year that exceeds the Single Audit threshold are subject to the requirements in 2 CFR 200 Subpart F, Audit Requirements, unless otherwise specified in program-specific guidance.

SLFRF funds transferred to subrecipients are also subject to reporting and Uniform Guidance requirements. Additional information about the definition of subrecipients is available in the section Distinguishing Subrecipients versus Beneficiaries.

Recipients should refer to the Assistance Listing for details on the specific provisions of the Uniform Guidance that do not apply to this program. The Assistance Listing is available on SAM.gov. Additional changes to compliance and reporting guidelines, including any clarifications on Uniform Guidance requirements, will be addressed in Compliance and Reporting Guidance and the User Guide.³⁸⁴

I. Remediation and Recoupment

Sections 602(e) and 603(e) of the Social Security Act provide the Secretary with the power to recoup “funds used in violation” of the Social Security Act. The interim final rule implemented these provisions by establishing a process for recoupment. Treasury may identify funds used in violation of the Social Security Act based on information submitted by recipients, including as part of reporting requirements, as well as information from other sources.³⁸⁵ If a potential violation is identified, Treasury will provide the recipient an initial written notice of the amount subject to recoupment along with an explanation of such amounts. A recipient then has 60 calendar days following receipt of a recoupment notice to submit a request for reconsideration containing any information it believes supports its use of funds. Within 60 calendar days of receipt of the request for reconsideration, the interim final rule provided that a recipient will receive a final notice of the Secretary’s decision to affirm, withdraw, or modify the recoupment notice. If the recipient did not submit a request for reconsideration, the initial notice of recoupment would be deemed a final notice. A recipient would then be required to repay any amounts subject to recoupment within 120 calendar days of either the initial recoupment notice, if the recipient does not request reconsideration, or the final recoupment notice, if the recipient does request reconsideration.

Public Comments

Treasury received several comments on the process for recoupment. For instance, some commenters, including many Tribal governments, requested additional time to file a request for reconsideration and submit repayment to ensure that small entities have the time necessary to carry out any logistical steps and consult with counsel. Treasury was also asked to align its recoupment process with that of the Office of the Inspector General and other departmental administrative processes to resolve findings, agency decisions, and related timelines. One commenter asked if the 120-calendar-day time limit for repayment was based on the initial notice, rather than a final decision issued by the Secretary. Several commenters expressed concern regarding the recoupment process, arguing that consideration of “all relevant facts and circumstances” provided Treasury with too much

authority and created ambiguity. Other commenters urged Treasury to establish a robust enforcement and compliance program and process and advocated for the creation of a whistleblower mechanism or public complaint process to allow public and private entities to report suspected misuses of funds. Finally, some commenters requested clarification regarding the process after a violation is identified and becomes final. One commenter also asked to allow recipients to amend reports deemed to contain ineligible expenses and inform recipients how the agency intends to resolve instances where a use was later deemed unacceptable. Another commenter asked if recouped funds could be released back to the recipient.

Commenters also expressed concern about Treasury’s authority to recoup funds used in violation of the tax offset provision. Some commenters requested additional clarity around when tax cuts would trigger Treasury’s recoupment authority and the duration of Treasury’s authority to seek recoupment of such funds.

Treasury Response

The final rule largely preserves the process established in the interim final rule but includes several adjustments to clarify certain elements.

Like the interim final rule, the final rule provides that, after an initial determination is made that a recipient has used SLFRF funds in violation of the law, a recipient may submit a request for reconsideration concerning any amounts identified in a notice provided by Treasury. If a recipient chooses to seek reconsideration of the initial notice, the recipient must submit a request for reconsideration as provided under the final rule. If a recipient does not request reconsideration, the initial notice that the recipient received will be deemed the final notice.³⁸⁶ Treasury has clarified that a recipient must invoke and exhaust the procedures available under section 35.10 of the final rule prior to seeking judicial review of a recoupment decision. Consistent with Section 602(b)(6)(A)(ii)(III) of the Social Security Act, if a state or territory is required to repay funds pursuant to the Secretary’s recoupment authority, the Secretary may reduce the amount payable to the state or territory in a second tranche payment by the amount that the state or territory would be required to repay as recoupment.

In the final rule, Treasury has clarified that, if it identifies a potential

³⁸⁵ Treasury will also consider the tax offset provision on an annual basis.

³⁸⁶ Funds subject to recoupment cannot later be returned.

³⁸⁴ *Id.*

violation,³⁸⁷ it may request additional information from a recipient before initiating the recoupment process and, where necessary, provide written notice to the recipient along with an explanation of such amounts potentially subject to recoupment. Furthermore, Treasury has also made clear that it retains the ability to expedite or extend timelines in any adjudication or pre-adjudication process pursuant to section 35.4(b) of the final rule, although the general timelines set forth in the interim final rule are maintained in the final rule.

This process is intended to provide the recipient with an adequate opportunity to present additional information regarding its uses of funds and provides flexibility for recipients to determine the information relevant to the particular facts and circumstances. It is also flexible enough to align with other adjudication procedures in other ARPA recovery programs administered by the Office of Recovery Programs at Treasury. As discussed above, the initial notice will provide recipients with an explanation of the identified potential violation in order to provide recipients with a meaningful opportunity to respond. Such initial notice will generally include information regarding the specific use of SLFRF funds and the source of such information.³⁸⁸ This process also will allow the Secretary to take into consideration the information provided by recipients, along with other relevant information, to ensure SLFRF funds are used in a manner consistent with the Social Security Act.

Finally, Treasury expects to work with recipients to support the use of SLFRF funds consistent with the law. For example, Treasury may request additional information from a recipient before initiating the recoupment process. In addition, Treasury may pursue other forms of remediation and monitoring in conjunction with, or as an alternative to, recoupment.³⁸⁹ These efforts may include working with recipients to identify and substitute permissible uses of SLFRF funds or amending uses of SLFRF funds to comply with applicable restrictions.

In response to comments regarding the amount of time provided to respond to an initial notice, the final rule clarifies that Treasury retains the ability

to expedite or extend timelines in any adjudication or pre-adjudication process pursuant to section 35.4(b) of the final rule, although the general timelines set forth in the interim final rule are maintained in the final rule.

V. Regulatory Analyses

Executive Orders 12866 and 13563

Regulatory Impact Assessment

This final rule is a “significant regulatory action” under section 3(f) of Executive Order 12866 for the purposes of Executive Orders 12866 and 13563 because it is likely to have an annual effect on the economy of \$100 million or more.

As explained below, this regulation meets a substantial need: ensuring that recipients—states, territories, Tribal governments, and local governments—of SLFRF funds fully understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress’ intent to provide necessary relief to recipient governments adversely impacted by the COVID-19 public health emergency. Furthermore, as required by Executive Orders 12866 and 13563, Treasury has weighed the costs and benefits of this final rule and varying alternatives and has reasonably determined that the benefits of the final rule to recipients and their communities far outweigh any costs.

The rule has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866.

Executive Orders 12866 and 13563

Under Executive Order 12866, OMB must determine whether this regulatory action is “significant,” and therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a significant regulatory action as an action likely to result in a rule that may, among other things, have an annual effect on the economy of \$100 million or more. This rule is likely to have an annual effect on the economy of \$100 million or more, and therefore, it is subject to review by OMB under section 3(f) of Executive Order 12866.

Treasury has also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency: (1) Propose or adopt regulations

only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices. Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” OMB’s Office of Information and Regulatory Affairs (OIRA) has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

Based on the analysis that follows and the reasons stated elsewhere in this document, Treasury believes that this final rule is consistent with the principles set forth in Executive Orders 12866 and 13563. This Regulatory Impact Analysis discusses the need for regulatory action, the potential benefits, and the potential costs. Treasury has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and is issuing this final rule only on a reasoned determination that the benefits exceed the costs. In choosing among alternative regulatory approaches, Treasury selected those approaches that would maximize net benefits.

Need for Regulatory Action

This final rule implements the \$350 billion SLFRF program of the ARPA, which Congress passed to help states, territories, Tribal governments, and localities respond to the ongoing COVID-19 public health emergency and its economic impacts. As the agency charged with execution of these programs, Treasury has concluded that this final rule is needed to ensure that recipients of SLFRF funds fully

³⁸⁸ Treasury may address potential violations based on information submitted from recipients, either through quarterly reports or self-reported information, and from other sources of information as Treasury deems necessary and appropriate (e.g., press, information submitted from the public).

³⁸⁹ Treasury intends to work with recipients to support the use of SLFRF funds consistent with the law.

understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress' mandate for targeted fiscal relief. This final rule governs the use of \$350 billion in grant funds from the federal government to states, territories, Tribal governments, and localities, generating a significant macroeconomic effect on the U.S. economy. Treasury has sought to implement the program in ways that maximize its potential benefits while minimizing its costs. It has done so by: aiming to target relief in key areas according to the congressional mandate; offering clarity to states, territories, Tribal governments, and localities while maintaining their flexibility to respond to local needs; and limiting administrative burdens.

Analysis of Benefits

Relative to a pre-statutory baseline, the SLFRF funds provide a combined \$350 billion to state, local, and Tribal governments for fiscal relief and support for costs incurred responding to the COVID-19 pandemic. Treasury believes that this transfer will generate substantial additional economic activity, although given the flexibility accorded to recipients in the use of funds, it is not possible to precisely estimate the extent to which this will occur and the timing with which it will occur. Economic research has demonstrated that state fiscal relief is an efficient and effective way to mitigate declines in jobs and output during an economic downturn.³⁹⁰ Absent such fiscal relief, fiscal austerity among state, local, and Tribal governments could exert a prolonged drag on the overall economic recovery, as occurred following the 2007–2009 recession.³⁹¹

This final rule provides benefits across several areas by implementing the four eligible use categories, as defined in statute: strengthening the response to the COVID-19 public health emergency and its negative economic impacts; replacing lost revenue to ease fiscal pressure on state, local, and Tribal governments that might otherwise lead to harmful cutbacks in employment or government services; providing premium pay to essential workers; and making necessary investments in water, sewer, and broadband infrastructure.

These benefits are achieved in the final rule through a broadly flexible

approach that sets clear guidelines on eligible uses of SLFRF funds and provides state, local, and Tribal government officials discretion within those eligible uses to direct SLFRF funds to areas of greatest need within their jurisdiction. While preserving recipients' overall flexibility, the final rule includes several provisions that implement statutory requirements and will help support use of SLFRF funds to achieve the intended benefits. Preserving flexibility for recipients not only serves an important public policy goal by allowing them to meet particularized and diverse needs of their local communities but also enhances the economic benefits of the final rule by allowing recipients to choose eligible uses of funds that provide the highest utility in their jurisdictions.

In implementing the ARPA, Treasury has also prioritized supporting underserved communities that have been disproportionately impacted by the pandemic. The SLFRF program as implemented by the final rule provides even greater flexibility to recipients for uses of funds in underserved communities, recognizing that pre-existing health and economic disparities in these communities amplified the impact of the pandemic there. In general, investments in improving health outcomes and economic opportunities provide high economic returns, so this approach is likely to achieve substantial near-term economic and public health benefits, in addition to the longer-term benefits arising from the allowable investments in water, sewer, and broadband infrastructure.

The remainder of this section clarifies how Treasury's approach to key provisions in the final rule will contribute to greater realization of benefits from the program.

Public Health and Negative Economic Impacts

The eligible use category for responding to the public health and negative economic impacts of the pandemic covers a wide range of eligible uses of funds. Treasury addresses several key uses of funds in this analysis, as well as ways that Treasury has structured this eligible use to minimize recipient administrative burden while also maintaining targeting of the funding to entities that experienced negative impacts from the pandemic.

Government Employment: In order to bolster the government's ability to effectively administer services, the final rule allows for a broader set of eligible uses to restore and support public sector employment relative to the interim final

rule. In particular, eligible uses include hiring up to a pre-pandemic baseline that is adjusted for historic underinvestment in the public sector by allowing funds to be used to pay for payroll and covered benefits associated with the recipient increasing its number of employees up to 7.5 percent above its pre-pandemic baseline. Eligible uses also include providing additional funds for employees who experienced pay cuts or were furloughed, avoiding layoffs, providing worker retention incentives, and paying for ancillary administrative costs related to hiring.

Treasury believes this expanded approach, relative to the interim final rule, provides useful flexibility to recipients, which may increase a state or local government's ability to effectively deliver services to its residents. While the interim final rule already explicitly permitted using funds to restore recipients' workforces up to pre-pandemic levels, the final rule's inclusion of an upward adjustment factor recognizes that, as the population or economy of a jurisdiction grows over time, more workers are generally needed to effectively meet responsibilities. It also provides recipients greater room to employ funds toward building back the public sector workforce after years of chronic underinvestment since the Great Recession. Treasury arrived at the 7.5 percent adjustment factor through an analysis of data from the Bureau of Labor Statistics on state and local government employment and data from the Census Bureau on population to estimate the extent of underinvestment in the public sector since the onset of the Great Recession. While Treasury considered a range of methodologies and point estimates to set the adjustment factor, a 7.5 percent factor errs on the side of recipient flexibility. Treasury believes this adjustment enhances recipients' ability to identify and meet the particularized needs of their communities. Treasury also believes that the additional enumerated eligible uses for supporting the workforce provide recipients several means to help retain current workers, decreasing turnover costs.

Identifying Eligible Populations

Treasury has provided several methods for recipients to identify households, populations, and communities eligible for services that respond to the public health and negative economic impacts of the pandemic. In general, these methods seek to provide recipients options to identify eligible populations with minimal administrative burden, while also maintaining targeting of the funds

³⁹⁰ See, e.g., Gabriel Chodorow-Reich et al., *Does state Fiscal Relief During Recessions Increase Employment? Evidence from the American Recovery and Reinvestment Act*, 4 *American Economic Journal* 118–145 (2012) <http://dx.doi.org/10.1257/pol.4.3.118>.

³⁹¹ See, e.g., Fitzpatrick, *supra* note 278.

to entities impacted by the pandemic. Recipients also retain flexibility to identify and serve other populations and entities that experienced pandemic impacts, ensuring that recipients can meet the particularized needs of their local communities.

Defining Low and Moderate Income:

To streamline the provision of funds relating to negative economic impacts resulting from the pandemic, Treasury has created an eligibility standard making it easier for recipients to provide assistance to low- and moderate-income populations without needing to identify and document a specific negative economic impact. Populations falling under the definition of low income are presumed to have been disproportionately impacted by the pandemic, while those falling under the definition of moderate income are presumed to have been impacted by the pandemic. In addition, the final rule recognizes categorical eligibility for certain enumerated programs and populations if a recipient chooses to implement categorical eligibility when identifying impacted and disproportionately impacted populations. Treasury considered several options for eligibility standards that would reduce administrative burdens for recipients when determining who qualifies as low and moderate income.

One option involved defining a household as low income or moderate income based only on FPG thresholds and could use levels lower than those selected. This option involved setting uniform thresholds throughout the country.

A second option took a broader approach, defining a household as low income if it has (i) income at or below 185 percent of the FPG for the size of its household or (ii) income at or below 40 percent of the AMI for its county and size of household. The option defined a household as moderate income if it has (i) income at or below 300 percent of the FPG for the size of its household or (ii) income at or below 65 percent of the AMI for its county and size of household. The combination of an FPG floor with AMI allows for a regional adjustment in areas with substantially higher costs and incomes. Finally, Treasury also considered a range of FPG and AMI thresholds above and below these levels.

Treasury chose the second option. Treasury believes that the higher FPG floor will ease administrative burdens by making more households presumptively eligible for funds meant to address negative economic impacts in a targeted manner. With respect to the

low-income cutoff, 185 percent of the FPG for a family of four is \$49,025, which is approximately the wage earnings for a two-earner household where both earners receive the median wage in occupations, such as waiters and waitresses and hotel clerks, that were heavily impacted by COVID-19. As such, this cutoff is likely to include more workers in industries heavily impacted by COVID-19, who may be most likely to face disproportionate impacts of the pandemic, than a lower threshold.³⁹² With respect to the moderate-income cutoff, many households with incomes between 200 percent and 300 percent of the FPG struggle with a lack of economic security, suggesting that 300 percent of the FPG was an appropriate cutoff for moderate income.

Treasury also considered relatively higher thresholds for both an FPG and AMI approach; however, increasing income thresholds for presumed eligibility increases the likelihood that higher-income workers, who generally experienced fewer economic impacts from the pandemic, would become presumed eligible for responsive services. Providing services to households that did not experience a negative economic impact, or experienced a relatively minimal impact, would provide much less benefit than serving households that experienced more severe impacts, diluting the benefits of the SLFRF funds.

In all, Treasury anticipates that these selected thresholds, combined with the regional adjustment, will allow resources to be targeted toward individuals and households with the greatest need while also reducing administrative burdens on recipients.

Disproportionately Impacted Populations: In the interim final rule, Treasury enumerated a broader set of eligible uses for disproportionately impacted communities, in recognition of the pre-existing health, economic, and social disparities that contributed to disproportionate pandemic impacts in certain communities and that addressing root causes of those disparities constitutes responding to the public health and negative economic impacts of the pandemic. To identify these communities and reduce administrative burden, Treasury allowed recipients to presume that certain populations—those in QCTs and those being served by Tribal

governments—were disproportionately impacted. In the final rule, to further decrease administrative burden and enhance recipient flexibility, Treasury is allowing recipients to also presume that low-income households were disproportionately impacted. Treasury anticipates that adding low-income households as a presumed eligible population will maintain targeting of funds to populations and communities most likely to have experienced severe pandemic impacts, while providing a more flexible approach for recipients.

Identifying Impacted Classes: In the final rule, Treasury reiterated its stance in the interim final rule allowing recipients to designate a class of households or other entities as impacted or disproportionately impacted and provide responsive services. After designating a class, recipients can serve a household or entity by simply identifying that the household or entity is a member of the class. Relative to restricting services to only presumed eligible populations identified by Treasury, this decision provides vital administrative flexibility for recipients that may identify particular impacted classes in the context of their jurisdiction. Treasury anticipates that SLFRF funds will be targeted to impacted or disproportionately impacted communities, as recipients must demonstrate that the designated class experienced negative economic impacts or meaningfully more severe negative economic impacts. This approach maintains the requirement that entities served have to have experienced a negative economic impact, while simultaneously minimizing any administrative costs associated with meeting this requirement.

Additional Enumerated Uses

The interim final rule enumerated eligible uses of SLFRF funds to serve both impacted and disproportionately impacted communities. For example, enumerated eligible uses to serve impacted communities included food assistance; rent, mortgage, or utility assistance; and counselling and legal aid to prevent eviction or homelessness. Examples of enumerated eligible uses to serve disproportionately impacted communities included remediation of lead paint or other lead hazards and housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity. In the final rule, Treasury had the option to retain, expand, or reduce enumerated eligible uses, or shift use eligibility between disproportionately impacted and impacted communities. Many

³⁹² See U.S. Bureau of Labor Statistics, Occupational Employment and Wage Estimates, https://www.bls.gov/oes/current/oes_nat.htm (last visited November 9, 2021).

public comments suggested potential expansions of uses, including shifting enumerated eligible uses for disproportionately impacted communities to serve a broader population of impacted communities. Taking these comments into account, Treasury generally took this approach, in anticipation that the benefits of the program will increase while recipient administrative costs in identifying and justifying non-enumerated uses of funds will decrease.

Specifically, Treasury added enumerated eligible uses for impacted populations including paid sick, medical, or family leave; health insurance subsidies; and services for the unbanked and underbanked, on the basis that impacts of the pandemic that were broadly experienced by many communities would be addressed by these uses. Treasury also shifted some eligible uses, formerly restricted only to disproportionately impacted communities, to impacted communities. These uses included community violence intervention, assistance accessing or applying to public benefits and services, affordable housing development, and services to promote healthy childhood environments like childcare and early learning. These uses were shifted on the basis that the associated impacts of the pandemic were experienced by a broader population, and responses are, accordingly, eligible to benefit a broader population.

Additionally, the final rule clarified that investments in parks and other public outdoor recreation spaces are enumerated eligible uses for disproportionately impacted communities. In including these uses, Treasury took into account evidence on the social determinants of health, or the ways that social context, like the neighborhood built environment, impacts health outcomes. By taking a more holistic approach to public health, the final rule allows recipients to respond more broadly to factors that contributed to the pandemic's health impacts and more fully mitigate those health impacts.

To balance administrative flexibility with a maintenance of focus on impacts of the pandemic, Treasury considered, but did not include, other proposed enumerated uses that did not respond to the impacts of the pandemic or responded to impacts that were not experienced generally across the country by many jurisdictions and populations. For example, Treasury did not include pollution remediation broadly, a proposed enumerated eligible use for disproportionately impacted

communities, on the basis that associated projects would only respond to disproportionate impacts of the pandemic depending on the specific issue addressed. In sum, Treasury expanded enumerated eligible uses while retaining a focus on broadly experienced impacts of the pandemic. Treasury anticipates that this will give recipients further flexibility to presume eligibility and respond to pandemic impacts without increasing administrative burden.

Capital Expenditures: In the interim final rule, Treasury permitted funds to be used for a limited number of capital expenditures mostly related to the COVID-19 public health response. This decision granted recipients some discretion to use SLFRF funds to address COVID-19 prevention and mitigation through certain investments in equipment, real property, and facilities, which Treasury recognized as critical components of the public health response. In the final rule, Treasury considered maintaining the provisions in the interim final rule or expanding allowable capital expenditures to provide recipients greater flexibility to pursue other capital investments that are responsive to the public health emergency and its negative economic impacts. While expanding allowable capital expenditures may increase the risk that recipients will undertake large expenditures that do not sufficiently address intended harms, or address harms in a less cost-efficient manner than an alternative investment (*e.g.*, a program or service), expanding allowable capital expenditures would likely help fill critical gaps in recipients' response to the pandemic and provide equipment and facilities that generate benefits beyond SLFRF's period of performance. To preserve flexibility while mitigating risks, the final rule allows recipients to undertake an expanded set of capital expenditures while requiring additional written justifications for projects with an expected total cost at or over \$1 million. Treasury believes this approach balances the implementation of appropriate risk-based compliance requirements and the provision of administrative convenience for smaller capital expenditures, while generally allowing recipients the flexibility to undertake a greater variety of responsive capital expenditures.

Revenue Loss

Revenue Loss Formula: In this final rule, Treasury's approach to revenue loss allows recipients to compute the extent of reduction in revenue by comparing actual revenue to a

counterfactual trend representing what could have plausibly been expected to occur in the absence of the pandemic. The counterfactual trend begins with the last full fiscal year prior to the public health emergency (as required by statute) and projects forward with an annualized growth adjustment. Treasury has made several adjustments in the final rule to decrease administrative burden, reducing costs for recipients, while still accurately capturing reductions in revenue due to the pandemic.

Under the interim final rule, Treasury specified that recipients calculate revenue loss on a calendar year basis. In this final rule, Treasury is providing recipients the option to calculate revenue loss on a calendar year or fiscal year basis, which will allow recipients the administrative flexibility to minimize administrative burdens based on the data available to them.

Treasury's decision to incorporate a growth adjustment into the calculation of revenue loss ensures that the formula more fully captures revenue shortfalls relative to recipients' pre-pandemic expectations. Recipients will have the opportunity to calculate revenue loss at several points throughout the program, recognizing that some recipients may experience revenue effects with a lag. This option to re-calculate revenue loss on an ongoing basis is intended to result in more support for recipients to avoid harmful cutbacks in future years. In calculating revenue loss, recipients will look at general revenue in the aggregate, rather than on a source-by-source basis, given that recipients may have experienced offsetting changes in revenues across sources. The final rule also provides for removing the impact of tax increasing or decreasing changes, which affect the amount of revenue collected but are not "due to" the pandemic, from the calculation of revenue loss due to the public health emergency. Both of these components of Treasury's approach provide a more accurate representation of the effect of the pandemic on overall revenues.

Revenue Loss Standard Allowance: In addition to largely preserving the formula to calculate revenue loss from the interim final rule, Treasury also added an alternative "standard allowance" option for the revenue loss calculation to this final rule. Treasury's decision to elect to allow a fixed amount of loss that can be used to fund "government services" allows recipients the flexibility to use minimal administrative capacity on the calculation if desired. The decision also benefits recipients by allowing them to avoid expending administrative

resources to determine how unique variations in revenue interact with the revenue loss formula.

Premium Pay

Per the ARPA statute, recipients have broad latitude to designate critical infrastructure sectors and make grants to third-party employers for the purpose of providing premium pay. While the final rule provides significant flexibility to implement the statutory requirement that premium pay respond to essential workers, it requires recipients give written justification in the case that premium pay would increase a worker's annual pay above a certain threshold or is awarded to an individual whose annual pay is already above that threshold. To set this threshold, Treasury analyzed data from the Bureau of Labor Statistics to determine a level that would not require further justification for premium pay to the vast majority of essential workers, while requiring higher scrutiny for provision of premium pay to higher earners who, even without premium pay, would likely have greater personal financial resources to cope with the effects of the pandemic. Alternatively, a recipient need not submit written justification to Treasury if the worker receiving premium pay is eligible for overtime under the FLSA. Treasury believes this alternative, which is an addition to the final rule, will give recipients more flexibility and will simplify application of the final rule as employers, public and private, are already legally required to determine whether an employee is eligible for overtime pay under the FLSA. Treasury believes the threshold and overtime eligibility provision in the final rule strike the appropriate balance between preserving flexibility and helping encourage use of these resources to help those in greatest need. The final rule also requires that workers eligible for premium pay have regular in-person interactions or regular physical handling of items that were also handled by others. This requirement will help encourage use of financial resources for those who have endured the heightened risk of performing essential work.

Water and Sewer Infrastructure

In the interim final rule, Treasury aligned eligible uses of funds for water and sewer infrastructure to those projects eligible to receive financial assistance through the DWSRF and CWSRF administered by the EPA.

The benefits of this approach included giving recipients an existing list that would provide them clarity as well as flexibility in identifying eligible

projects, particularly given the broad range of projects eligible under the CWSRF and DWSRF. The approach also ensured that projects would conform to vetted project types from a widely used program. Treasury received comments from recipients requesting additional project categories to be considered eligible, indicating a potential cost to maintaining alignment with the CWSRF and DWSRF.

For the final rule, Treasury has expanded eligibility to include several additional project types beyond those covered by the CWSRF and DWSRF.

Treasury believes that expanded eligibility will benefit recipients by allowing them additional flexibility to pursue beneficial projects, including project categories that support the provision of drinking water and the removal, management, and treatment of wastewater and stormwater: Additional stormwater management projects, private well infrastructure, additional projects that address lead in water, and certain dam and reservoir rehabilitation projects undertaken to address the provision of drinking water. A potential cost of this approach is that uses beyond the CWSRF and DWSRF may have less public guidance available to understand project eligibilities. However, Treasury anticipates that this eligibility expansion will provide a net benefit to recipients by allowing them to pursue projects relevant to their goals that were ineligible under the interim final rule.

The expansion to allow private well infrastructure may also affect the distributional impact of SLFRF. Private wells disproportionately serve rural Americans, including low-income households, and expanding eligibility to include this use may allow SLFRF funds to benefit such households. While distributional impacts are uncertain, Treasury believes that the potential for benefits to accrue to rural and low-income households makes it important to clarify that these types of projects are eligible.

Broadband Infrastructure

In the final rule, Treasury expands eligible areas for broadband investment by requiring that recipients invest in projects designed to provide service to households and businesses with an identified need for additional broadband investment, including increasing access to high-speed broadband, increasing the affordability of broadband services, and improving the reliability of broadband service.³⁹³

³⁹³ Further, the final rule encourages, but does not require, that recipients pursue broadband infrastructure projects in locations not currently

Treasury considered multiple alternatives when selecting this standard. The threshold for the interim final rule allowed benefits to accrue in a more targeted manner to the approximately 9 percent of the country with access to speeds under the 25/3 Mbps threshold.³⁹⁴ However, since SLFRF funds are distributed to tens of thousands of governments across the country with a variety of broadband needs, Treasury believes that allowing recipients greater flexibility to determine locations to serve in their jurisdictions—including considering affordability and competition barriers—will lead to greater long-term public benefit. Further, given that many federal broadband grant programs are focused solely on unserved and underserved areas, Treasury believes that the final rule's flexibility enables these funds to fill an important role in the overall federal broadband landscape.

In the final rule, Treasury also requires that broadband projects must meet a standard of reliably delivering at least 100 Mbps download speeds and upload speeds, or in cases where it is not practicable to do so, reliably delivering at least 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed while being scalable to 100 Mbps upload and download speeds. Treasury expects that this threshold will yield long-term benefits and allow networks to meet both pandemic-related and future needs. The Federal Communications Commission (FCC) estimates that currently a household with two to three remote learners using the internet simultaneously needs a connection supporting 100 Mbps download speeds.³⁹⁵ While a lower threshold may have resulted in lower near-term costs to build, it would have potentially constrained future utility from the infrastructure by producing infrastructure that would more quickly—potentially in the near-term—become obsolete and no longer meet household needs, potentially requiring sooner replacement and generally decreasing the return on investment. As

served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed.

³⁹⁴ Data from the Federal Communications Commission shows that as of June 2020, 9.07 percent of the U.S. population had no available cable or fiber broadband providers providing greater than 25 Mbps download speeds and 3 Mbps upload speeds. Federal Communications Commission, Fixed Broadband Deployment, <https://broadbandmap.fcc.gov/#/> (last visited May 9, 2021).

³⁹⁵ See Federal Communications Commission, Broadband Speed Guide, available at <https://www.fcc.gov/consumers/guides/broadband-speed-guide> (last visited October 28, 2021).

such, projects meeting a lower threshold could not be considered “necessary” investments in broadband infrastructure, so Treasury has retained the threshold from the interim final rule.

Further, the final rule adds a requirement that recipients address the affordability needs of low-income consumers in accessing broadband networks funded by SLFRF, either by requiring service providers that provide service to households to either participate in the FCC’s Affordable Connectivity Program (ACP), or a broad-based affordability program with commensurate benefits. Treasury believes that this requirement will increase the number of customers that are able to take advantage of broadband infrastructure funded by SLFRF, increasing the effectiveness of funds in connecting households and businesses to high-speed internet that is critical to work, health, and education. There is a potential that this requirement may marginally increase project costs for recipients and providers, but this impact is uncertain, given the varying business models and pricing structures of broadband projects and providers.

Labor Standards

In this Supplementary Information for the final rule, Treasury encourages recipients to ensure that capital expenditures to respond to the public health and negative economic impacts of the pandemic and water, sewer, and broadband projects use strong labor standards, including, for example, project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury believes that its encouragement of labor standards carries benefits because it will ensure that workers have access to strong employment opportunities associated with infrastructure projects, which will in turn aid the economic recovery. Treasury believes that infrastructure projects may also benefit from stronger labor standards due to the potential of these standards to ensure a stronger skilled labor supply and minimize labor disputes and workplace injuries, which can result in costly disruptions to projects. Treasury assesses that these benefits will increase the economy and efficiency of infrastructure projects undertaken through SLFRF and will outweigh the potential for a marginal increase in labor costs.

Splitting Payments to Recipients

Treasury is required by statute to deliver funds to local governments in

two payments separated by at least twelve months, and the interim final rule provided for split payments to a majority of states as well. As discussed above, splitting payments ensures that recipients can adapt spending plans to evolving economic conditions and that at least some of the economic benefits will be realized in 2022 or later. However, consistent with authorities granted to Treasury in the statute, Treasury recognizes that a subset of states with significant remaining elevation in the unemployment rate could face heightened additional near term needs to aid unemployed workers and stimulate the recovery. Therefore, for a subset of state governments, Treasury has provided funds in one payment. Treasury believes that this approach strikes an appropriate balance between the general reasons to provide funds in two payments and the heightened additional near-term needs in specific states. As discussed above, Treasury set a threshold based on historical analysis of unemployment rates in recessions.

Reaching Underserved Communities

Finally, the final rule aims to promote and streamline the provision of assistance to individuals and communities in greatest need, particularly communities that have been historically underserved and have experienced disproportionate impacts of the COVID-19 crisis. Targeting relief is in line with Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” which laid out an Administration-wide priority to support “equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.” To this end, the final rule enumerates a list of services that may be provided using SLFRF funds in disproportionately impacted communities, including low-income areas, to address the more severe impacts of the pandemic in these communities; establishes the characteristics of essential workers eligible for premium pay and encouragement to serve workers based on financial need; provides that recipients may use SLFRF funds to restore state and local workforces, where women and people of color are disproportionately represented; and requires that broadband infrastructure projects participate in programs to support affordability of broadband service. Collectively, these provisions will promote use of resources to facilitate the provision of assistance to

individuals and communities with the greatest need.

Analysis of Costs

This regulatory action will generate administrative costs relative to a pre-statutory baseline. This includes, chiefly, costs required to administer SLFRF funds, oversee subrecipients and beneficiaries, and file periodic reports with Treasury. It also requires states to allocate SLFRF funds to nonentitlement units, which are smaller units of local government that are statutorily required to receive their funds through states. Treasury expects that the administrative burden associated with this program will be moderate for a grant program of its size. Treasury expects that many recipients receive direct or indirect funding from federal government programs and that many have familiarity with how to administer and report on federal funds or grant funding provided by other entities. In particular, states, territories, and large localities will have received funds from the Coronavirus Relief Fund (CRF) and Treasury expects them to rely heavily on established processes developed through that program or other prior grant funding, mitigating burden on these governments. Treasury has enhanced the level of recipient reporting as compared to the CRF, incorporating feedback from the Government Accountability Office and others that additions would improve the oversight of recipients’ use of funds. To balance the oversight benefits with the costs of added reporting burdens, Treasury has incorporated other mechanisms to mitigate burden. For example, Treasury is “tiering” reporting requirements so that recipients that receive relatively lesser amounts of SLFRF funds are required to submit less frequent reports than recipients receiving greater amounts of funds. Treasury is noting administrative costs as a generally allowable use of SLFRF funds, which defrays administrative expenses to recipients that may be needed to comply with reporting requirements. Treasury has also provided options for recipients to use eligibility thresholds they are already familiar with during administration of SLFRF funds, which will enable recipients to avoid the costs of setting up new programs and reporting mechanisms to meet reporting and compliance requirements. For example, Treasury has permitted recipients to use “categorical eligibility” when delivering assistance to particular groups, such as impacted or disproportionately impacted households.

In making implementation choices, Treasury has hosted numerous consultations with a diverse range of direct recipients—states, cities, counties, and Tribal governments—along with various communities across the United States, including those that are underserved. Furthermore, Treasury has made clear in guidance that SLFRF funds may be used to cover certain expenses related to administering programs established using SLFRF funds.³⁹⁶

Executive Order 13132

Executive Order 13132 (entitled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state, local, and Tribal governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications within the meaning of the Executive Order and does not impose substantial, direct compliance costs on state, local, and Tribal governments or preempt state law within the meaning of the Executive Order. The compliance costs are imposed on state, local, and Tribal governments by sections 602 and 603 of the Social Security Act, as enacted by the ARPA. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected state, local, and Tribal government officials and

associations in the process of developing the interim final rule and this final rule. Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, Treasury certifies that it has complied with the requirements of Executive Order 13132.

Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, generally requires public notice and an opportunity for comment before a rule becomes effective. However, the APA provides that the requirements of 5 U.S.C. 553 do not apply “to the extent that there is involved . . . a matter relating to agency . . . grants.” The APA also provides an exception to ordinary notice-and-comment procedures “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(B). The interim final rule was issued without prior notice and comment procedures because it implemented statutory conditions on the eligible uses of SLFRF funds, and addressed the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses to help address the economic and public health emergency. See the **SUPPLEMENTARY INFORMATION** section of the May 17, 2021 interim final rule for the applicability of the requirements of

5 U.S.C. 553. In addition, under the exception discussed in that section for matters relating to agency grants, the requirements of 5 U.S.C. 553 also do not apply to this final rule. After careful consideration of the comments received, this final rule adopts the May 17, 2021 interim final rule with the revisions discussed in this **SUPPLEMENTARY INFORMATION**.

Congressional Review Act

The Administrator of OIRA has determined that this is a major rule for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA) (5 U.S.C. 804(2) *et seq.*). Under the CRA, a major rule generally may take effect no earlier than 60 days after the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3).

Paperwork Reduction Act

The information collections associated with the SLFRF program have been reviewed and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35) (PRA) and assigned control number 1505–0271. Under the PRA, an agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a valid OMB control number.

Estimates of hourly burden under this program are set forth in the table below.

Reporting	Number respondents	Number responses per respondent	Total responses	Hours per response	Total burden in hours	Cost to respondents (\$48.80 per hour*)
Recipient Payment Form	5,050	1	5,050	.25 (15 minutes)	1,262.5	\$61,610
Acceptance of Award Terms	5,050	1	5,050	.25 (15 minutes)	1,262.5	61,610
Title VI Assurances	5,050	1	5,050	.50 (30 minutes)	2,525	123,220
Tribal Employment Information Form	584	1	584	.75 (45 minutes)	438	21,374
Request for Extension Form	96	1	96	1	96	4,685
Annual Recovery Plan Performance Report	430	1	430	100	43,000	2,098,400
NEU Distribution Template	55	2	110	10	1,100	53,680
Non-UGLG Distribution Template	55	2	110	5	550	26,840
Transfer Forms	1,500	1	1,500	1	1,500	73,200
Project and Expenditure Report	37,000	1	37,000	5	185,000	9,028,000
Total	54,870		54,980		236,735	11,552,619

* Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Accountants and Auditors, on the internet at <https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm> (visited March 28, 2020). Base wage of \$33.89/hour increased by 44 percent to account for fully loaded employer cost of employee compensation (benefits, etc.) for a fully loaded wage rate of \$48.80.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the

Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and

publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment under the APA or any other law are also exempt from the RFA

³⁹⁶ See Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, 10.2,

as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

requirements, including the requirement to conduct a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Because this rule is exempt from the notice and comment requirements of the APA, Treasury is not required to conduct a regulatory flexibility analysis.

Rule Text

List of Subjects in 31 CFR Part 35

Executive compensation, State and Local Governments, Tribal Governments, Public health emergency.

For the reasons stated in the preamble, the United States Department of the Treasury amends 31 CFR part 35 as follows:

PART 35—PANDEMIC RELIEF PROGRAMS

■ 1. Revise Subpart A to read as follows:

Subpart A—Coronavirus State and Local Fiscal Recovery Funds

Sec.

- 35.1 Purpose.
- 35.2 Applicability.
- 35.3 Definitions.
- 35.4 Reservation of authority, reporting.
- 35.5 Use of funds.
- 35.6 Eligible uses.
- 35.7 Pensions.
- 35.8 Tax.
- 35.9. Compliance with applicable laws.
- 35.10. Recoupment.
- 35.11 Payments to States.
- 35.12. Distributions to nonentitlement units of local government and units of general local government.

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f).

§35.1 Purpose.

This part implements section 9901 of the American Rescue Plan Act (Subtitle M of Title IX of Pub. L. 117–2), which amends Title VI of the Social Security Act (42 U.S.C. 801 *et seq.*) by adding sections 602 and 603 to establish the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund.

§35.2 Applicability.

This part applies to states, territories, Tribal governments, metropolitan cities, nonentitlement units of local government, counties, and units of general local government that accept a payment or transfer of funds made under section 602 or 603 of the Social Security Act.

§35.3 Definitions.

Baseline means tax revenue of the recipient for its fiscal year ending in 2019, adjusted for inflation in each reporting year using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

Capital expenditures has the same meaning given in 2 CFR 200.1.

County means a county, parish, or other equivalent county division (as defined by the Census Bureau).

Covered benefits include, but are not limited to, the costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Covered change means a change in law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase. A change in law includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period.

Covered period means, with respect to a state or territory, the period that:

- (1) Begins on March 3, 2021; and
- (2) Ends on the last day of the fiscal year of such State or territory in which all funds received by the State or territory from a payment made under section 602 or 603 of the Social Security Act have been expended or returned to, or recovered by, the Secretary.

COVID-19 means the Coronavirus Disease 2019.

COVID-19 public health emergency means the period beginning on January 27, 2020 and lasting until the termination of the national emergency concerning the COVID-19 outbreak declared pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq.*).

Deposit means an extraordinary payment of an accrued, unfunded liability. The term deposit does not refer to routine contributions made by an employer to pension funds as part of the employer's obligations related to payroll, such as either a pension contribution consisting of a normal cost component related to current employees or a component addressing the amortization of unfunded liabilities

calculated by reference to the employer's payroll costs.

Eligible employer means an employer of an eligible worker who performs essential work.

Eligible workers means workers needed to maintain continuity of operations of essential critical infrastructure sectors, including health care; emergency response; sanitation, disinfection, and cleaning work; maintenance work; grocery stores, restaurants, food production, and food delivery; pharmacy; biomedical research; behavioral health work; medical testing and diagnostics; home- and community-based health care or assistance with activities of daily living; family or childcare; social services work; public health work; vital services to Tribes; any work performed by an employee of a State, local, or Tribal government; educational work, school nutrition work, and other work required to operate a school facility; laundry work; elections work; solid waste or hazardous materials management, response, and cleanup work; work requiring physical interaction with patients; dental care work; transportation and warehousing; work at hotel and commercial lodging facilities that are used for COVID-19 mitigation and containment; work in a mortuary; and work in critical clinical research, development, and testing necessary for COVID-19 response.

(1) With respect to a recipient that is a metropolitan city, nonentitlement unit of local government, or county, workers in any additional non-public sectors as each chief executive officer of such recipient may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county; or

(2) With respect to a State, territory, or Tribal government, workers in any additional non-public sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government.

Essential work means work that:

- (1) Is not performed while teleworking from a residence; and
- (2) Involves:

(i) Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or

(ii) Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work.

Funds means, with respect to a recipient, amounts provided to the recipient pursuant to a payment made under section 602(b) or 603(b) of the Social Security Act or transferred to the recipient pursuant to section 603(c)(4) of the Social Security Act.

General revenue means money that is received from tax revenue, current charges, and miscellaneous general revenue, excluding refunds and other correcting transactions and proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and intergovernmental transfers from the Federal Government, including transfers made pursuant to section 9901 of the American Rescue Plan Act. General revenue also includes revenue from liquor stores that are owned and operated by state and local governments. General revenue does not include revenues from utilities, except recipients may choose to include revenue from utilities that are part of their own government as general revenue provided the recipient does so consistently over the remainder of the period of performance. Revenue from Tribal business enterprises must be included in general revenue.

Intergovernmental transfers means money received from other governments, including grants and shared taxes.

Low-income household means a household with:

(1) Income at or below 185 percent of the Federal Poverty Guidelines for the size of its household based on the poverty guidelines published most recently by the Department of Health and Human Services; or

(2) Income at or below 40 percent of the Area Median Income for its county and size of household based on data published most recently by the Department of Housing and Urban Development.

Micro-business means a small business that has five or fewer employees, one or more of whom owns the small business.

Moderate-income household means a household with:

(1) Income at or below 300 percent of the Federal Poverty Guidelines for the size of its household based on poverty guidelines published most recently by the Department of Health and Human Services; or

(2) Income at or below 65 percent of the Area Median Income for its county and size of household based on data published most recently by the Department of Housing and Urban Development.

Metropolitan city has the meaning given that term in section 102(a)(4) of

the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) and includes cities that relinquish or defer their status as a metropolitan city for purposes of receiving allocations under section 106 of such Act (42 U.S.C. 5306) for fiscal year 2021.

Net reduction in total spending is measured as the State or territory's total spending for a given reporting year excluding its spending of funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States for that reporting year.

Nonentitlement unit of local government means a "city," as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(5)), that is not a metropolitan city.

Nonprofit means a nonprofit organization that is exempt from Federal income taxation and that is described in section 501(c)(3) or 501(c)(19) of the Internal Revenue Code.

Obligation means an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.

Pension fund means a defined benefit plan and does not include a defined contribution plan.

Period of performance means the time period described in § 35.5 during which a recipient may obligate and expend funds in accordance with sections 602(c)(1) and 603(c)(1) of the Social Security Act and this subpart.

Premium pay means an amount of up to \$13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID-19 public health emergency. Such amount may not exceed \$25,000 in total over the period of performance with respect to any single eligible worker. Premium pay may be awarded to non-hourly and part-time eligible workers performing essential work. Premium pay will be considered to be in addition to wages or remuneration the eligible worker otherwise receives if, as measured on an hourly rate, the premium pay is:

(1) With regard to work that the eligible worker previously performed, pay and remuneration equal to the sum of all wages and remuneration previously received plus up to \$13 per hour with no reduction, substitution, offset, or other diminishment of the eligible worker's previous, current, or prospective wages or remuneration; or

(2) With regard to work that the eligible worker continues to perform, pay of up to \$13 per hour that is in addition to the eligible worker's regular rate of wages or remuneration, with no reduction, substitution, offset, or other diminishment of the worker's current and prospective wages or remuneration.

Qualified census tract has the same meaning given in 26 U.S.C. 42(d)(5)(B)(ii)(I).

Recipient means a State, territory, Tribal government, metropolitan city, nonentitlement unit of local government, county, or unit of general local government that receives a payment made under section 602(b) or 603(b) of the Social Security Act or transfer pursuant to section 603(c)(4) of the Social Security Act.

Reporting year means a single year or partial year within the covered period, aligned to the current fiscal year of the State or territory during the covered period.

Secretary means the Secretary of the Treasury.

State means each of the 50 States and the District of Columbia.

Small business means a business concern or other organization that:

(1) Has no more than 500 employees or, if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates, and

(2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Tax revenue means revenue received from a compulsory contribution that is exacted by a government for public purposes excluding refunds and corrections and, for purposes of § 35.8, intergovernmental transfers. Tax revenue does not include payments for a special privilege granted or service rendered, employee or employer assessments and contributions to finance retirement and social insurance trust systems, or special assessments to pay for capital improvements.

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

Title I eligible schools means schools eligible to receive services under section 1113 of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6313), including schools served under section 1113(b)(1)(C) of that Act.

Tribal enterprise means a business concern:

(1) That is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or

(2) That is owned in part by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns, as these terms are used and consistent with the definitions in 15 U.S.C. 657a(b)(2)(D).

Tribal government means the recognized governing body of any Indian or Alaska Native Tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published on January 29, 2021, pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Unemployment rate means the U-3 unemployment rate provided by the Bureau of Labor Statistics as part of the Local Area Unemployment Statistics program, measured as total unemployment as a percentage of the civilian labor force.

Unemployment trust fund means an unemployment trust fund established under section 904 of the Social Security Act (42 U.S.C. 1104).

Unit of general local government has the meaning given to that term in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)).

§ 35.4 Reservation of authority, reporting.

(a) *Reservation of authority.* Nothing in this part shall limit the authority of the Secretary to take action to enforce conditions or violations of law, including actions necessary to prevent evasions of this subpart.

(b) *Extensions or accelerations of timing.* The Secretary may extend or accelerate any deadline or compliance date of this part, including reporting requirements that implement this subpart, if the Secretary determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Secretary will consider the period of time that would be extended or accelerated and how the modified timeline would facilitate compliance with this subpart.

(c) *Reporting and requests for other information.* During the period of performance, recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, modifications to a State or Territory's tax revenue sources, and such other information as the Secretary may

require for the administration of this section. In addition to regular reporting requirements, the Secretary may request other additional information as may be necessary or appropriate, including as may be necessary to prevent evasions of the requirements of this subpart. False statements or claims made to the Secretary may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in Federal awards or contracts, and/or any other remedy available by law.

§ 35.5 Use of funds.

(a) *In general.* A recipient may only use funds to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, for one or more of the purposes enumerated in sections 602(c)(1) and 603(c)(1) of the Social Security Act, as applicable, including those enumerated in § 35.6, subject to the restrictions set forth in sections 602(c)(2) and 603(c)(2) of the Social Security Act, as applicable.

(b) *Costs incurred.* A cost shall be considered to have been incurred for purposes of paragraph (a) of this section if the recipient has incurred an obligation with respect to such cost by December 31, 2024.

(c) *Return of funds.* A recipient must return any funds not obligated by December 31, 2024. A recipient must also return funds obligated by December 31, 2024 but not expended by December 31, 2026.

§ 35.6 Eligible uses.

(a) *In general.* Subject to §§ 35.7 and 35.8, a recipient may use funds for one or more of the purposes described in paragraphs (b) through (f) of this section.

(b) *Responding to the public health emergency or its negative economic impacts.* A recipient may use funds to respond to the public health emergency or its negative economic impacts if the use meets the criteria provided in paragraph (b)(1) of this section or is enumerated in paragraph (b)(3) of this section; provided that, in the case of a use of funds for a capital expenditure under paragraphs (b)(1) or (b)(3) of this section, the use of funds must also meet the criteria provided in paragraph (b)(4) of this section. Treasury may also articulate additional eligible programs, services, or capital expenditures from time to time that satisfy the eligibility criteria of this paragraph (b), which shall be eligible under this paragraph (b).

(1) *Identifying eligible responses to the public health emergency or its negative economic impacts.* (i) A

program, service, or capital expenditure is eligible under this paragraph (b)(1) if a recipient identifies a harm or impact to a beneficiary or class of beneficiaries caused or exacerbated by the public health emergency or its negative economic impacts and the program, service, or capital expenditure responds to such harm.

(ii) A program, service, or capital expenditure responds to a harm or impact experienced by an identified beneficiary or class of beneficiaries if it is reasonably designed to benefit the beneficiary or class of beneficiaries that experienced the harm or impact and is related and reasonably proportional to the extent and type of harm or impact experienced.

(2) *Identified harms: Presumptions of impacted and disproportionately impacted beneficiaries.* A recipient may rely on the following presumptions to identify beneficiaries presumptively impacted or disproportionately impacted by the public health emergency or its negative economic impacts for the purpose of providing a response under paragraph (b)(1) or (b)(3) of this section:

(i) Households or populations that experienced unemployment; experienced increased food or housing insecurity; qualify for the Children's Health Insurance Program (42 U.S.C. 1397aa *et seq.*), Childcare Subsidies through the Child Care and Development Fund Program (42 U.S.C. 9857 *et seq.* and 42 U.S.C. 618), or Medicaid (42 U.S.C. 1396 *et seq.*); if funds are to be used for affordable housing programs, qualify for the National Housing Trust Fund (12 U.S.C. 4568) or the Home Investment Partnerships Program (42 U.S.C. 12721 *et seq.*); if funds are to be used to address impacts of lost instructional time for students in kindergarten through twelfth grade, any student who did not have access to in-person instruction for a significant period of time; and low- and moderate-income households and populations are presumed to be impacted by the public health emergency or its negative economic impacts;

(ii) The general public is presumed to be impacted by the public health emergency for the purposes of providing the uses set forth in subparagraphs (b)(3)(i)(A) and (b)(3)(i)(C); and

(iii) The following households, communities, small businesses, and nonprofit organizations are presumed to be disproportionately impacted by the public health emergency or its negative economic impacts:

(A) Households and populations residing in a qualified census tract;

households and populations receiving services provided by Tribal governments; households and populations residing in the territories; households and populations receiving services provided by territorial governments; low-income households and populations that qualify for Temporary Assistance for Needy Families (42 U.S.C. 601 *et seq.*), the Supplemental Nutrition Assistance Program (7 U.S.C. 2011 *et seq.*), Free and Reduced Price School Lunch and/or Breakfast programs (42 U.S.C. 1751 *et seq.* and 42 U.S.C. 1773), Medicare Part D Low-income Subsidies (42 U.S.C. 1395w–114), Supplemental Security Income (42 U.S.C. 1381 *et seq.*), Head Start (42 U.S.C. 9831 *et seq.*), Early Head Start (42 U.S.C. 9831 *et seq.*), the Special Supplemental Nutrition Program for Women, Infants, and Children (42 U.S.C. 1786), Section 8 Vouchers (42 U.S.C. 1437f), the Low-Income Home Energy Assistance Program (42 U.S.C. 8621 *et seq.*), Pell Grants (20 U.S.C. 1070a), and, if SLFRF funds are to be used for services to address educational disparities, Title I eligible schools;

(B) Small businesses operating in a qualified census tract, operated by Tribal governments or on Tribal lands, or operating in the territories; and

(C) Nonprofit organizations operating in a qualified census tract, operated by Tribal governments or on Tribal lands, or operating in the territories.

(3) *Enumerated eligible uses: Responses presumed reasonably proportional.* A recipient may use funds to respond to the public health emergency or its negative economic impacts on a beneficiary or class of beneficiaries for one or more of the following purposes unless such use is grossly disproportionate to the harm caused or exacerbated by the public health emergency or its negative economic impacts:

(i) Responding to the public health impacts of the public health emergency for purposes including:

(A) COVID–19 mitigation and prevention in a manner that is consistent with recommendations and guidance from the Centers for Disease Control and Prevention, including vaccination programs and incentives; testing programs; contact tracing; isolation and quarantine; mitigation and prevention practices in congregate settings; acquisition and distribution of medical equipment for prevention and treatment of COVID–19, including personal protective equipment; COVID–19 prevention and treatment expenses for public hospitals or health care facilities, including temporary medical

facilities; establishing or enhancing public health data systems; installation and improvement of ventilation systems in congregate settings, health facilities, or other public facilities; and assistance to small businesses, nonprofits, or impacted industries to implement mitigation measures;

(B) Medical expenses related to testing and treating COVID–19 that are provided in a manner consistent with recommendations and guidance from the Centers for Disease Control and Prevention, including emergency medical response expenses, treatment of long-term symptoms or effects of COVID–19, and costs to medical providers or to individuals for testing or treating COVID–19;

(C) Behavioral health care, including prevention, treatment, emergency or first-responder programs, harm reduction, supports for long-term recovery, and behavioral health facilities and equipment; and

(D) Preventing and responding to increased violence resulting from the public health emergency, including community violence intervention programs, or responding to increased gun violence resulting from the public health emergency, including payroll and covered benefits associated with community policing strategies; enforcement efforts to reduce gun violence; and investing in technology and equipment;

(ii) Responding to the negative economic impacts of the public health emergency for purposes including:

(A) Assistance to households and individuals, including:

(1) Assistance for food; emergency housing needs; burials, home repairs, or weatherization; internet access or digital literacy; cash assistance; and assistance accessing public benefits;

(2) Paid sick, medical, or family leave programs, or assistance to expand access to health insurance;

(3) Childcare, early learning services, home visiting, or assistance for child welfare-involved families or foster youth;

(4) Programs to address the impacts of lost instructional time for students in kindergarten through twelfth grade;

(5) Development, repair, and operation of affordable housing and services or programs to increase long-term housing security;

(6) Financial services that facilitate the delivery of Federal, State, or local benefits for unbanked and underbanked individuals;

(7) Benefits for the surviving family members of individuals who have died from COVID–19, including cash assistance to surviving spouses or

dependents of individuals who died of COVID–19;

(8) Assistance for individuals who want and are available for work, including those who are unemployed, have looked for work sometime in the past 12 months, who are employed part time but who want and are available for full-time work, or who are employed but seeking a position with greater opportunities for economic advancement;

(9) Facilities and equipment related to the provision of services to households provided in subparagraphs (b)(3)(ii)(A)(1)–(8);

(10) The following expenses related to Unemployment Trust Funds:

(i) Contributions to a recipient Unemployment Trust Fund and repayment of principal amounts due on advances received under Title XII of the Social Security Act (42 U.S.C. 1321) up to an amount equal to the difference between the balance in the recipient's Unemployment Trust Fund as of January 27, 2020 and the balance of such account as of May 17, 2021 plus the principal amount outstanding as of May 17, 2021 on any advances received under Title XII of the Social Security Act between January 27, 2020 and May 17, 2021; provided that if a recipient repays principal on Title XII advances or makes a contribution to an Unemployment Trust Fund after April 1, 2022, such recipient shall not reduce average weekly benefit amounts or maximum benefit entitlements prior to December 31, 2024; and

(ii) Any interest due on such advances received under Title XII of the Social Security Act (42 U.S.C. 1321); and

(11) A program, service, capital expenditure, or other assistance that is provided to a disproportionately impacted household, population, or community, including:

(i) Services to address health disparities of the disproportionately impacted household, population, or community;

(ii) Housing vouchers and relocation assistance;

(iii) Investments in communities to promote improved health outcomes and public safety such as parks, recreation facilities, and programs that increase access to healthy foods;

(iv) Capital expenditures and other services to address vacant or abandoned properties;

(v) Services to address educational disparities; and

(vi) Facilities and equipment related to the provision of these services to the disproportionately impacted household, population, or community.

(B) Assistance to small businesses, including:

(1) Programs, services, or capital expenditures that respond to the negative economic impacts of the COVID-19 public health emergency, including loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, or providing technical assistance; and

(2) A program, service, capital expenditure, or other assistance that responds to disproportionately impacted small businesses, including rehabilitation of commercial properties; storefront and façade improvements; technical assistance, business incubators, and grants for start-ups or expansion costs for small businesses; and programs or services to support micro-businesses;

(C) Assistance to nonprofit organizations including programs, services, or capital expenditures, including loans or grants to mitigate financial hardship such as declines in revenues or increased costs, or technical assistance;

(D) Assistance to tourism, travel, hospitality, and other impacted industries for programs, services, or

capital expenditures, including support for payroll costs and covered benefits for employees, compensating returning employees, support for operations and maintenance of existing equipment and facilities, and technical assistance; and

(E) Expenses to support public sector capacity and workforce, including:

(1) Payroll and covered benefit expenses for public safety, public health, health care, human services, and similar employees to the extent that the employee's time is spent mitigating or responding to the COVID-19 public health emergency;

(2) Payroll, covered benefit, and other costs associated with programs or services to support the public sector workforce and with the recipient:

(i) Hiring or rehiring staff to fill budgeted full-time equivalent positions that existed on January 27, 2020 but that were unfilled or eliminated as of March 3, 2021; or

(ii) Increasing the number of its budgeted full-time equivalent employees by up to the difference between the number of its budgeted full-time equivalent employees on January 27, 2020, multiplied by 1.075, and the number of its budgeted full-time equivalent employees on March 3, 2021,

provided that funds shall only be used for additional budgeted full-time equivalent employees above the recipient's number of budgeted full-time equivalent employees as of March 3, 2021;

(3) Costs to improve the design and execution of programs responding to the COVID-19 pandemic and to administer or improve the efficacy of programs addressing the public health emergency or its negative economic impacts; and

(4) Costs associated with addressing administrative needs of recipient governments that were caused or exacerbated by the pandemic.

(4) *Capital expenditures.* A recipient, other than a Tribal government, must prepare a written justification for certain capital expenditures according to Table 1 to paragraph (b)(4) of this section. Such written justification must include the following elements:

(i) Describe the harm or need to be addressed;

(ii) Explain why a capital expenditure is appropriate; and

(iii) Compare the proposed capital expenditure to at least two alternative capital expenditures and demonstrate why the proposed capital expenditure is superior.

TABLE 1 TO PARAGRAPH (b)(4)

If a project has total expected capital expenditures of	and the use is enumerated in (b)(3), then	and the use is not enumerated in (b)(3), then
Less than \$1 million	No Written Justification required	No Written Justification required.
Greater than or equal to \$1 million, but less than \$10 million.	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury.	Written Justification required and recipients must submit as part of regular reporting to Treasury.
\$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury.	

(c) *Providing premium pay to eligible workers.* A recipient may use funds to provide premium pay to eligible workers of the recipient who perform essential work or to provide grants to eligible employers that have eligible workers who perform essential work, provided that any premium pay or grants provided under this paragraph (c) must respond to eligible workers performing essential work during the COVID-19 public health emergency. A recipient uses premium pay or grants provided under this paragraph (c) to respond to eligible workers performing essential work during the COVID-19 public health emergency if:

(1) The eligible worker's total wages and remuneration, including the premium pay, is less than or equal to 150 percent of the greater of such eligible worker's residing State's or county's average annual wage for all

occupations as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics;

(2) The eligible worker is not exempt from the Fair Labor Standards Act overtime provisions (29 U.S.C. 207); or

(3) The recipient has submitted to the Secretary a written justification that explains how providing premium pay to the eligible worker is responsive to the eligible worker performing essential work during the COVID-19 public health emergency (such as a description of the eligible workers' duties, health, or financial risks faced due to COVID-19, and why the recipient determined that the premium pay was responsive despite the worker's higher income).

(d) *Providing government services.* A recipient may use funds for the provision of government services to the extent of the reduction in the recipient's general revenue due to the public health

emergency, calculated according to this paragraph (d). A recipient must make a one-time election to calculate the amount of the reduction in the recipient's general revenue due to the public health emergency according to either paragraph (d)(1) or (d)(2) of this section:

(1) *Standard allowance.* The reduction in the recipient's general revenue due to the public health emergency over the period of performance will be deemed to be ten million dollars; or

(2) *Formula.* The reduction in the recipient's general revenue due to the public health emergency over the period of performance equals the sum of the reduction in revenue, calculated as of each date identified in paragraph (d)(2)(i) of this section and according to the formula in paragraph (d)(2)(ii) of this section:

(i) A recipient must make a one-time election to calculate the reduction in its general revenue using information as of either:

(A) December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023; or

(B) The last day of each of the recipient's fiscal years ending in 2020, 2021, 2022, and 2023.

(ii) A reduction in a recipient's general revenue for each date identified in paragraph (d)(2)(i) of this section equals:

$$\text{Max} \{ [\text{Base Year Revenue} * (1 + \text{Growth Adjustment})^n - \text{Actual General Revenue}; 0 \}$$

Where:

(A) Base Year Revenue is the recipient's general revenue for the most recent full fiscal year prior to the COVID-19 public health emergency;

(B) Growth Adjustment is equal to the greater of 5.2 percent (or 0.052) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency;

(C) n equals the number of months elapsed from the end of the base year to the calculation date;

(D) Subscript t denotes the specific calculation date; and

(E) Actual General Revenue is a recipient's actual general revenue collected during the 12-month period ending on each calculation date identified in paragraph (d)(2)(i) of this section, except:

(1) For purposes of all calculation dates on or after April 1, 2022, in the case of any change made after January 6, 2022 to any law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase and that the recipient assesses has had the effect of decreasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must add to actual general revenue the amount of such decrease in tax revenue;

(2) For purposes of any calculation date on or after April 1, 2022, in the case of any change made after January 6, 2022 to any law, regulation, or administrative interpretation that increases any tax (by providing for an increase in a rate, the reduction of a rebate, a deduction, or a credit, or otherwise) or accelerates the imposition of any tax or tax increase and that the

recipient assesses has had the effect of increasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must subtract from actual general revenue the amount of such increase in tax revenue;

(3) If the recipient makes a one-time election to adjust general revenue to reflect tax changes made during the period beginning on January 27, 2020 and ending on January 6, 2022, for purposes of each calculation date identified in paragraph (d)(2)(i) of this section:

(i) In the case of any change made during such prior period to any law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase and that the recipient assesses has had the effect of decreasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must add to actual general revenue the amount of such decrease in tax revenue; and

(ii) In the case of any change made during such prior period to any law, regulation, or administrative interpretation that increases any tax (by providing for an increase in a rate, the reduction of a rebate, a deduction, or a credit, or otherwise) or accelerates the imposition of any tax or tax increase and that the recipient assesses has had the effect of increasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must subtract from actual general revenue the amount of such increase in tax revenue; and

(4) With respect to any calculation date during the period beginning on January 6, 2022 and ending on March 31, 2022, if the recipient makes the election in paragraph (d)(3) of this section, the recipient must also make the adjustments referenced in paragraph (d)(3) of this section with respect to any such changes in law, regulation, or administrative interpretation during the period beginning on January 6, 2022 and ending on such calculation date.

(e) *Making necessary investments in water, sewer, and broadband infrastructure.* A recipient may use funds to make the following

investments in water, sewer, and broadband infrastructure.

(1) *Water and sewer investments—(i) Clean Water State Revolving Fund projects.* Projects or activities of the type that meet the eligibility requirements of section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c));

(ii) *Additional stormwater projects.* Projects to manage, reduce, treat, or recapture stormwater or subsurface drainage water regardless of whether such projects would improve water quality if such projects would otherwise meet the eligibility requirements of section 603(c)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)(5));

(iii) *Drinking Water State Revolving Fund projects.* Projects or activities of the type that meet the eligibility requirements of section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) as implemented by the regulations adopted by the Environmental Protection Agency (EPA) under 40 CFR 35.3520, provided that:

(A) The recipient is not required to comply with the limitation under 40 CFR 35.3520(c)(2) to acquisitions of land from willing sellers or the prohibition under 40 CFR 35.3520(e)(6) on uses of funds for certain Tribal projects; and

(B) In the case of lead service line replacement projects, the recipient must replace the full length of the service line and may not replace only a partial portion of the service line.

(iv) *Additional lead remediation and household water quality testing.* Projects or activities to address lead in drinking water or provide household water quality testing that are within the scope of the programs the EPA is authorized to establish under sections 1459A(b)(2), 1459B(b)(1), 1464(d)(2), and 1465 of the Safe Drinking Water Act (42 U.S.C. 300j-19a(b)(2), 300j-19b(b)(1), 300j-24(d)(2), and 300j-25), provided that:

(A) In the case of lead service line replacement projects, the recipient must replace the full length of the service line and may not replace only a partial portion of the service line; and

(B) In the case of projects within the scope of the program the EPA is authorized to establish under section 1459B(b)(1) of the Safe Drinking Water Act, the recipient may determine the income eligibility of homeowners served by lead service line replacement projects in its discretion.

(v) *Drinking water projects to support increased population.* Projects of the type that meet the eligibility requirements of 40 CFR 35.3520 other than the requirement of subparagraph

(b)(1) of such regulation to address present or prevent future violations of health-based drinking water standards, if the following conditions are met:

(A) The project is needed to support increased population, with need assessed as of the time the project is undertaken;

(B) The project is designed to support no more than a reasonable level of projected increased need, whether due to population growth or otherwise;

(C) The project is a cost-effective means for achieving the desired level of service; and

(D) The project is projected to continue to provide an adequate level of drinking water over its estimated useful life.

(vi) *Dams and reservoirs.*

Rehabilitation of dams and reservoirs if the following conditions are met:

(A) The project meets the requirements of 40 CFR 35.3520 other than the following requirements:

(1) The prohibition on the rehabilitation of dams and reservoirs in 40 CFR 35.3520(e)(1) and (3); and

(2) The requirement in 40 CFR 35.3520(b)(1) that the project is needed to address present or prevent future violations of health-based drinking water standards, provided that if the dam or reservoir project does not meet this requirement, the project must be needed to support increased population, with need assessed as of the time the project is undertaken, and the project must be projected to continue to provide an adequate level of drinking water over its estimated useful life;

(B) The primary purpose of the dam or reservoir is for drinking water supply;

(C) The project is needed for the provision of drinking water supply, with need assessed as of the time the project is initiated;

(D) The project is designed to support no more than a reasonable level of projected increased need, whether due to population growth or otherwise; and

(E) The project is a cost-effective means for achieving the desired level of service.

(vii) *Private wells.* Rehabilitation of private wells, testing initiatives to identify contaminants in private wells, and treatment activities and remediation projects that address contamination in private wells, if the project meets the requirements of 40 CFR 35.3520 other than the limitation to certain eligible systems under 40 CFR 35.3520(a).

(2) *Broadband investments—(i) General.* Broadband infrastructure if the following conditions are met:

(A) The broadband infrastructure is designed to provide service to households and businesses with an

identified need, as determined by the recipient, for such infrastructure;

(B) The broadband infrastructure is designed to, upon completion:

(1) Reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or

(2) In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, to provide service reliably meeting or exceeding symmetrical 100 Mbps download speed and upload speeds:

(i) Reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and

(ii) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed; and

(C) The service provider for a completed broadband infrastructure investment project that provides service to households is required, for as long as the SLFRF-funded broadband infrastructure is in use, by the recipient to:

(1) Participate in the Federal Communications Commission's Affordable Connectivity Program (ACP) through the lifetime of the ACP; or

(2) Otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP through the lifetime of the ACP.

(ii) *Cybersecurity infrastructure investments.* Cybersecurity infrastructure investments that are designed to improve the reliability and resiliency of new and existing broadband infrastructure. Such investments may include the addition or modernization of network security hardware and software tools designed to strengthen cybersecurity for the end-users of these networks.

(f) *Meeting the non-federal matching requirements for Bureau of Reclamation projects.* A recipient may use funds to meet the non-federal matching requirements of any authorized Bureau of Reclamation project.

§ 35.7 Pensions.

A recipient (other than a Tribal government) may not use funds for deposit into any pension fund.

§ 35.8 Tax.

(a) *Restriction.* A State or Territory shall not use funds to either directly or indirectly offset a reduction in the net tax revenue of the State or Territory resulting from a covered change during the covered period.

(b) *Violation.* Treasury will consider a State or Territory to have used funds to offset a reduction in net tax revenue if, during a reporting year:

(1) *Covered change.* The State or Territory has made a covered change that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of reducing tax revenue relative to current law;

(2) *Exceeds the de minimis threshold.* The aggregate amount of the measured or predicted reductions in tax revenue caused by covered changes identified under paragraph (b)(1) of this section, in the aggregate, exceeds 1 percent of the State's or Territory's baseline;

(3) *Reduction in net tax revenue.* The State or Territory reports a reduction in net tax revenue, measured as the difference between actual tax revenue and the State's or Territory's baseline, each measured as of the end of the reporting year; and

(4) *Consideration of other changes.* The aggregate amount of measured or predicted reductions in tax revenue caused by covered changes is greater than the sum of the following, in each case, as calculated for the reporting year:

(i) The aggregate amount of the expected increases in tax revenue caused by one or more covered changes that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of increasing tax revenue; and

(ii) Reductions in spending, up to the amount of the State's or Territory's net reduction in total spending, that are in:

(A) Departments, agencies, or authorities in which the State or Territory is not using funds; and

(B) Departments, agencies, or authorities in which the State or Territory is using funds, in an amount equal to the value of the spending cuts in those departments, agencies, or authorities, minus funds used.

(c) *Amount and revenue reduction cap.* If a State or Territory is considered to be in violation pursuant to paragraph (b) of this section, the amount used in

violation of paragraph (a) of this section is equal to the lesser of:

(1) The reduction in net tax revenue of the State or Territory for the reporting year, measured as the difference between the State's or Territory's baseline and its actual tax revenue, each measured as of the end of the reporting year; and,

(2) The aggregate amount of the reductions in tax revenues caused by covered changes identified in paragraph (b)(1) of this section, minus the sum of the amounts in identified in paragraphs (b)(4)(i) and (ii) of this section.

§ 35.9 Compliance with applicable laws.

A recipient must comply with all other applicable Federal statutes, regulations, and executive orders, and a recipient shall provide for compliance with the American Rescue Plan Act, this subpart, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds.

§ 35.10 Recoupment.

(a) *Identification of violations*—(1) *In general.* Any amount used in violation of § 35.5, 35.6, or 35.7 may be identified at any time prior to December 31, 2026.

(2) *Annual reporting of amounts of violations.* On an annual basis, a recipient that is a State or territory must calculate and report any amounts used in violation of § 35.8.

(b) *Calculation of amounts subject to recoupment*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, the Secretary will calculate any amounts subject to recoupment resulting from a violation of § 35.5, 35.6 or 35.7 as the amounts used in violation of such restrictions.

(2) *Violations of § 35.8.* The Secretary will calculate any amounts subject to recoupment resulting from a violation of § 35.8, equal to the lesser of:

(i) The amount set forth in § 35.8(c); and,

(ii) The amount of funds received by such recipient.

(c) *Initial notice.* If the Secretary calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient an initial written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for reconsideration.*

Unless the Secretary extends or accelerates the time period, within 60 calendar days of receipt of an initial notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to the Secretary requesting reconsideration of any amounts subject to recoupment

under paragraph (b) of this section. To request reconsideration of any amounts subject to recoupment, a recipient must submit to the Secretary a written request that includes:

(1) An explanation of why the recipient believes all or some of the amount should not be subject to recoupment; and

(2) A discussion of supporting reasons, along with any additional information.

(e) *Final amount subject to recoupment.* Unless the Secretary extends or accelerates the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section or the expiration of the period for requesting reconsideration provided under paragraph (d), the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided. A recipient must invoke and exhaust the procedures available under this subpart prior to seeking judicial review of a decision under § 35.10.

(f) *Repayment of funds.* Unless the Secretary extends or accelerates the time period, a recipient shall repay to the Secretary any amounts subject to recoupment in accordance with instructions provided by the Secretary:

(1) Within 120 calendar days of receipt of the notice of recoupment provided under paragraph (c) of this section, in the case of a recipient that does not submit a request for reconsideration in accordance with the requirements of paragraph (d) of this section; or

(2) Within 120 calendar days of receipt of the Secretary's decision under paragraph (e) of this section, in the case of a recipient that submits a request for reconsideration in accordance with the requirements of paragraph (d) of this section.

(g) *Other remedial actions.* Prior to seeking recoupment or taking other appropriate action pursuant to paragraph (c), (d), (e), or (f) of this section, the Secretary may notify the recipient of potential violations and provide the recipient an opportunity for informal consultation and remediation.

§ 35.11 Payments to States.

(a) *In general.* With respect to any State or Territory that has an unemployment rate as of the date that it submits an initial certification for payment of funds pursuant to section

602(d)(1) of the Social Security Act that is less than two percentage points above its unemployment rate in February 2020, the Secretary will withhold 50 percent of the amount of funds allocated under section 602(b) of the Social Security Act to such State or territory until at least May 10, 2022 and not more than twelve months from the date such initial certification is provided to the Secretary.

(b) *Payment of withheld amount.* In order to receive the amount withheld under paragraph (a) of this section, the State or Territory must submit to the Secretary the following information:

(1) A certification, in the form provided by the Secretary, that such State or Territory requires the payment to carry out the activities specified in section 602(c) of the Social Security Act and will use the payment in compliance with section 602(c) of the Social Security Act; and

(2) Any reports required to be filed by that date pursuant to this part that have not yet been filed.

§ 35.12 Distributions to nonentitlement units of local government and units of general local government.

(a) *Nonentitlement units of local government.* Each State or Territory that receives a payment from the Secretary pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of local government in such State or Territory in accordance with the requirements set forth in section 603(b)(2)(C) of the Social Security Act and without offsetting any debt owed by such nonentitlement units of local governments against such payments.

(b) *Budget cap.* A State or Territory may not make a payment to a nonentitlement unit of local government pursuant to section 603(b)(2)(C) of the Social Security Act and paragraph (a) of this section in excess of the amount equal to 75 percent of the most recent budget for the nonentitlement unit of local government as of January 27, 2020. For purposes of this section 35.12, a nonentitlement unit of local government's most recent budget shall mean the nonentitlement unit of local government's total annual budget, including both operating and capital expenditure budgets, in effect as of January 27, 2020. A State or Territory shall permit a nonentitlement unit of local government without a formal budget as of January 27, 2020, to provide a certification from an authorized officer of the nonentitlement unit of local government of its most recent annual expenditures as of

January 27, 2020, and a State or Territory may rely on such certification for purposes of complying with this section 35.12.

(c) *Units of general local government.* Each State or Territory that receives a payment from the Secretary pursuant to section 603(b)(3)(B)(ii) of the Social Security Act, in the case of an amount to be paid to a county that is not a unit of general local government, shall

distribute the amount of the payment to units of general local government within such county in accordance with the requirements set forth in section 603(b)(3)(B)(ii) of the Social Security Act and without offsetting any debt owed by such units of general local government against such payments.

(d) *Additional conditions.* A State or Territory may not place additional conditions or requirements on

distributions to nonentitlement units of local government or units of general local government beyond those required by section 603 of the Social Security Act or this subpart.

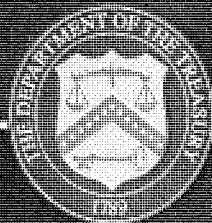
Jacob Leibenluft,
Chief Recovery Officer.

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Compliance and Reporting Guidance

State and Local Fiscal Recovery Funds



September 20, 2022
Version: 5.0



Coronavirus State and Local Fiscal Recovery Funds Guidance on Recipient Compliance and Reporting Responsibilities

On March 11, 2021, the American Rescue Plan Act was signed into law, and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund, which together make up the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") program. This program is intended to provide support to State, territorial, local, and Tribal governments in responding to the economic and public health impacts of COVID-19 and in their efforts to contain impacts on their communities, residents, and businesses.

In May 2021, Treasury published the interim final rule ("IFR") describing eligible and ineligible uses of SLFRF, as well as other program requirements. The initial versions of this Compliance and Reporting guidance reflected the IFR and its eligible use categories. On January 6, 2022, the U.S. Department of the Treasury ("Treasury") adopted the final rule implementing the SLFRF program. The final rule became effective on April 1, 2022. Prior to the final rule effective date, the IFR remained in effect; funds used consistently with the IFR while it was in effect were in compliance with the SLFRF program. However, recipients could choose to take advantage of the final rule's flexibilities and simplifications ahead of the effective date. Recipients may consult the [*Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule*](#) for more information on compliance with the IFR and the final rule.

To support recipients in complying with the final rule, this reporting guidance reflects the final rule and provides additional detail and clarification for each recipient's compliance and reporting responsibilities under the SLFRF program, and should be read in concert with the Award Terms and Conditions, the authorizing statute, the [final rule](#), other program guidance including the [Final Rule FAQs](#), and other regulatory and statutory requirements, including regulatory requirements under the [Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#) ("Uniform Guidance" or 2 CFR Part 200), and [2021 SLFRF Compliance Supplement – Technical Update and 2022 SLFRF Compliance Supplement](#). Please see the [Assistance Listing in SAM.gov](#) under assistance listing number (formerly known as CFDA number) 21.027 for more information.

Please Note: This guidance document applies to the SLFRF program only and does not change or impact reporting and compliance requirements for the Coronavirus Relief Fund ("CRF") established by the CARES Act.

This guidance includes two parts:

Part 1: General Guidance

This section provides an orientation to recipients' compliance responsibilities and Treasury's expectations and recommends best practices where appropriate under the SLFRF program.

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B. Statutory Eligible Uses.....	P. 4
C. Treasury's Final Rule.....	P. 5
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Part 2: Reporting Requirements

This section provides information on the reporting requirements for the SLFRF program.

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B. Project and Expenditure Report.....	P. 17
C. Recovery Plan Performance Report.....	P. 34
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Appendix 3: Expenditure Categories under the Interim Final Rule.....	P. 48

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OMB Expiration Date: 04/30/2025

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden for the collections of information included in this guidance is as follows: 30 minutes for Title VI Assurances, 2 hours per response for the Interim Report, 6 hours per response for the Project and Expenditure Report and 100 hours per response for the Recovery Plan Performance Report (if applicable). Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.



Part 1: General Guidance

This section provides an orientation on recipients' compliance responsibilities and Treasury's expectations and recommended best practices where appropriate under the SLFRF program.

Recipients under the SLFRF program are the eligible entities identified in sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021 (the "SLFRF statute") that receive an SLFRF award. Subrecipients under the SLFRF program are entities that receive a subaward from a recipient to carry out the purposes (program or project) of the SLFRF award on behalf of the recipient.

Recipients are accountable to Treasury for oversight of their subrecipients in accordance with 2 CFR 200.332, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's interim final rule and final rule, applicable federal statutes, regulations, and reporting requirements.

A. Key Principles

There are several guiding principles for developing your own effective compliance regimes:

- Recipients and subrecipients are the first line of defense and responsible for ensuring the SLFRF award funds are not used for ineligible purposes, and there is no fraud, waste, or abuse associated with their SLFRF award;
- Many SLFRF-funded projects respond to the COVID-19 public health emergency and meet urgent community needs. Swift and effective implementation is vital, and recipients must balance facilitating simple and rapid program access widely across the community and maintaining a robust documentation and compliance regime;
- Treasury encourages recipients to use SLFRF-funded projects to advance shared interests and promote equitable delivery of government benefits and opportunities to underserved communities, as outlined in [Executive Order 13985, On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#); and
- Transparency and public accountability for SLFRF award funds and use of such funds are critical to upholding program integrity and trust in all levels of government, and SLFRF award funds should be managed consistent with Administration guidance per [Memorandum M-21-20](#) and [Memorandum M-20-21](#).

B. Statutory Eligible Uses

As a recipient of an SLFRF award, your organization has substantial discretion to use the award funds in the ways that best suit the needs of your constituents – as long as such use fits into one of the following four statutory categories:

1. To respond to the COVID-19 public health emergency or its negative economic impacts;
2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the recipient that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
3. For the provision of government services, to the extent of the reduction in revenue of such recipient due to the COVID-19 public health emergency, relative to revenues collected in the most recent full fiscal year of the recipient prior to the emergency; or
4. To make necessary investments in water, sewer, or broadband infrastructure.

Treasury adopted an interim final rule in May 2021 and the [final rule](#) on January 6, 2022 to implement these eligible use categories and other restrictions on the use of funds under the SLFRF



program. The final rule took effect on April 1, 2022, and the interim final rule remained in effect until that time, although recipients could choose to take advantage of the final rule's flexibilities and simplifications prior to April 1, 2022. Recipients may consult the [Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule](#) for more information on compliance with the interim final rule and the final rule.

It is the recipient's responsibility to ensure all SLFRF award funds are used in compliance with the program's requirements. In addition, recipients should be mindful of any additional compliance obligations that may apply – for example, additional restrictions imposed upon other sources of funds used in conjunction with SLFRF award funds, or statutes and regulations that may independently apply to water, broadband, and sewer infrastructure projects. Recipients should ensure they maintain proper documentation supporting determinations of costs and applicable compliance requirements, and how they have been satisfied as part of their award management, internal controls, and subrecipient oversight and management.

C. Treasury's Final Rule

Treasury's [final rule](#) details recipients' compliance responsibilities and provides additional information on eligible and restricted uses of SLFRF award funds and reporting requirements.

- 1. Eligible and Restricted Uses of SLFRF Funds.** As described in the SLFRF statute and summarized above, there are four enumerated eligible uses of SLFRF award funds. As a recipient of an award under the SLFRF program, your organization is responsible for complying with requirements for the use of funds. In addition to determining a given project's eligibility, recipients are also responsible for determining subrecipient's or beneficiaries' eligibility, and must monitor subrecipients' use of SLFRF award funds.

To help recipients build a greater understanding of eligible uses, Treasury's [final rule](#) establishes a framework for determining whether a specific project would be eligible under the SLFRF program, including some helpful definitions. For example, Treasury's [final rule](#) establishes:

- A framework for determining whether a project responds to the COVID-19 public health emergency or its negative economic impacts;
- Definitions of "eligible employers," "essential work," "eligible workers," and "premium pay" for cases where premium pay is an eligible use;
- The option to select between a standard amount of revenue loss or complete a full revenue loss calculation of revenue lost due to the COVID-19 public health emergency;
- A framework for necessary water and sewer infrastructure projects that aligns eligible uses with projects that are eligible under the Environmental Protection Agency's Drinking Water and Clean Water State Revolving Funds along with certain additional projects, including a wider set of lead remediation and stormwater infrastructure projects and aid for residential wells; and
- A framework for necessary broadband projects that allows for projects that are designed to provide service of sufficient speeds to eligible areas, as well as an affordability requirement for providers that provide service to households.

Treasury's [final rule](#) also provides more information on important restrictions on use of SLFRF award funds, including that recipients other than Tribal governments may not deposit SLFRF funds into a pension fund; and recipients that are States or territories may not use SLFRF funds to offset a reduction in net tax revenue resulting from the recipient's change in law, regulation, or administrative interpretation. In addition, recipients may not use SLFRF funds directly to service debt, satisfy a judgment or settlement, or contribute to a "rainy day" fund. Recipients should refer to Treasury's final rule for more information on these restrictions.



Treasury's final rule outlines that funds available under the "revenue loss" eligible use category (sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act) generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. However, the final rule notes that SLFRF funds may not be used as the non-federal share for purposes of a state's Medicaid and CHIP programs because the Office of Management and Budget ("OMB") has approved a waiver as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations. If a recipient seeks to use SLFRF funds to satisfy match or cost-share requirements for a federal grant program, it should first confirm with the relevant awarding agency that no waiver has been granted for that program, that no other circumstances enumerated under 2 CFR 200.306(b) would limit the use of SLFRF funds to meet the match or cost-share requirement, and that there is no other statutory or regulatory impediment to using the SLFRF funds for the match or cost-share requirement. SLFRF funds beyond those that are available under the revenue loss eligible use category may not be used to meet the non-federal match or cost-share requirements of other federal programs, other than as specifically provided for by statute. For example, the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-federal match requirements of authorized Bureau of Reclamation projects and certain broadband deployment projects.

2. **Eligible Costs Timeframe.** Your organization, as a recipient of an SLFRF award, may use SLFRF funds to cover eligible costs that your organization incurred during the period that begins on March 3, 2021 and ends on December 31, 2024, as long as the award funds for the obligations incurred by December 31, 2024 are expended by December 31, 2026. Costs for projects incurred by the recipient State, territorial, local, or Tribal government prior to March 3, 2021 are not eligible, as provided for in Treasury's final rule.

Recipients may, in certain circumstances, use SLFRF award funds for the eligible use categories described in Treasury's final rule for costs incurred prior to March 3, 2021. Specifically,

- a. **Public Health/Negative Economic Impacts:** Recipients may use SLFRF award funds to provide assistance to households, small businesses, and nonprofits to respond to the public health emergency or negative economic impacts of the pandemic – such as rent, mortgage, or utility assistance – for costs incurred by the beneficiary (e.g., a household) prior to March 3, 2021, provided that the recipient State, territorial, local or Tribal government did not incur the cost of providing such assistance prior to March 3, 2021.
- b. **Premium Pay:** Recipients may provide premium pay retrospectively for work performed at any time since the start of the COVID-19 public health emergency. Such premium pay must be "in addition to" wages and remuneration already received and the obligation to provide such premium pay must not have been incurred by the recipient prior to March 3, 2021.
- c. **Revenue Loss:** Recipients have broad discretion to use funds for the provision of government services to the extent of reduction in revenue. While calculation of lost revenue is based on the recipient's revenue in the last full fiscal year prior to the COVID-19 public health emergency, use of funds for government services must be forward looking for costs incurred by the recipient after March 3, 2021.
- d. **Investments in Water, Sewer, and Broadband:** Recipients may use SLFRF award funds to make necessary investments in water, sewer, and broadband infrastructure. Recipients may use SLFRF award funds to cover costs incurred for eligible projects planned or started prior to March 3, 2021, provided that the project costs covered by the SLFRF award funds were incurred by the recipient after March 3, 2021.

Any funds not obligated or expended for eligible uses by the timelines above must be returned to Treasury, including any unobligated or unexpended funds that have been provided to subrecipients and contractors as part of the award closeout process pursuant to 2 C.F.R. 200.344(d). For the purposes of determining expenditure eligibility, Treasury's final rule provides



that “incurred” means the recipient has incurred an obligation, which has the same meaning given to “financial obligation” in 2 CFR 200.1.

3. **Reporting.** Generally, recipients must submit one initial Interim Report, quarterly or annual Project and Expenditure reports which include subaward reporting, and in some cases annual Recovery Plan reports. Treasury’s final rule and Part 2 of this guidance provide more detail around SLFRF reporting requirements.
4. **Expenditure Categories.** Treasury’s final rule provides greater flexibility and simplicity for recipients to fight the pandemic and support families and businesses struggling with its impacts, maintain vital services amid revenue shortfalls, and build a strong, resilient, and equitable recovery. As such, recipients report on a broader set of eligible uses and associated Expenditure Categories (“EC”), which began with the April 2022 Project and Expenditure Report. Appendix 1 includes the new ECs, as well as a reference to previous ECs used for reporting under the interim final rule.

Assistance Listing

The Assistance Listing for the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) was published May 28, 2021 on SAM.gov under Assistance Listing Number (“ALN”), formerly known as CFDA Number, **21.027**.

The assistance listing includes helpful information including program purpose, statutory authority, eligibility requirements, and compliance requirements for recipients. The ALN is the unique 5-digit number assigned to identify a federal assistance listing, and can be used to search for federal assistance program information, including funding opportunities, spending on USASpending.gov, or audit results through the Federal Audit Clearinghouse.

To expedite payments and meet statutory timelines Treasury issued initial payments under an existing ALN, 21.019, assigned to the CRF. If you have already received funds or captured the initial number in your records, please update your systems and reporting to reflect the new ALN 21.027 for the SLFRF program. **Recipients must use ALN 21.027 for all financial accounting, subawards, and associated program reporting requirements for the SLFRF awards.**

D. Uniform Administrative Requirements

The SLFRF awards are generally subject to the requirements set forth in the Uniform Guidance. In all instances, your organization should review the Uniform Guidance requirements applicable to your organization’s use of SLFRF funds, and SLFRF-funded projects. Additional details about applicability of certain provisions of the Uniform Guidance may be found in:

- SLFRF final rule;
- SLFRF Assistance Listing; and
- SLFRF Final Rule FAQs, including FAQ 4.9, 10.1, and Section 13.

The following sections provide a general summary of your organization’s compliance responsibilities under applicable statutes and regulations, including the Uniform Guidance, as described in the most recent compliance supplement issued by OMB. Note that the descriptions below are only general summaries and all recipients and subrecipients are advised to carefully review the Uniform Guidance requirements and any additional regulatory and statutory requirements applicable to the program.

1. **Allowable Activities.** Each recipient should review program requirements, including Treasury’s final rule and the recipient’s Award Terms and Conditions, to determine and record eligible uses



of SLFRF funds. Per 2 CFR Part 200.303, your organization must develop and implement effective internal controls to ensure that funding decisions under the SLFRF award constitute eligible uses of funds, and document determinations.

- 2. Allowable Costs/Cost Principles.** As outlined in the Uniform Guidance at 2 CFR Part 200, Subpart E regarding Cost Principles, allowable costs are based on the premise that a recipient is responsible for the effective administration of Federal awards, application of sound management practices, and administration of Federal funds in a manner consistent with the program objectives and terms and conditions of the award. Recipients must implement robust internal controls and effective monitoring to ensure compliance with the Cost Principles, which are important for building trust and accountability. Please note that as outlined in Final Rule [FAQ 13.15](#), only a subset of the Uniform Guidance requirements at 2 CFR Part 200 Subpart E (Cost Principles) applies to recipients' use of funds in the revenue loss eligible use category.

SLFRF funds may be, but are not required to be, used along with other funding sources for a given project. Recipients should note that SLFRF funds available under the "revenue loss" eligible use category generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. If a recipient seeks to use SLFRF funds to satisfy match or cost-share requirements for a federal grant program, the recipient should first confirm with the relevant awarding agency that no waiver has been granted for that program, that no other circumstances enumerated under 2 CFR 200.306(b) would limit the use of SLFRF funds to meet the match or cost-share requirement, and that there is no other statutory or regulatory impediment to using the SLFRF funds for the match or cost-share requirement. For instance, recipients should note that SLFRF funds may not be used as the non-federal share for purposes of a state's Medicaid and CHIP programs because the OMB has approved a waiver from this provision as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations.

SLFRF funds beyond those that are available under the revenue loss eligible use category may not be used to meet the non-federal match or cost-share requirements of other federal programs, other than as specifically provided for by statute. As an example, the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-federal match requirements of authorized Bureau of Reclamation projects and certain broadband deployment projects. Recipients should consult the final rule for further details if they seek to utilize SLFRF funds as a match for these projects.

Treasury's final rule, program guidance, and the Uniform Guidance outline the types of costs that are allowable, including certain audit costs. For example, per 2 CFR 200.425, a reasonable proportionate share of the costs of audits required by the Single Audit Act Amendments of 1996 are allowable; however, costs for audits that were not performed in accordance with 2 CFR Part 200, Subpart F and the Compliance Supplement are not allowable. Please see 2 CFR Part 200, Subpart E regarding the Cost Principles for more information.

- a. Administrative costs:** Recipients may use funds for administering the SLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements.¹ Further, costs must be reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405. Pursuant to the SLFRF Award Terms and Conditions, recipients are permitted to charge both direct and indirect costs to their SLFRF award as administrative costs as long as they are accorded consistent treatment per 2 CFR 200.403. Direct costs are those that are identified specifically as costs of implementing the SLFRF program objectives, such as

¹ Recipients also may use SLFRF funds directly for administrative costs to improve the design and execution of programs responding to the COVID-19 pandemic and to administer or improve the efficacy of programs addressing the public health emergency or its negative economic impacts. 31 CFR 35.6(b)(3)(ii)(E)(3).



contract support, materials, and supplies for a project. Indirect costs are general overhead costs of an organization where a portion of such costs are allocable to the SLFRF award such as the cost of facilities or administrative functions like a director's office.²³ Each category of cost should be treated consistently in like circumstances as direct or indirect, and recipients may not charge the same administrative costs to both direct and indirect cost categories, or to other programs. If a recipient has a current Negotiated Indirect Costs Rate Agreement ("NICRA") established with a Federal cognizant agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, then the recipient may use its current NICRA. Alternatively, if the recipient does not have a NICRA, the recipient may elect to use the de minimis rate of 10 percent of the modified total direct costs pursuant to 2 CFR 200.414(f).

- b. **Salaries and Expenses:** In general, certain employees' wages, salaries, and covered benefits are an eligible use of SLFRF award funds. Please see Treasury's final rule for details.

3. **Cash Management.** SLFRF payments made to recipients are not subject to the requirements of the Cash Management Improvement Act and Treasury's implementing regulations at 31 CFR Part 205 or 2 CFR 200.305(b)(8)-(9).

As such, recipients can place funds in interest-bearing accounts, do not need to remit interest to Treasury, and are not limited to using that interest for eligible uses under the SLFRF award.

4. **Eligibility.** Under this program, recipients are responsible for ensuring funds are used for eligible purposes. Generally, recipients must develop and implement policies and procedures, and retain records, to determine and monitor implementation of criteria for determining the eligibility of beneficiaries and/or subrecipients. Your organization, and if applicable, the subrecipient(s) administering a program on behalf of your organization, will need to maintain procedures for obtaining information evidencing a given beneficiary, subrecipient, or contractor's eligibility, including a valid SAM.gov registration (except with respect to individuals or households for which a SAM.gov registration is not required). Implementing risk-based due diligence for eligibility determinations is a best practice to augment your organization's existing controls.
5. **Property Management.** Any purchase of real or personal property with SLFRF funds must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D, unless stated otherwise by Treasury. For example, as outlined in Final Rule [FAQ 13.15](#), only a subset of the Uniform Guidance requirements at 2 CFR Part 200 Subpart D (Post Federal Award Requirements) applies to recipients' use of funds in the revenue loss eligible use category. Furthermore, as outlined in Final Rule [FAQ 13.16](#), Treasury has clarified the use and disposition requirements for real and personal property, supplies, and equipment purchased with SLFRF funds.
6. **Matching, Level of Effort, Earmarking.** There are no matching, level of effort, or earmarking compliance responsibilities associated with the SLFRF award. See Section C.1 (Eligible and Restricted Uses of SLFRF Funds) for a discussion of restrictions on use of SLFRF funds. Please see 2. Allowable Costs/Cost Principles above for information on the use of SLFRF funds for non-Federal match or cost-sharing requirements in other Federal programs.
7. **Period of Performance.** Your organization should also develop and implement internal controls related to activities occurring outside the period of performance. All funds remain subject to statutory and regulatory requirements that they must be used for costs incurred by the recipient during the period that begins on March 3, 2021, and ends on December 31, 2024, and that award funds for the financial obligations incurred by December 31, 2024 must be expended by December

² 2 CFR 200.413 Direct Costs.

³ 2 CFR 200.414 Indirect Costs.



31, 2026. Any funds not used must be returned to Treasury as part of the award closeout process pursuant to 2 C.F.R. 200.344(d).

- 8. Procurement, Suspension & Debarment.** Recipients are responsible for ensuring that any procurement using SLFRF funds, or payments under procurement contracts using such funds, are consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327, unless stated otherwise by Treasury. As outlined in Final Rule [FAQ 13.15](#), only a subset of the Uniform Guidance requirements at 2 CFR Part 200 Subpart D (Post Federal Award Requirements) applies to recipients' use of funds in the revenue loss eligible use category. The procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327 are not included in Final Rule [FAQ 13.15](#)'s list of applicable Subpart D requirements that apply to recipients' use of funds in the revenue loss eligible use category.

The Uniform Guidance establishes in 2 CFR 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in 2 CFR 200.320, which allows for non-competitive procurements only in certain circumstances. Recipients must have and use documented procurement procedures that are consistent with the standards outlined in 2 CFR 200.317 through 2 CFR 200.320. The Uniform Guidance, pursuant to 2 CFR 180, requires an infrastructure for competitive bidding and contractor oversight, including maintaining written standards of conduct and prohibitions on dealing with suspended or debarred parties. Your organization must ensure adherence to all applicable local, State, and federal procurement laws and regulations.

- 9. Program Income.** Generally, program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, and principal and interest on loans made with Federal award funds. Program income does not include interest earned on advances of Federal funds, rebates, credits, discounts, or interest on rebates, credits, or discounts. Recipients of SLFRF funds should calculate, document, and record the organization's program income. Additional controls that your organization should implement include written policies that explicitly identify appropriate allocation methods, accounting standards and principles, compliance monitoring checks for program income calculations, and records.

The Uniform Guidance outlines the requirements that pertain to program income at 2 CFR 200.307. Treasury has clarified in its Final Rule FAQs that recipients may add program income to the Federal award. Any program income generated from SLFRF funds must be used for the purposes and under the conditions of the Federal award. Further, Final Rule [FAQ 4.9](#) provides additional information about program income requirements applicable to certain eligible uses, and Final Rule [FAQ 13.15](#) clarifies that only a subset of the Uniform Guidance requirements at 2 CFR 200 Subpart D (Post Federal Award Requirements) applies to recipients' use of funds in the revenue loss eligible use category. The list of applicable Subpart D requirements in Final Rule [FAQ 13.15](#) does not include the program income requirements in 2 CFR 200.307.

- 10. Reporting.** 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.

11. Subrecipient Monitoring. SLFRF recipients that are pass-through entities as described under 2 CFR 200.1 are required to manage and monitor their subrecipients to ensure compliance with requirements of the SLFRF award pursuant to 2 CFR 200.332 regarding requirements for pass-through entities.

First, your organization must clearly identify to the subrecipient: (1) that the award is a subaward of SLFRF funds; (2) any and all compliance requirements for use of SLFRF funds; and (3) any and all reporting requirements for expenditures of SLFRF funds.

Next, your organization will need to evaluate each subrecipient’s risk of noncompliance based on a set of common factors. These risk assessments may include factors such as prior experience in managing Federal funds, previous audits, personnel, and policies or procedures for award execution and oversight. Ongoing monitoring of any given subrecipient should reflect its assessed risk and include monitoring, identification of deficiencies, and follow-up to ensure appropriate remediation.

Accordingly, your organization should develop written policies and procedures for subrecipient monitoring and risk assessment and maintain records of all award agreements identifying or otherwise documenting subrecipients’ compliance obligations.

Recipients should note that NEUs are not subrecipients under the SLFRF program. They are SLFRF recipients that report directly to Treasury.

Recipients should also note that subrecipients do not include individuals and organizations that received SLFRF funds as end users. Such individuals and organizations are beneficiaries and not subject to audit pursuant to the Single Audit Act and 2 C.F.R. Part 200, Subpart F.

Many recipients may choose to provide a subaward or contract to other entities to provide services to other end users. For example, a recipient may provide a subaward to a nonprofit to provide homeless services to individuals experiencing homelessness. In this case, the subaward to a nonprofit is based on the services that the recipient intends to provide (assistance to households experiencing homelessness), and the nonprofit is serving as the subrecipient, providing services on behalf of the recipient. Subrecipients are subject to an audit pursuant to the Single Audit Act and 2 CFR part 200, subpart F regarding audit requirements, whereas contractors are not subject to an audit pursuant to the Single Audit Act and 2 CFR part 200, subpart F regarding audit requirements.

Please note that as outlined in Final Rule FAQ 13.14, recipients’ use of funds in the revenue loss eligible use category does not give rise to subrecipient relationships. As a result, subaward reporting is not required for projects in the revenue loss eligible use category.

12. Special Tests and Provisions. From time-to-time, Treasury may issue subregulatory guidance as well as frequently asked questions.

Across each of the compliance requirements above, Treasury has described some best practices for development of internal controls in **Table 1** below, with an example of each best practice.

**Table 1: Internal controls best practices**

Best Practice	Description	Example
Written policies and procedures	Formal documentation of recipient policies and procedures	Documented procedure for determining worker eligibility for premium pay
Written standards of conduct	Formal statement of mission, values, principles, and professional standards	Documented code of conduct / ethics for subcontractors
Risk-based due diligence	Pre-payment validations conducted according to an assessed level of risk	Enhanced eligibility review of subrecipient with imperfect performance history
Risk-based compliance monitoring	Ongoing validations conducted according to an assessed level of risk	Higher degree of monitoring for projects that have a higher risk of fraud, given program characteristics
Record maintenance and retention	Creation and storage of financial and non-financial records.	Storage of all subrecipient payment information.

E. Award Terms and Conditions

The Award Terms and Conditions of the SLFRF financial assistance agreement sets forth the compliance obligations for recipients pursuant to the SLFRF statute, the Uniform Guidance, Treasury's final rule, and applicable federal laws and regulations. Recipients should ensure they remain in compliance with all Award Terms and Conditions. These obligations include the following items in addition to those described above:

- 1. SAM.gov Requirements.** All eligible recipients are required to have an active registration with the System for Award Management ("SAM") (<https://www.sam.gov>) pursuant to 2 CFR Part 25. To ensure timely receipt of funding, Treasury has stated that NEUs who have not previously registered with SAM.gov may do so after receipt of the award, but before the submission of mandatory reporting.⁴
- 2. Recordkeeping Requirements.** Generally, your organization must maintain records and financial documents for five years after all funds have been expended or returned to Treasury, as outlined in paragraph 4.c. of the Award Terms and Conditions. Treasury may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.

Your organization must agree to provide or make available such records to Treasury upon request, and to the Government Accountability Office ("GAO"), Treasury's Office of Inspector General ("OIG"), and their authorized representative in order to conduct audits or other investigations.

- 3. Single Audit Requirements.** Recipients and subrecipients that expend more than \$750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements.⁵ Note that the Compliance Supplement provides information on the existing, important compliance requirements that the federal government expects to be considered as a part of such audit. For example, the SLFRF Compliance Supplement describes an alternative to the Single Audit for

⁴ See flexibility provided in https://www.whitehouse.gov/wp-content/uploads/2021/03/M_21_20.pdf.

⁵ For-profit entities that receive SLFRF subawards are not subject to Single Audit requirements. However, they are subject to other audits as deemed necessary by authorized governmental entities, including Treasury and Treasury's OIG.



eligible recipients. Recipients should consult the Compliance Supplement for more information about the alternative compliance examination engagement. The Compliance Supplement is routinely updated, and is made available in the Federal Register and on OMB's website: <https://www.whitehouse.gov/omb/office-federal-financial-management/> Recipients and subrecipients should consult the [Federal Audit Clearinghouse](#) to see examples of Single Audit submissions.

- 4. Civil Rights Compliance.** Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, Treasury will collect and review information from recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, [Coordination of Non-discrimination in Federally Assisted Programs](#), 28 CFR part 42, provide for the collection of data and information from recipients (see 28 CFR 42.406). Treasury may request that non-tribal recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status. As explained in Treasury FAQ 12.1, the award terms and conditions for Treasury's pandemic recovery programs, including the SLFRF program, do not impose antidiscrimination requirements on Tribal governments beyond what would otherwise apply under federal law.



Part 2: Reporting Guidance

There are three types of reporting requirements for the SLFRF program. The report requirements are approved and documented under OMB PRA number - OMB # 1505-0271.

- **Interim Report:** Provide initial overview of status and uses of funding. This is a one-time report. See Section A, page 16.
- **Project and Expenditure Report:** Report on projects funded, expenditures, and contracts and subawards equal to or greater than \$50,000, and other information. See Section B, page 17.
- **Recovery Plan Performance Report:** The Recovery Plan Performance Report (the "Recovery Plan") will provide information on the projects that large recipients are undertaking with program funding and how they plan to ensure program outcomes are achieved in an effective, efficient, and equitable manner. It will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury. The Recovery Plan will be posted on the website of the recipient as well as provided to Treasury. See Section C, page 28.

The reporting threshold is based on the total award amount allocated by Treasury under the SLFRF program, not the funds received by the recipient as of the time of reporting.

States and territories are also required to submit information on their distributions to NEUs. Please refer to Section D for additional details.

**Table 2: Reporting requirements by recipient type**

Tier	Recipient	Interim Report	Project and Expenditure Report	Recovery Plan Performance Report
1	States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents	By August 31, 2021 or 60 days after receiving funding if funding was received by October 15, with expenditures by category. <i>Note: NEUs were not required to submit an Interim Report</i>	By January 31, 2022, and then the last day of the month after the end of each quarter thereafter	By August 31, 2021 or 60 days after receiving funding, and annually thereafter by July 31
2	Metropolitan cities and counties with a population below 250,000 residents that are allocated more than \$10 million in SLFRF funding, and NEUs that are allocated more than \$10 million in SLFRF funding		<i>Note: NEUs were not required to submit a Project and Expenditure Report on January 31, 2022. The first reporting date for NEUs was April 30, 2022.</i>	
3	Tribal Governments that are allocated more than \$30 million in SLFRF funding			
4	Tribal Governments that are allocated less than \$30 million in SLFRF funding			
5	Metropolitan cities and counties with a population below 250,000 residents that are allocated less than \$10 million in SLFRF funding, and NEUs that are allocated less than \$10 million in SLFRF funding			

Note: Based on the period of performance, reports will be collected through April 30, 2027. See the specific due dates listed in Sections B and C.

As mentioned above, the total SLFRF allocations across all sources for a given jurisdiction will be used to identify that jurisdiction's Reporting Tier, beginning in April of 2022. Treasury may reach out to jurisdictions to update Reporting Tiers.

The remainder of this document describes these reporting requirements. User guides describing how and where to submit required reports are posted at www.treasury.gov/SLFRPReporting and updated on a regular basis.



Comparison to reporting for the CRF

This guidance does not change the reporting or compliance requirements pertaining to the CRF. Reporting and compliance requirements for the SLFRF are separate from CRF reporting requirements. Differences between CRF and SLFRF include:

- **Project, Expenditure, and Subaward Reporting:** The SLFRF reporting requirements leverage the existing reporting regime used for CRF to foster continuity and provide many recipients with a familiar reporting mechanism. The data elements for the Project and Expenditure Report will largely mirror those used for CRF, with some minor exceptions noted in this guidance. The users' guide will describe how reporting for CRF funds will relate to reporting for the SLFRF.
- **Timing of Reports:** CRF reports were due within 10 days of each calendar quarter end. For quarterly reporters, SLFRF reporting will be due the last day of the month following the end of the period covered. For annual reporters, SLFRF reporting will be due on an annual schedule (see table in Section B below).
- **Program and Performance Reporting:** The CRF reporting did not include any program or performance reporting. To build public awareness and accountability and allow Treasury to monitor compliance with eligible uses, some program and performance reporting is required for SLFRF.

A. Interim Report

Note: The Interim Reports were submitted under the interim final rule.

States, U.S. territories, metropolitan cities, counties, and Tribal governments were required to submit a one-time interim report with expenditures⁶ by Expenditure Category covering the period from March 3rd to July 31, 2021, by August 31, 2021 or sixty (60) days after first receiving funding if the recipient's date of award was between July 15, 2021 and October 15, 2021. The recipient was required to enter obligations⁷ and expenditures and, for each, select the specific expenditure category from the available options. See Appendix 3 for Expenditure Categories applicable for the Interim Report.

1. Required Programmatic Data

Recipients were also required to provide the following information if they had or planned to have expenditures in the following Expenditure Categories.

- a. Revenue replacement (EC 6.1⁸): Key inputs into the revenue replacement formula in the Interim Final Rule and estimated revenue loss due to the Covid-19 public health emergency calculated using the formula in the Interim Final Rule as of December 31, 2020.
 - Base year general revenue (e.g., revenue in the last full fiscal year prior to the public health emergency)
 - Fiscal year end date
 - Growth adjustment used (either 4.1 percent or average annual general revenue growth over 3 years prior to pandemic)
 - Actual general revenue as of the twelve months ended December 31, 2020

⁶ For purposes of reporting in the SLFRF portal, an expenditure is the amount that has been incurred as a liability of the entity (the service has been rendered or the good has been delivered to the entity).

⁷ For purposes of reporting in the SLFRF portal, an obligation is an order placed for property and services, contracts and subawards made, and similar transactions that require payment.

⁸ See Appendix 3 for the full Expenditure Category (EC) list. Please note that Appendix 3 includes the expenditure categories under the interim final rule, applicable to the Interim Report.



- Estimated revenue loss due to the Covid-19 public health emergency as of December 31, 2020
- An explanation of how revenue replacement funds were allocated to government services (Note: additional instructions was provided in the user guide)

In calculating general revenue and the other items discussed above, recipients should have used audited data if it was available. When audited data was not available, recipients were not required to obtain audited data if substantially accurate figures could be produced on an unaudited basis. Recipients should have used their own data sources to calculate general revenue and did not need to rely on revenue data published by the Census Bureau. Treasury acknowledges that due to differences in timing, data sources, and definitions, recipients' self-reported general revenue figures may differ from those published by the Census Bureau. Recipients were permitted to provide data on a cash, accrual, or modified accrual basis, provided that recipients are consistent in their choice of methodology throughout the covered period and until reporting is no longer required. Recipients' reporting should align with their own financial reporting.

In calculating general revenue, recipients should have excluded all intergovernmental transfers from the federal government. This includes, but is not limited to, federal transfers made via a State to a locality pursuant to the CRF or SLFRF. To the extent federal funds are passed through States or other entities or intermingled with other funds, recipients should have attempted to identify and exclude the federal portion of those funds from the calculation of general revenue on a best-efforts basis.

Consistent with the broad latitude provided to recipients to use funds for government services to the extent of reduction in revenue, recipients were required to submit a description of services provided. This description may be in narrative or in another form, and recipients were encouraged to report based on their existing budget processes and to minimize administrative burden. For example, a recipient with \$100 in revenue replacement funds available could indicate that \$50 were used for law enforcement operating expenses and \$50 were used for pay-go building of sidewalk infrastructure. As discussed in the interim final rule, these services can include a broad range of services but may not be used directly for pension deposits or debt service.

Reporting requirements did not require tracking the indirect effects of Fiscal Recovery Funds, apart from the restrictions on use of Fiscal Recovery Funds to offset a reduction in net tax revenue. In addition, recipients were required to indicate that Fiscal Recovery Funds were not used to make a deposit in a pension fund.

B. Project and Expenditure Report

All recipients are required to submit Project and Expenditure Reports.

Note on NEUs: To facilitate reporting, each NEU will need an NEU Recipient Number. This is a unique identification code for each NEU assigned by the State or territory to the NEU as part of its request for funding.

1. Quarterly Reporting

The following recipients are required to submit quarterly Project and Expenditure Reports:

- States and U.S. territories
- Tribal governments that are allocated more than \$30 million in SLFRF funding
- Metropolitan cities and counties with a population that exceeds 250,000 residents



- Metropolitan cities and counties with a population below 250,000 residents that are allocated more than \$10 million in SLFRF funding and NEUs that are allocated more than \$10 million in SLFRF funding.

For these recipients, the initial quarterly Project and Expenditure Report covers three calendar quarters from March 3, 2021 to December 31, 2021 and was required to be submitted to Treasury by January 31, 2022. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury by the last day of the month following the end of the period covered. Quarterly reports are not due concurrently with applicable annual reports. **Table 3** summarizes the quarterly report timelines:

Table 3: Quarterly Project and Expenditure Report Timeline

Report	Year	Quarter	Period Covered	Due Date
1	2021	2 – 4	March 3 – December 31	January 31, 2022
2	2022	1	January 1 – March 31	April 30, 2022
3	2022	2	April 1 – June 30	July 31, 2022
4	2022	3	July 1 – September 30	October 31, 2022
5	2022	4	October 1 – December 31	January 31, 2023
6	2023	1	January 1 – March 31	April 30, 2023
7	2023	2	April 1 – June 30	July 31, 2023
8	2023	3	July 1 – September 30	October 31, 2023
9	2023	4	October 1 – December 31	January 31, 2024
10	2024	1	January 1 – March 31	April 30, 2024
11	2024	2	April 1 – June 30	July 31, 2024
12	2024	3	July 1 – September 30	October 31, 2024
13	2024	4	October 1 – December 31	January 31, 2025
14	2025	1	January 1 – March 31	April 30, 2025
15	2025	2	April 1 – June 30	July 31, 2025
16	2025	3	July 1 – September 30	October 31, 2025
17	2025	4	October 1 – December 31	January 31, 2026
18	2026	1	January 1 – March 31	April 30, 2026
19	2026	2	April 1 – June 30	July 31, 2026
20	2026	3	July 1 – September 30	October 31, 2026
21	2026	4	October 1 – December 31	April 30, 2027

2. Annual Reporting

The following recipients are required to submit annual Project and Expenditure Reports:

- Tribal governments that are allocated less than \$30 million in SLFRF funding
- Metropolitan cities and counties with a population below 250,000 residents that are allocated less than \$10 million in SLFRF funding and NEUs that are allocated less than \$10 million in SLFRF funding.

For these recipients, the initial Project and Expenditure Report covered from March 3, 2021 to March 31, 2022 and was required to be submitted to Treasury by April 30, 2022. The subsequent annual reports will cover one calendar year and must be submitted to Treasury by April 30. **Table 4** summarizes the annual report timelines:

**Table 4: Annual Project and Expenditure Report timeline**

Report	Period Covered	Due Date
1	March 3, 2021 – March 31, 2022	April 30, 2022
2	April 1, 2022 – March 31, 2023	April 30, 2023
3	April 1, 2023 – March 31, 2024	April 30, 2024
4	April 1, 2024 – March 31, 2025	April 30, 2025
5	April 1, 2025 – March 31, 2026	April 30, 2026
6	April 1, 2026 – December 31, 2026	April 30, 2027

3. Required Information

The following information is required in Project and Expenditure Reports for both quarterly and annual reporting:

- a. **Projects:** Provide information on all SLFRF funded projects. Projects are defined as a grouping of closely related activities that together are intended to achieve a specific goal or are directed toward a common purpose. These activities can include new or existing eligible government services or investments funded in whole or in part by SLFRF funding. For each project, the recipient is required to enter the project name, identification number (created by the recipient), project expenditure category (see Appendix 1), description, and status of completion. Project descriptions must describe the project in sufficient detail to provide an understanding of the major activities that will occur, and must be between 50 and 250 words. Projects should be defined to include only closely related activities directed toward a common purpose. Recipients should review the Required Programmatic Data described in 3.g. below and define their projects at a sufficient level of granularity.

Note: For each project, the recipient is asked to select the appropriate Expenditure Category based on the scope of the project (see Appendix 1). Projects should be scoped to align to a single Expenditure Category. For select Expenditure Categories, the recipient also is asked to provide additional programmatic data (described further below).

- b. **Obligations and Expenditures:** Once a project is entered the recipient will be able to report on the project's obligations and expenditures. Recipients will be asked to report:
- Current period obligation
 - Cumulative obligation
 - Current period expenditure
 - Cumulative expenditure
- c. **Project Status:** Once a project is entered the recipient will be asked to report on project status each reporting period, in four categories:
- Not Started
 - Completed less than 50 percent
 - Completed 50 percent or more
 - Completed
- d. **Program Income:** Recipients should report the program income earned and expended to cover eligible project costs, if applicable.
- e. **Adopted Budget (States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents only):** Each state, territory and metropolitan city and county with a population that exceeds 250,000 residents will provide the budget adopted for each project by its jurisdiction associated with SLFRF funds. Treasury will use this information to better understand the intended impact, identify opportunities for outreach, and understand the recipient's progress in program implementation. Treasury is not approving or pre-approving projects or budgets.



- Recipients will enter the Adopted Budget based on information that exists currently in the recipient's financial systems and the recipient's established budget process. Treasury understands that recipients may use different budget processes. For example, a recipient may consider a project budgeted once a legislature has appropriated funds; whereas another recipient may consider a project budgeted at the moment when the funds have been obligated.
 - Additional information is provided on the differences between Adopted Budget, Obligations, and Expenditures as part of the user guide posted at www.treasury.gov/SLFRPReporting.
- f. Project Demographic Distribution (applicable to Public Health and Negative Economic Impact ECs: EC 1.1-2.37)– Collection began April 2022

Recognizing the disproportionate public health and negative economic impacts of the pandemic on many households, communities, and other entities, recipients must report whether certain types of projects are targeted to impacted and disproportionately impacted communities. Recipients will be asked to respond to the following:

- a. What Impacted and/or Disproportionately Impacted population does this project primarily serve? Please select the population primarily served.
- b. If this project primarily serves more than one Impacted and/or Disproportionately Impacted population, please select up to two additional populations served.

Recipients will select from the following options:

	Impacted	Disproportionately Impacted
Public Health	• General Public	
Assistance to Households	• Low- or-moderate income households or populations⁹ • Households that experienced unemployment • Households that experienced increased food or housing insecurity • Households that qualify for certain federal programs¹⁰ • For services to address lost instructional time in K-12 schools: any students that lost access to in-person instruction for a significant period of time	• Low-income households and populations¹¹ • Households and populations residing in Qualified Census Tracts • Households that qualify for certain federal programs¹² • Households receiving services provided by Tribal governments • Households residing in the U.S. territories or receiving services from these governments

⁹ Low or moderate-income households and communities are those with (i) income at or below 300 percent of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines by the Department of Health and Human Services (HHS) or (ii) income at or below 65 percent of the Area Median Income for the county and size of household based on the most recently published data by the Department of Housing and Urban Development (HUD).

¹⁰ For Impacted households, these programs are Children's Health Insurance Program ("CHIP"); Childcare Subsidies through the Child Care and Development Fund ("CCDF") Program; Medicaid; National Housing Trust Fund ("HTF"), for affordable housing programs only; Home Investment Partnerships Program ("HOME"), for affordable housing programs only.

¹¹ Low-income households and communities are those with (i) income at or below 185 percent of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines by HHS or (ii) income at or below 40 percent of Area Median Income for its county and size of household based on the most recently published data by HUD.

¹² For Disproportionately Impacted households, these programs are Temporary Assistance for Needy Families ("TANF"), Supplemental Nutrition Assistance Program ("SNAP"), Free- and Reduced-Price Lunch ("NSLP") and/or School Breakfast ("SBP") programs, Medicare Part D Low-Income Subsidies, Supplemental Security Income ("SSI"), Head Start, Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC"), Section 8 Vouchers, Low-Income Home Energy Assistance Program ("LIHEAP"), and Pell Grants.



	Impacted	Disproportionately Impacted
	Other households or populations that experienced a negative economic impact of the pandemic other than those listed above (please specify)	- For services to address educational disparities, Title I eligible schools¹³ - Other households or populations that experienced a disproportionate negative economic impact of the pandemic other than those listed above (please specify)
Assistance to Small Businesses	- Small businesses that experienced a negative economic impact of the pandemic - Classes of small businesses designated as negatively economically impacted by the pandemic (please specify)	- Small businesses operating in Qualified Census Tracts - Small businesses operated by Tribal governments or on Tribal lands - Small businesses operating in the U.S. territories - Other small businesses disproportionately impacted by the pandemic (please specify)
Assistance to Non-Profits	- Non-profits that experienced a negative economic impact of the pandemic (please specify) - Classes of non-profits designated as negatively economically impacted by the pandemic (please specify)	- Non-profits operating in Qualified Census Tracts - Non-profits operated by Tribal governments or on Tribal lands - Non-profits operating in the U.S. territories - Other non-profits disproportionately impacted by the pandemic (please specify)
Aid to Impacted Industries	- Travel, tourism, or hospitality sectors (including Tribal development districts) - Industry outside the travel, tourism, or hospitality sectors that experienced a negative economic impact of the pandemic (please specify)	N/A

- g. Subawards, Contracts, Grants, Loans, Transfers, and Direct Payments: Each recipient shall also provide detailed obligation and expenditure information for any contracts and grants awarded, loans issued, transfers made to other government entities, and direct payments made by the recipient that are equal to or greater than \$50,000. As noted in Treasury's Project & Expenditure User Guides, subaward reporting for funds spent under the revenue loss eligible use category has not been required in past reporting periods. Please note that as outlined in Final Rule FAQ 13.14, Treasury is not collecting subaward data for projects categorized under the revenue loss eligible use category.

Recipients do not need to submit separate monthly subaward reports to FSRs.gov as required pursuant to the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, which is included in the SLFRF Award Terms and Conditions. Treasury

¹³ For educational services and other efforts to address educational disparities, Treasury will recognize Title I eligible schools as disproportionately impacted and responsive services that support the school generally or support the whole school service as eligible. "Title I eligible schools" means schools eligible to receive services under section 1113 of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6313), including schools served under section 1113(b)(1)(C) of that Act.



will submit this reporting on behalf of recipients using the \$50,000 reporting threshold, timing, and data elements discussed in this guidance. If recipients choose to continue reporting to FSRG.gov in addition to reporting directly to Treasury on these funds, they may do so and will be asked to notify Treasury as part of their quarterly submission.

In general, recipients will be asked to provide the following information for each Contract, Grant, Loan, Transfer, or Direct Payment equal to or greater than \$50,000:

- Subrecipient identifying and demographic information (e.g., UEI/TIN number and location)
- Award number (e.g., Award number, Contract number, Loan number)
- Award date, type, amount, and description
- Award payment method (reimbursable or lump sum payment(s))
- For loans, expiration date (date when loan expected to be paid in full)
- Primary place of performance
- Related project name(s)
- Related project identification number(s) (created by the recipient)
- Period of performance start date
- Period of performance end date
- Quarterly obligation amount
- Quarterly expenditure amount
- Project(s)
- Additional programmatic performance indicators for select Expenditure Categories (see below)

Aggregate reporting is required for contracts, grants, transfers made to other government entities, loans, and direct payments that are below \$50,000. This information will be accounted for by Expenditure Category at the project level. Note that all obligations and expenditures made directly to individuals, regardless of dollar amount, should be included in aggregate reporting.

As required by the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, recipients must also report the names and total compensation of their five most highly compensated executives and their subrecipients' executives for the preceding completed fiscal year if (1) the recipient received 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as provided by 2 CFR 170.320 (and subawards), and received \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act (and subawards), and (2) if the information is not otherwise public. In general, most SLFRF recipients are governmental entities with executive salaries that are already disclosed, so no additional information would be required to be reported for them. The recipient is responsible for the subrecipients' compliance with registering and maintaining an updated profile on SAM.gov.

- h. Civil Rights Compliance: Treasury will request information on recipients' compliance with Title VI of the Civil Rights Act of 1964, as applicable, on an annual basis. This information may include a narrative describing the recipient's compliance with Title VI, along with other questions and assurances. This collection does not apply to Tribal governments¹⁴
- i. Ineligible Activities: Tax Offset Provision (States and territories only): Section 602(c)(2)(A) of the Social Security Act prohibits a State or territory from using SLFRF funds to directly or indirectly offset a reduction in the net tax revenue of the State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period (the "Tax Offset Provision"). The Final Rule implements the Tax Offset Provision at 31 CFR § 35.8. Violations of the Tax

¹⁴ Please note, as explained in Treasury [FAQ 12.1](#), that the award terms and conditions for Treasury's pandemic recovery programs, including the SLFRF, do not impose antidiscrimination requirements on Tribal governments beyond what would otherwise apply under federal law.



Offset Provision may be subject to recoupment. The following information is required for Treasury to ensure SLFRF funding is not used for ineligible activities related to the Tax Offset Provision.

For each reporting year, in the quarterly reporting cycle occurring 90 days after the end of the recipient's fiscal year, States and territories will report certain items related to the Tax Offset Provision, as detailed below. For example, if a recipient's fiscal year ends June 30, 2022, reporting on the Tax Offset Provision for fiscal year 2022 will be due in October 2022. All States and territories reported on the Tax Offset Provision for fiscal year 2021 in July 2022.

As indicated in the final rule, Treasury is implementing a tiered approach to reporting on the Tax Offset Provision, which is described below. Although Treasury is implementing a tiered approach to reporting, recipients should maintain records to support their compliance with the Tax Offset Provision.

The terms "reporting year," "baseline," "covered change," "covered period," "net reduction in total spending," and "tax revenue" are defined in the Final Rule, 31 CFR § 35.3. For purposes of calculating a net reduction in total spending, total spending for the fiscal year ending 2019 should be reported on an inflation-adjusted basis, consistent with the Final Rule. Similarly, for purposes of calculating baseline tax revenue, tax revenue for the fiscal year 2019 should be reported on an inflation-adjusted basis, consistent with the Final Rule.

For purposes of reporting actual tax revenue for the requested fiscal year and baseline tax revenue for the fiscal year ending 2019,¹⁵ (a) if available, recipients should report information using audited financials and (b) recipients may provide data on a cash, accrual, or modified accrual basis, but must be consistent in their approach across all reporting periods. Similarly, for purposes of calculating a net reduction in total spending, recipients should report data using audited financials where available.

Recipients will first answer a series of summary questions to determine the tiering of their tax offset reporting:

Summary Questions

- Do you have revenue-reducing covered change(s) to report for the requested fiscal year and for future fiscal years? Yes/No
 - If no, recipients have no further reporting requirements in the tax offset section. (Remaining summary questions will be greyed out).
 - If yes, recipients will complete part 1 and additional fields.
- Is the aggregate value of your revenue-reducing covered change(s) for the requested fiscal year less than the de minimis? Yes/No.
 - If yes, recipients will complete parts 1 and 2, and no further reporting is required in the tax offset section. (Remaining summary questions will be greyed out).
 - If no, recipients will complete parts 1, 2 and additional fields.
- Do you have a reduction in net tax revenue for the requested fiscal year, meaning that actual tax revenue for the requested fiscal year is less than baseline tax revenue? Yes/No.
 - If yes, recipients will complete parts 1, 2, and 3 and additional fields.
 - If no, recipients will complete parts 1, 2, and 3, and no further reporting is required in the tax offset section. (Remaining summary questions will be greyed out).
- Do you have revenue-increasing covered change(s) and/or covered spending cuts to report for the requested fiscal year? Yes/No
 - If yes, recipients will complete parts 1, 2, 3, and 4.
 - If no, recipients will complete the revenue reduction cap.

Reporting Part 1: Revenue-reducing Covered Changes

¹⁵ Tax revenue for fiscal year ending 2019 is relevant for calculating the recipient's baseline.



- Do you have revenue-reducing covered change(s) to report for the requested fiscal year and for future fiscal years? Yes/No
 - If yes, complete grid or upload spreadsheet with the name of each revenue-reducing covered change and the value of the revenue-reducing covered change for the requested fiscal year and for future fiscal years.
 - If no, a recipient has no revenue-reducing covered changes to report, no additional reporting is required.
- Enter in the aggregate value of all revenue-reducing covered change(s) for the requested fiscal year.¹⁶

Revenue-reducing Covered Changes: Guidance

For each reporting year, a recipient must report the value of covered changes that the recipient predicts will have the effect of reducing tax revenue in a given reporting year (revenue-reducing covered changes), similar to the way it would in the ordinary course of its budgeting process. The value of these revenue-reducing covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The revenue-reducing covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Estimation approaches should not use dynamic methodologies that incorporate the projected effects of the policies on macroeconomic growth. In general and where possible, reported values should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Recipients must maintain records regarding the identification and predicted effects of revenue-reducing covered changes.

Reporting Part 2: Baseline Revenue and De Minimis Threshold

- Enter Baseline Revenue:
- Enter in the aggregate value of the revenue-reducing covered change(s) for the requested fiscal year as a percentage of baseline revenue:
- Is the aggregate value of the revenue-reducing covered change(s) for the requested fiscal year less than one percent of baseline revenue? Y/N
 - If yes, a recipient's aggregate value of the revenue-reducing covered changes in the reporting year is less than the *de minimis threshold*, and no additional reporting is required.

Baseline Revenue: Guidance

Baseline has the meaning defined in the Final Rule, 31 CFR 35.3.

Recipients must determine whether the aggregate value of the revenue-reducing covered changes in the reporting year is less than one percent of baseline revenue (the *de minimis threshold*).

Reporting Part 3: Actual Tax Revenue and Reduction in Net Tax Revenue

- Enter Actual Tax Revenue for the requested fiscal year:
- Enter Reduction in Net Tax Revenue: baseline revenue minus actual tax revenue

¹⁶ The final rule defines covered change. "Covered change means a change in law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase. A change in law includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period."



- If the value of the reduction in net tax revenue is zero or negative (meaning that actual tax revenue is equal to or greater than baseline revenue), no additional reporting is required.

Actual Tax Revenue: Guidance

Actual tax revenue means the tax revenue received by the recipient government in the reporting year. Tax revenue has the meaning defined in the Final Rule, 31 CFR 35.3.

Reduction in Net Tax Revenue: Guidance

The reduction in net tax revenue is equal to baseline revenue minus actual tax revenue in each reporting year. If this value is zero or negative, there is no reduction in net tax revenue.

Reporting Part 4: Revenue-increasing Covered Changes and Covered Spending Cuts

- Do you have revenue-increasing covered change(s) and/or covered spending cuts to report for the requested fiscal year? Yes/No.
- If yes, complete grid or upload spreadsheet with the name of each revenue-increasing covered change and the value.
- Enter in the aggregate value of revenue-increasing covered change(s):
- Enter net reduction in total spending for the requested fiscal year:
- Complete grid or upload spreadsheet of specific spending cuts and the corresponding "reporting unit", including the name of the reporting unit, description of the spending cut, the amount of the reduction in spending in the reporting unit for the reporting year relative to its inflation-adjusted FY 2019 level, the amount of any Fiscal Recovery Funds spent in the reporting unit in the reporting year, and the amount by which the reduction in spending in the reporting unit in the reporting year exceeds the Fiscal Recovery Funds spent in the reporting unit in the reporting year, if at all.
- Enter the aggregate value of covered spending cuts.
- Enter the aggregate value of revenue-increasing covered changes + the aggregate value of covered spending cuts.
- Enter the total value of revenue-reducing covered changes minus the total of (aggregate value of revenue-increasing covered changes + aggregate value of covered spending cuts).
- Is the aggregate value of revenue-reducing covered changes minus the total of (aggregate value of revenue-increasing changes + aggregate value of covered spending cuts) negative or equal to zero? (Yes/No)
 - If yes, recipients have no further reporting requirements related to the Tax Offset Provision.
 - If no, recipients must move on to the calculation of the revenue reduction cap.

Revenue-increasing covered changes: Guidance

If a recipient has revenue-reducing covered changes, the aggregate value of which exceed the de minimis threshold, and its actual tax revenue does not exceed baseline tax revenue, a recipient must report the value of covered changes that have had or that the recipient predicts will have the effect of increasing tax revenue in a given reporting year (revenue-increasing covered changes), similar to the way it would in the ordinary course of its budgeting process. The value of these revenue-increasing covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The revenue-increasing covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the revenue-increasing covered change(s), relative to the current law baseline prior to the change(s). Estimation approaches should not use dynamic methodologies that incorporate the projected effects of the policies on macroeconomic growth.



In general and where possible, reporting should be produced by the agency of the recipient responsible for estimating the costs and effects of fiscal policy changes. Recipients should maintain records regarding revenue-increasing covered changes and estimates of such changes.

Net reduction in total spending, and tables of specific spending cuts: Guidance
Recipients may cut spending in certain areas to pay for revenue-reducing covered changes, up to the amount of the recipient's net reduction in total spending. To calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient must first consider whether there has been a reduction in total net spending, excluding Fiscal Recovery Funds (net reduction in total spending). As defined in the Final Rule, 35 CFR 35.3, net reduction in total spending is measured as the recipient government's total spending for a given reporting year excluding Fiscal Recovery Funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States for that reporting year. If that calculation yields a positive value, there has been a net reduction in total spending; if it yields zero or a negative value, there has not been a net reduction in total spending. If there has been no net reduction in total spending, a recipient will have no spending cuts to offset a reduction in net tax revenue.

Next, a recipient must determine and aggregate the value of spending cuts in each "reporting unit." "Reporting units" are departments, agencies, or authorities of the recipient's government. For each reporting unit, the recipient must report (1) the amount of the reduction in spending in the reporting unit for the reporting year relative to its inflation-adjusted FY 2019 level, (2) the amount of any Fiscal Recovery Funds spent in the reporting unit in the reporting year, and (3) the amount by which the reduction in spending in the reporting year exceeds the Fiscal Recovery funds spent in the reporting unit in the reporting year. If a recipient has not spent amounts received from the Fiscal Recovery Funds in a reporting unit, the full amount of the reduction in spending counts as a covered spending cut and may be included in the aggregate value of spending cuts. If the recipient has spent amounts received from the Fiscal Recovery Funds, such amounts generally would be deemed to have replaced the amount of spending cut, and only reductions in spending above the amount of Fiscal Recovery Funds spent on the reporting unit would be eligible to offset a reduction in net tax revenue. Only such amounts above the amount of Fiscal Recovery Funds spent on the reporting unit should be included in the aggregate value of spending cuts.

To align with existing reporting and accounting, the Final Rule considers the department, agency, or authority from which spending has been cut and whether the recipient government has spent amounts received from the Fiscal Recovery Funds on that same department, agency, or authority. Some commenters on the interim final rule argued that the methodology for identifying offsetting spending cuts at the department, agency, or authority level was too restrictive, but as discussed in the final rule, Treasury maintained the approach of requiring this reporting at the department, agency, or authority level. Recipients are encouraged to define reporting units in a manner consistent with their existing budget process and should, to the extent possible, report using the same reporting unit in each reporting year. Spending cuts must be reported relative to FY 2019 spending levels, adjusted for inflation, and excluding Fiscal Recovery Funds from reporting year spending levels.

Recipients should maintain records regarding spending cuts.

Reporting Part 5: Revenue Reduction Cap

The "revenue reduction cap," together with Part 3, ensures that recipient governments can use organic revenue growth to offset the cost of revenue-reducing covered changes. If, based on the calculations completed so far, a recipient has not yet demonstrated how its revenue-reducing



covered changes were offset by non-SLFRF sources, the reporting portal will auto-calculate the revenue reduction cap, which will be the lesser of the following two amounts:

- Reduction in Net Tax Revenue (baseline tax revenue minus actual tax revenue) [pre-populated from Part 3] and
- Aggregate Value of revenue-reducing covered changes minus (total of (aggregate value of revenue-increasing changes + aggregate value of covered spending cuts) [pre-populated from Part 4].

- j. Required Programmatic Data (other than infrastructure projects): For all projects listed under the following Expenditure Categories (see Appendix 1), the information listed must be provided in each report.

1. Public Health and Negative Economic Impact (EC 1.1-3.5) - Collection began in April 2022

- Brief description of structure and objectives of assistance program(s), including public health or negative economic impact experienced
- Brief description of how a recipient's response is related and reasonably proportional to a public health or negative economic impact of COVID-19.¹⁷

Note: The final rule presumes that all enumerated eligible uses for programs and services, including COVID-19 mitigation and prevention programs and services, are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. Many of the Eligibility Categories encompass multiple specific enumerated eligible uses and may be provided to a variety of populations. For example, EC 2.13 *Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System* includes a wide array of financial, educational, child development, or health supports, or other supports necessary, including supports for kinship care, and may be provided to foster youth and/or families involved in the child welfare system. Between these two fields above, recipients should provide enough information to identify the type of enumerated eligible use being provided within the EC (e.g., kinship care support services), the public health or economic impact experienced, who the program and/or service is being provided to, and what services are being provided (e.g., respite resources). For enumerated eligible uses, recipients are not required to provide substantive documentation that the response is related and reasonably proportional in the Project and Expenditure Report.

2. Capital Expenditures (EC 1.1-3.5) - Collection began in January 2022, with additional fields required starting in July 2022

- Does this project include a capital expenditure? (*Collection began in January 2022*)
- Total expected capital expenditure, including pre-development costs, if applicable (*Collection began in January 2022*)
- Type of capital expenditure, based on the following enumerated uses (*Collection began in July 2022*):
 - COVID-19 testing sites and laboratories, and acquisition of related equipment
 - COVID-19 vaccination sites
 - Medical facilities generally dedicated to COVID-19 treatment and mitigation (e.g., emergency rooms, intensive care units, telemedicine capabilities for COVID-19 related treatment)
 - Temporary medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs
 - Acquisition of equipment for COVID-19 prevention and treatment, including ventilators, ambulances, and other medical or emergency services equipment

¹⁷ Please note that capital expenditures are not considered "programs and services" and are not presumed to be reasonably proportional responses to an identified harm except as provided in the final rule.



- Emergency operations centers and acquisition of emergency response equipment (e.g., emergency response radio systems)
- Installation and improvement of ventilation systems in congregate settings, health facilities, or other public facilities
- Public health data systems, including technology infrastructure
- Adaptations to congregate living facilities, including skilled nursing facilities, other long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities, as well as public facilities and schools (excluding construction of new facilities for the purpose of mitigating spread of COVID-19 in the facility)
- Mitigation measures in small businesses, nonprofits, and impacted industries (e.g., developing outdoor spaces)
- Behavioral health facilities and equipment (e.g., inpatient or outpatient mental health or substance use treatment facilities, crisis centers, diversion centers)
- Technology and equipment to allow law enforcement to efficiently and effectively respond to the rise in gun violence resulting from the pandemic
- Affordable housing, supportive housing, or recovery housing development
- Food banks and other facilities primarily dedicated to addressing food insecurity
- Transitional shelters (e.g., temporary residences for people experiencing homelessness)
- Devices and equipment that assist households in accessing the internet (e.g., tablets, computers, or routers)
- Childcare, daycare, and early learning facilities
- Job and workforce training centers
- Improvements to existing facilities to remediate lead contaminants (e.g., removal of lead paint)
- Medical equipment and facilities designed to address disparities in public health outcomes (includes primary care clinics, hospitals, or integrations of health services into other settings)
- Parks, green spaces, recreational facilities, sidewalks, pedestrian safety features like crosswalks, streetlights, neighborhood cleanup, and other projects to revitalize public spaces
- Rehabilitations, renovation, remediation, cleanup, or conversions of vacant or abandoned properties
- Schools and other educational facilities or equipment to address educational disparities
- Technology and tools to effectively develop, execute, and evaluate government programs
- Technology infrastructure to adapt government operations to the pandemic (e.g., video-conferencing software, improvements to case management systems or data sharing resources), reduce government backlogs, or meet increased maintenance needs
- Other (please specify)
- For recipients (other than Tribal governments) investing in projects with total expected capital expenditures for an enumerated eligible use of \$10 million or more, as well as projects with total expected capital expenditures for an “other” use of \$1 million or more, provide a written justification (*Collection began in July 2022*)
- For projects with total expected capital expenditures of over \$10 million, provide labor reporting as outlined for infrastructure projects on pages 26 and 27 (*Collection began July 2022*)



3. Household Assistance (EC 2.1-2.8) – *Collection began January 2022:*
 - Number of households served (by program if recipient establishes multiple separate household assistance programs)
4. Small Business Economic Assistance (EC 1.8, 2.29-2.33) – *Collection began April 2022*
 - Number of small businesses served (by program if recipient establishes multiple separate small business assistance programs)
5. Assistance to Non-Profits (EC 1.9, 2.34)– *Collection began April 2022*
 - Number of Non-Profits served (by program if recipient establishes multiple separate non-profit assistance programs)
6. Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (EC 1.10, 2.35-2.36) – *Collection began April 2022:*
 - If aid is provided to industries other than travel, tourism, and hospitality (EC 2.36), describe if the industry experienced at least 8 percent employment loss from pre-pandemic levels, or the industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries as of the date of the final rule, and rationale for providing aid to the industry
 - For each subaward:
 - Sector of employer (Note: additional detail, including list of sectors, to be provided in the user guide posted to www.treasury.gov/SLFRP)
 - Purpose of funds (e.g., payroll support, safety measure implementation)
7. Education Assistance (EC 2.14, 2.24-2.27) – *Collection began in January 2022:*
 - The National Center for Education Statistics (“NCES”) School ID or NCES District ID. List the School District if all schools within the school district received some funds. If not all schools within the school district received funds, list the School ID of the schools that received funds. These can allow evaluators to link data from the NCES to look at school-level demographics and, eventually, student performance.¹⁸
8. Payroll for Public Health and Safety Employees (EC 3.1) – *Collection began in January 2022:*
 - Number of government FTEs responding to COVID-19 supported under this authority
9. Rehiring Public Sector Staff (EC 3.2) – *Collection began in January 2022:*
 - Number of FTEs rehired by governments under this authority
10. Premium Pay (both Public Sector EC 4.1 and Private Sector EC 4.2) – *Collection began in January 2022; additional field began in April 2022*
 - List of sectors designated as critical to protecting the health and well-being of residents by the chief executive of the jurisdiction, if beyond those included in the final rule (*Collection began January 2022*)
 - Number of workers to be served (*Collection began January 2022*)
 - Employer sector for all subawards to third-party employers (i.e., employers other than the State, local, or Tribal government) (*Collection began January 2022*)
 - For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county’s average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employment and Wage Statistics, whichever is

¹⁸ For more information on NCES identification numbers see <https://nces.ed.gov/ccd/districtsearch/> (districts) and <https://nces.ed.gov/ccd/schoolsearch/> (schools).



higher, on an annual basis; OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions:

- A brief written narrative justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19, and why the recipient government determined that the premium pay was responsive to workers performing essential work during the pandemic. This description should not include personally identifiable information; when addressing individual workers, recipients should be careful not to include this information. Recipients may consider describing the workers' occupations and duties in a general manner as necessary to protect privacy (*Collection began January 2022*)
- Number of workers to be served with premium pay in K-12 schools (*Collection began April 2022*)

11. Revenue replacement (EC 6.1) – *Collection began in August 2021:*

As outlined in the final rule, recipients have the option to make a one-time decision to calculate revenue loss according to the formula outlined in the final rule or elect a "Standard Allowance" of up to \$10 million, not to exceed the award allocation, to spend on government services throughout the period of performance. The option to make this one-time decision was provided during the April 30, 2022 reporting deadline.

For recipients electing the "Standard Allowance," Treasury will presume that up to \$10 million, not to exceed the award allocation, in revenue has been lost due to the public health emergency. Recipients are permitted to use that amount to fund "government services." Please note that electing the standard allowance does not change a recipient's total allocation. Recipients that elect to use this standard allowance will make this election instead of calculating lost revenue using the formula.

For recipients calculating revenue loss according to the formula, the final rule permits recipients to choose whether to use calendar or fiscal year calculation dates. Recipients must use the same calculation time frame (calendar or fiscal year) throughout the award period.

Recipients calculating lost revenue using the formula should report the following:

- Choice of fiscal or calendar year revenue loss (choice must remain consistent throughout award period)
- General revenue collected over the past 12 months as of the most recent calculation date, as outlined in the final rule.
- Calculated revenue loss due to the Covid-19 public health emergency; and
- An explanation of how the revenue replacement funds were allocated to government services (note: additional instructions and/or template provided in the user guide posted at www.treasury.gov/SLFRPReporting).

For information on treatment of future tax changes, please see the [Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule](#).

- k. Required Programmatic Data for Infrastructure Projects (EC 5): For all projects listed under the Water, Sewer, and Broadband Expenditure Categories (see Appendix 1), more detailed project-level information is required. Each project will be required to report expenditure data as described above, but will also report the following information:

1. All infrastructure projects (EC 5) – *Collection began in January 2022:*



- Projected/actual construction start date (month/year)
- Projected/actual initiation of operations date (month/year)
- Location
- For projects over \$10 million (based on expected total cost):
 - a. A recipient may provide a certification that, for the relevant project, all laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as “baby Davis-Bacon Acts”). If such certification is not provided, a recipient must provide a project employment and local impact report detailing:
 - The number of employees of contractors and sub-contractors working on the project;
 - The number of employees on the project hired directly and hired through a third party;
 - The wages and benefits of workers on the project by classification; and
 - Whether those wages are at rates less than those prevailing.¹⁹
 Recipients must maintain sufficient records to substantiate this information upon request.
 - b. A recipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing:
 - How the recipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project, including a description of any required professional certifications and/or in-house training;
 - How the recipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project;
 - How the recipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (e.g., OSHA 10, OSHA 30);
 - Whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and
 - Whether the project has completed a project labor agreement.
 - c. Whether the project prioritizes local hires.
 - d. Whether the project has a Community Benefit Agreement, with a description of any such agreement.

2. Water and sewer projects (EC 5.1-5.18) Required once the project starts:

- National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund) (*Collection began in January 2022*)

¹⁹ As determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed.



- Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund) (*Collection began January 2022*)
 - Median Household Income of service area (*Collection began in April 2022*)
 - Lowest Quintile Income of the service area (*Collection began in April 2022*)
3. Broadband projects (EC 5.19-5.21) *Collection includes new fields that began in July 2022. Additional fields will be phased in through future reporting periods, as noted below.*

Overall Project Information

- Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
 - If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
 - Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
- Confirm that the service provider for the project has, or will upon completion of the project, either participated in the Federal Communications Commission (FCC)'s Affordable Connectivity Program (ACP) or otherwise provided access to a broad-based affordability program that provides benefits to households commensurate with those provided under the ACP to low-income consumers in the proposed service area of the broadband infrastructure (*applicable only to projects that provide service to households*).

Detailed Project Information

- Project technology type(s) (Planned/Actual)
 - Fiber
 - Coaxial Cable
 - Terrestrial Fixed Wireless
 - Other (specify)
- Total miles of fiber deployed (Planned/Actual)
- Total number of funded locations served (Planned/Actual)
 - Total number of funded locations served, broken out by speeds:
 - Pre-SLFRF Investment:
 - Number receiving 25/3 Mbps or below
 - Number receiving between 25/3 Mbps and 100/20 Mbps
 - Post-SLFRF Investment (Planned/Actual):
 - Number receiving minimum 100/100 Mbps
 - Number receiving minimum 100/20 Mbps and scalable to minimum 100/100 Mbps
 - Total number of funded locations served, broken out by type (Planned/Actual):
 - Residential
 - Total Housing Units
 - Business
 - Community anchor institution
- Speed tiers offered, corresponding non-promotional prices, including associated fees, and data allowance for each speed tier of broadband service (*collection to be phased in a future reporting period*)

Location-by-Location Project Information

For each location served by a Project, the recipient must collect from the subrecipient or contractor and submit the following information to Treasury using a predetermined file format that will be provided by Treasury (*collection of certain fields will begin in October 2022, as specified below*):



- Latitude/longitude at the structure where service will be installed (*required starting October 2022*)
 - Technology used to offer service at the location (*required starting October 2022*)
 - Location type (*required starting October 2022*)
 - Residential
 - If Residential, Number of Housing Units
 - Business
 - Community anchor institution
 - Speed tier at the location pre-SLFRF investment (*collection to be phased in*)
 - 25/3 Mbps or below
 - Between 25/3 Mbps and 100/20 Mbps
 - Speed and latency at the location post-SLFRF investment (*collection to be phased in*)
 - Maximum download speed offered
 - Maximum download speed delivered
 - Maximum upload speed offered
 - Maximum upload speed delivered
 - Latency
- I. Additional Required Programmatic Data for States, U.S. territories, and metropolitan cities and counties with a population that exceeds 250,000 residents only: As noted in the Recovery Plan section of this guidance, states, U.S. territories, and metropolitan cities and counties with a population over 250,000 are required to provide additional data in the Project and Expenditure report for projects in the following expenditure categories:
1. Use of Evidence (for relevant ECs noted in Appendix 1)—*Collection began April 2022*
 - The dollar amount of the total project spending that is allocated towards evidence-based interventions
 - Whether a program evaluation of the project is being conducted
 2. Household Assistance (EC 2.2, Long-Term Housing Security (EC 2.15-2.16) and Housing Support (EC 2.17-2.18):
 - Number of households receiving eviction prevention services (including legal representation)
 - Number of affordable housing units preserved or developed
 3. Assistance to Unemployed or Underemployed Workers (EC 2.10) and Community Violence Interventions (EC 1.11):
 - Number of workers enrolled in sectoral job training programs
 - Number of workers completing sectoral job training programs
 - Number of people participating in summer youth employment programs
 4. Addressing Educational Disparities (EC 2.24-2.26) and Addressing Impacts of Lost Instructional Time (EC 2.27):
 - Number of students participating in evidence-based tutoring programs²⁰
 5. Healthy Childhood Environments (EC 2.11-2.14):
 - Number of children served by childcare and early learning services (pre-school/pre-K/ages 3-5)
 - Number of families served by home visiting

²⁰ For more information on evidence-based tutoring programs, refer to the U.S. Department of Education's 2021 ED COVID-19 Handbook (Volume 2), which summarizes research on evidence-based tutoring programs (see the bottom of page 20).



m. **NEU Documentation (NEUs only):** Each NEU is also required to provide the following information once its accounts are established in Treasury's Reporting Portal and prior to the due date for their first Project and Expenditure Report (due April 30, 2022):

- Copy of the signed award terms and conditions agreement (which was signed and submitted to the State as part of the request for funding)
- Copy of the signed assurances of compliance with Title VI of the Civil Rights Act of 1964 (which was signed and submitted to the State as part of the request for funding)
- Copy of actual budget documents validating the top-line budget total provided to the State as part of the request for funding

NEU accounts are established in Treasury's Portal based on information provided by the States or territories, as further described in Section Part 2 D below.

C. Recovery Plan Performance Report

States, territories, and metropolitan cities and counties with a population that exceeds 250,000 residents (i.e., Tier 1 recipients) will also be required to publish and submit to Treasury a Recovery Plan performance report ("Recovery Plan"). Each Recovery Plan must be posted on an easily discoverable webpage on the public-facing website of the recipient by the same date the recipient submits the report to Treasury. Treasury recommends that Recovery Plans be accessible within three clicks or fewer from the homepage of the recipient's website. Within Treasury's reporting portal, recipients must upload a link to the publicly available Recovery Plan and provide required data.

The Recovery Plan provides the public and Treasury both retrospective and prospective information on the projects recipients are undertaking or planning to undertake with program funding and how they are planning to ensure program outcomes are achieved in an effective, efficient, and equitable manner. While this guidance outlines some minimum requirements for the Recovery Plan, each recipient is encouraged to add information to the plan that they feel is appropriate to provide information to their constituents on efforts they are taking to respond to the pandemic and promote economic recovery. Each jurisdiction may determine the general form and content of the Recovery Plan, as long as it includes the minimum information required by Treasury. Treasury provided a template (located at www.treasury.gov/SLFRP) but recipients may modify this template as appropriate for their jurisdiction, provided the modified template meets Treasury's requirements, outlined below. Through the Recovery Plan, recipients may link to public documents, including, but not limited to, legislation, dashboards, survey results, community engagement reports, and equity frameworks to support the Recovery Plan narrative. The Recovery Plan should include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury, as noted below.

The initial Recovery Plan covered the period from the date of award to July 31, 2021 and was required to be submitted to Treasury by August 31, 2021, or 60 days after receiving funding. Thereafter, the Recovery Plan will cover a 12-month period and recipients are required to submit the report to Treasury after the end of the 12-month period by July 31. The Recovery Plan should include both retrospective information covering the time period of the Recovery Plan along with prospective information on future work to be undertaken with SLFRF funds or on the planning that has been undertaken during the covered period. **Table 5** summarizes the report timelines:

Table 5 Recovery Plan Timeline

Annual Report	Period Covered	Due Date
1	Award Date – July 31, 2021	August 31, 2021 or 60 days after receiving funding
2	July 1, 2021 – June 30, 2022	July 31, 2022



Annual Report	Period Covered	Due Date
3	July 1, 2022 – June 30, 2023	July 31, 2023
4	July 1, 2023 – June 30, 2024	July 31, 2024
5	July 1, 2024 – June 30, 2025	July 31, 2025
6	July 1, 2025 – June 30, 2026	July 31, 2026
7	July 1, 2026 – December 31, 2026	April 30, 2027

Recovery Plans submitted as part of reporting are used by Treasury, third party organizations, the public, and other stakeholders to obtain a comprehensive understanding of SLFRF's largest recipients' planned and actual usage of SLFRF funding, including the jurisdiction's policy goals, its strategy for achieving them, and specific projects or initiatives underway. Alignment of data reported in Project and Expenditure reports and Recovery Plans is expected by both Treasury and SLFRF's many stakeholders. Finally, Recovery Plans will be posted publicly by Treasury to provide transparency about how program funds are being used by recipient governments.

The Recovery Plan must include, at a minimum, the following information:

1. Executive Summary

In this section, recipients should provide a high-level overview of the jurisdiction's intended and actual uses of funding including, but not limited to: the jurisdiction's strategy, goals, and plan for using Fiscal Recovery Funds to respond to the pandemic and promote economic recovery, key outcome goals, progress to date on those outcomes, and any noteworthy challenges or opportunities identified during the reporting period.

2. Uses of Funds

In this section, recipients should describe in further detail the strategy and goals of their jurisdiction's SLFRF program, such as how their jurisdiction's approach would help support a strong and equitable recovery from the COVID-19 pandemic and economic downturn. Recipients should describe how their intended and actual uses of funds will achieve their goals. Given the broad eligible uses of funds established by the final rule and the specific needs of different jurisdictions, recipients should also explain how the funds would support the communities, populations, or individuals in their jurisdiction. Recipients should describe how their use of funds supports their overall strategy and goals in the following areas:

- a. Public Health (EC 1): As relevant, describe how funds are being used to respond to COVID-19, the broader health impacts of COVID-19, and the COVID-19 public health emergency, including community violence interventions and behavioral health.
- b. Negative Economic Impacts (EC 2): As relevant, describe how funds are being used to respond to negative economic impacts of the COVID-19 public health emergency, including services to households (such as affordable housing, job training, and childcare), small businesses, non-profits, and impacted industries.
- c. Public Health-Negative Economic Impact: Public Sector Capacity (EC 3): As relevant, describe how funds are being used to support public sector workforce and capacity, including public sector payroll, rehiring of public sector workers, and building of public sector capacity.
- d. Premium Pay (EC 4): As relevant, describe the approach, goals, and sectors or occupations served in any premium pay program. Describe how the approach prioritizes low-income workers and/or any particular group of eligible workers.
- e. Water, sewer, and broadband infrastructure (EC 5): As relevant, describe the approach, goals, and types of projects being pursued. Where relevant, recipients should note how projects contribute to addressing climate change and/or how projects benefit disadvantaged communities in line with the Justice40 Initiative.²¹

²¹ See Executive Order 14008, On Tackling the Climate Crisis at Home and Abroad and the Interim Implementation Guidance for the Justice40 Initiative, OMB M-21-28.



- f. **Revenue Replacement (EC 6):** Describe the loss in revenue, including if electing the standard allowance, due to the COVID-19 public health emergency, and how funds have been used to provide government services, including any funds used under revenue loss for non-federal cost-share or matching requirements of other federal programs.

If appropriate, recipients may also include information on their jurisdiction's use (or planned use) of other federal recovery funds, including other programs under the American Rescue Plan such as Emergency Rental Assistance, the Homeowner Assistance Fund, the Capital Projects Fund, the State Small Business Credit Initiative, and so forth, to provide broader context on the overall approach for pandemic recovery. Jurisdictions may also address use of SLFRF funds in coordination with, or in preparation for, funding available through the Infrastructure Investment and Jobs Act.

3. Promoting equitable outcomes

Treasury encourages uses of funds that advance strong, equitable growth, including economic and racial equity. For the purposes of the SLFRF, equity is described in the [Executive Order 13985 On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#), as issued on January 20, 2021.

In this section, recipients should describe, as applicable, their efforts to promote equitable outcomes, including economic and racial equity, and their efforts to design, implement, and measure their SLFRF program and projects with equity in mind.

In describing their efforts to **design** their SLFRF program and projects with equity in mind, recipients may consider the following:

- a. **Goals:** Are there particular historically underserved, marginalized, or adversely affected groups that recipients intend to serve within their jurisdiction?
- b. **Awareness:** How equitable and practical is the ability for residents or businesses to become aware of the services funded by SLFRF?
- c. **Access and Distribution:** Are there differences in levels of access to benefits and services across groups? Are there administrative requirements that result in disparities in ability to complete applications or meet eligibility criteria?
- d. **Outcomes:** How are intended outcomes focused on closing gaps and/or reaching universal levels of service? How is the considering disaggregating outcomes by race, ethnicity, and other equity dimensions where relevant for the policy objective?

In describing their efforts to **implement** their SLFRF program and projects with equity in mind, recipients may consider the following:

- a. **Goals and Targets:** Please describe how planned or current uses of funds prioritize economic and racial equity as a goal, name specific targets intended to produce meaningful equity results at scale, and include initiatives to achieve those targets.
- b. **Project Implementation:** In addition, please explain how the jurisdiction's overall equity strategy translates into focus areas for SLFRF projects and the specific services or programs offered by the jurisdiction in the following Expenditure Category, as indicated in the final rule.

Negative Economic Impacts (EC 2): assistance to households, small businesses, and non-profits to address impacts of the pandemic, which have been most severe among low-income populations. This includes assistance with food, housing, and other needs; employment programs for people with barriers to employment who faced negative economic impacts from the pandemic (such as residents of low-income neighborhoods, minorities, disconnected youth, the unemployed, formerly incarcerated people, veterans, and people with disabilities); services to provide long-term housing security and housing supports, address educational disparities, or provide child care and early learning services; and other strategies that provide



impacted and disproportionately impacted communities with services to address the negative economic impacts of the pandemic

The first annual Recovery Plan, due in 2021, was required to describe initial efforts and intended outcomes to promote equity, as applicable. Beginning in 2022, each annual Recovery Plan must provide an update, using qualitative and quantitative data, on how the recipients' approach achieved or promoted equitable outcomes or progressed against equity goals during the performance period, as applicable. Each jurisdiction should describe any constraints or challenges that impacted project success in terms of increasing equity. In particular, this section should describe the geographic and demographic distribution of funding, including whether it is targeted toward traditionally marginalized communities (recipients may reference the demographic data information in their Project and Expenditure Reports as relevant).

4. Community Engagement

In this section, recipients should describe how their jurisdiction's planned or current use of funds incorporates community engagement strategies including written feedback through surveys, project proposals, and related documents; oral feedback through community meetings, issue-specific listening sessions, stakeholder interviews, focus groups, and additional public engagement; as well as other forms of input, such as steering committees, taskforces, and digital campaigns that capture diverse feedback from the community. Recipients may describe completed or planned community engagement strategies specifically focused on their SLFRF program and projects or community engagement strategies that included SLFRF among other government programs. Recipients should also describe how community engagement strategies support their equity goals, including engagement with communities that have historically faced significant barriers to services, such as people of color, people with low incomes, limited English proficient populations, and other traditionally underserved groups.

5. Labor Practices

In this section, recipients should describe workforce practices on any infrastructure projects or capital expenditures being pursued. How are projects using strong labor standards to promote effective and efficient delivery of high-quality infrastructure projects while also supporting the economic recovery through strong employment opportunities for workers? For example, report whether any of the following practices are being utilized: project labor agreements, community benefits agreements, prevailing wage requirements, and local hiring.

6. Use of Evidence

In this section of the Recovery Plan, recipients should describe whether and how evidence-based interventions and/or program evaluation are incorporated into their SLFRF program. Recipients may include links to evidence standards, evidence dashboards, evaluation policies, and other public facing tools that are used to track and communicate the use of evidence and evaluation for Fiscal Recovery Funds. Recipients are encouraged to consider how a learning agenda, either narrowly focused on SLFRF or broadly focused on the recipient's broader policy agenda, could support their overarching evaluation efforts in order to create an evidence-building strategy for their jurisdiction.²²

In the Project Inventory section of the Recovery Plan (see Section 8 below), recipients should identify whether SLFRF funds are being used for evidence-based interventions²³ and/or if projects are being evaluated through rigorous program evaluations that are designed to build evidence. In the Project Inventory, recipients must briefly describe the goals of the project and the evidence base for the interventions funded by the project. As part of the Project Inventory section, recipients must also specifically identify the dollar amount of the total project spending that is allocated towards evidence-based interventions for each project in the Expenditure Categories noted with an asterisk in Appendix 1. Please note that to increase consistency, the Project and Expenditure report now also includes

²² For more information on learning agendas, please see [OMB M-19-23](#)

²³ As noted in Appendix 2, evidence-based refers to interventions with strong or moderate levels of evidence.



fields for recipients to identify the dollar amount of the total project spending that is allocated to evidence-based interventions and to indicate if a program evaluation of the project is being conducted.

Recipients are encouraged to reference relevant evidence clearinghouses, among other sources, to assess the level of evidence for their interventions and identify evidence-based models that could be applied in their jurisdiction; such evidence clearinghouses include the U.S. Department of Education's What Works Clearinghouse, the U.S. Department of Labor's CLEAR, and the Childcare & Early Education Research Connections and the Home Visiting Evidence of Effectiveness clearinghouses from Administration for Children and Families, as well as other clearinghouses relevant to particular projects conducted by the recipient.

Recipients are exempt from reporting on evidence-based interventions in cases where a program evaluation is being conducted. In such cases where a recipient is conducting a program evaluation, recipients must describe the evaluation design, including whether it is a randomized or quasi-experimental design; the key research questions being evaluated; whether the study has sufficient statistical power to disaggregate outcomes by demographics; and the timeframe for the completion of the evaluation (including a link to the completed evaluation if relevant).²⁴ Once the evaluation has been completed, recipients must post the evaluation publicly and link to the completed evaluation in the Recovery Plan. Once an evaluation has been completed (or has sufficient interim findings to determine the efficacy of the intervention), recipients should determine whether the spending for the evaluated interventions should be counted towards the dollar amount categorized as evidence-based for the relevant project.

For all projects, recipients may be selected to participate in a national evaluation, which might, for example, study their project along with similar projects in other jurisdictions that are focused on the same set of outcomes. In such cases, recipients may be asked to share information and data that is needed for the national evaluation.

Appendix 2 contains additional information on evidence-based interventions for the purposes of the Recovery Plan.

7. Performance Report

In this section, recipients should describe how performance management is incorporated into their SLFRF program, including how they are tracking their overarching jurisdictional goals for these funds as well as measuring results for individual projects. The recipient has flexibility in terms of how this information is presented in the Recovery Plan, and may report key performance indicators for each project, or may group projects with substantially similar goals and the same outcome measures. In some cases, the recipient may choose to include some indicators for each individual project as well as crosscutting indicators. Recipients may include links to performance management dashboards, performance management policies, and other public facing tools that are used to track and communicate the performance of Fiscal Recovery Funds. In addition to outlining in this section their high-level approach to performance management, recipients must also include key performance indicators for each SLFRF project in the Project Inventory section (described below in #8).

Performance indicators should include both output and outcome measures. Output measures, such as the number of students enrolled in an early learning program, provide valuable information about the early implementation stages of a project. Outcome measures, such as the percent of students reading on grade level, provide information about whether a project is achieving its overall goals. Recipients are encouraged to use logic models²⁵ to identify their output and outcome measures.

²⁴ For more information on the required standards for program evaluation, see [OMB M-20-12](#).

²⁵ A logic model is a tool that depicts the intended links between program investments and outcomes, specifically the relationships among the resources, activities, outputs, outcomes, and impact of a program.



While the initial Recovery Plan focused heavily on early output goals, recipients should include the related outcome goal for each project and provide updated information on achieving these outcome goals in subsequent annual reports. In cases where recipients are conducting a program evaluation for a project (as described above), the outcome measures in the performance report should be aligned with those being evaluated in the program. As described in the final rule, to support their performance measurement and program improvement efforts, recipients are permitted to use funds to make improvements to data or technology infrastructure and data analytics, as well as perform program evaluations.

While recipients have discretion on the full suite of performance indicators to include, a number of mandatory performance indicators and programmatic data must be included. These are necessary to allow Treasury to conduct oversight as well as understand and aggregate program outcomes across recipients. This section provides an overview of the mandatory performance indicators and programmatic data. This information should be included in the Project Inventory, but this data will also need to be entered directly into the Treasury reporting portal as part of the Project and Expenditure report, as Treasury has added these fields (for Tier 1 recipients only) to the Project and Expenditure report. Below is a list of required data for each Expenditure Category, where relevant.

- a. Household Assistance (EC 2.2), Long-Term Housing Security (EC 2.15-2.16) and Housing Support (EC 2.17-2.18):
 - Number of households receiving eviction prevention services (including legal representation)
 - Number of affordable housing units preserved or developed
- b. Assistance to Unemployed or Underemployed Workers (EC 2.10) and Community Violence Interventions (EC 1.11):
 - Number of workers enrolled in sectoral job training programs
 - Number of workers completing sectoral job training programs
 - Number of people participating in summer youth employment programs
- c. Addressing Educational Disparities (EC 2.24-2.26) and Addressing Impacts of Lost Instructional Time (EC 2.27):
 - Number of students participating in evidence-based tutoring programs²⁶
- d. Healthy Childhood Environments (EC 2.11-2.14):
 - Number of children served by childcare and early learning services (pre-school/pre-K/ages 3-5)
 - Number of families served by home visiting

The initial report should have included the key indicators above. Each annual report thereafter should include updated data for the performance period as well as prior period data, and a brief narrative adding any additional context to help the reader interpret the results and understand any changes in performance indicators over time. To the extent possible, Treasury also encourages recipients to provide data disaggregated by race, ethnicity, gender, income, and other relevant factors.

8. Project Inventory

In this section, recipients should list the name and provide a brief description of each SLFRF funded project. Projects are defined as a grouping of closely related activities that together are intended to achieve a specific goal or are directed toward a common purpose. These activities can include new or existing eligible government services or investments funded in whole or in part by SLFRF funding.

²⁶ For more information on evidence-based tutoring programs, refer to the U.S. Department of Education's 2021 ED COVID-19 Handbook (Volume 2), which summarizes research on evidence-based tutoring programs (see the bottom of page 20.).



For each project, recipients should include the project name, funding amount, identification number (the same identification number created by the recipient that matches the identification number used in the quarterly Project and Expenditure Report), project Expenditure Category (see Appendix 1), and a description of the project that includes an overview of the main activities of the project, approximate timeline, primary delivery mechanisms and partners, and intended outcomes. Each jurisdiction should also include a link to the website of the project if available. This information will provide context and additional detail for the information reported quarterly in the Project and Expenditure Report.

For infrastructure projects, where relevant, recipients should describe how the project contributes to addressing climate change and/or advances the Justice40 initiative²⁷, which sets a target of providing 40 percent of the benefits of certain federal investments, including climate and clean energy investments to disadvantaged communities.

As noted above in section 6, the Project Inventory must also include information about the dollar amount of the total project spending that is allocated towards evidence-based interventions (or describe how projects are being evaluated as noted above). As described above in section 7, the Project Inventory must also contain information about the performance indicators for each project, including both those measures that recipients have defined for each project as well as the mandatory performance indicators defined by Treasury.

Recipients have flexibility in the presentation and format of their Project Inventory, provided it includes the minimum required information. Recipients have the option of downloading a spreadsheet of the information entered into their Project and Expenditure Report to assist them in creating the Project Inventory in their Recovery Plan. However, recipients must ensure that their Project Inventory contains the additional information required by this guidance, including but not limited to information about performance measures and evidence/evaluation for each project. In all cases, recipients must post publicly (and submit to Treasury) a single PDF file of their Recovery Plan, which includes the Project Inventory.

D. Distributions to NEUs

Each state and territory is required to provide regular updates on their NEU distributions as well as their distributions to units of general local government within counties that are not units of general local government. The distribution template generally requests information on whether the local government has (1) received funding; (2) declined funding and requested a transfer to the state under Section 603(c)(4) of the Act; or (3) not taken action on its funding or declined funding.

For NEUs, states and territories should be prepared to report on their information, including the following:

- NEU name
- NEU UEI number
- NEU Taxpayer Identification Number (TIN)
- NEU Recipient Number (a unique identification code for each NEU assigned by the State or territory to the NEU as part of the request for funding)
- NEU contact information (e.g., address, point of contact name, point of contact email address, and point of contact phone number)
- NEU authorized representative name and email address
- Initial allocation and, if applicable, subsequent allocation to the NEU (before application of the 75 percent cap)

²⁷ See [Executive Order 14008](#), On Tackling the Climate Crisis at Home and Abroad and the Interim Implementation Guidance for the Justice40 Initiative, [OMB M-21-28](#).



- Total NEU reference budget (as submitted by the NEU to the State or territory as part of the request for funding)
- Amount of the initial and, if applicable, subsequent allocation above 75 percent of the NEU's reference budget which will be returned to Treasury
- Payment amount(s)
- Payment date(s)

States with "weak" minor civil divisions (i.e., Illinois, Indiana, Kansas, Missouri, Nebraska, North Dakota, Ohio, and South Dakota) should also list any minor civil divisions that the state deemed ineligible.

For each eligible NEU that declined funding and requested a transfer to the state under Section 603(c)(4) of the Social Security Act, the state or territory must also attach a form signed by the NEU, as detailed in the Guidance on Distributions of Funds to Non-Entitlement Units of Local Government.



Appendix 1: Expenditure Categories

Treasury's final rule provides greater flexibility and simplicity for recipients to fight the pandemic and support families and businesses struggling with its impacts, maintain vital services amid revenue shortfalls, and build a strong, resilient, and equitable recovery. As such, recipients began reporting on a broader set of eligible uses and associated Expenditure Categories ("EC"), starting with the April 2022 Project and Expenditure Report than they did in their interim reports, initial Recovery Plans, and January Project and Expenditure Report. The table below includes the new Expenditure Categories, as well as a reference to previous Expenditure Categories aligned with the interim final rule and used for reporting before this date.

The Expenditure Categories (EC) listed below must be used to categorize each project as noted in Part 2 above. The term "Expenditure Category" refers to the detailed level (e.g., 1.1 COVID-19 Vaccination). When referred to as a category (e.g., EC 1) it includes all Expenditure Categories within that level.

*Denotes areas where recipients must identify the amount of the total funds that are allocated to evidence-based interventions (see Use of Evidence section above for details)

^Denotes areas where recipients must report on whether projects are primarily serving disproportionately impacted communities (see Project Demographic Distribution section above for details)

Expenditure Category	EC ²⁸	Previous EC ²⁹
1: Public Health		
COVID-19 Mitigation & Prevention		
COVID-19 Vaccination [^]	1.1	1.1
COVID-19 Testing [^]	1.2	1.2
COVID-19 Contact Tracing [^]	1.3	1.3
Prevention in Congregate Settings (Nursing Homes, Prisons/Jails, Dense Work Sites, Schools, Child care facilities, etc.) ^{*,^}	1.4	1.4
Personal Protective Equipment [^]	1.5	1.5
Medical Expenses (including Alternative Care Facilities) [^]	1.6	1.6
Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine) [^]	1.7	1.8
COVID-19 Assistance to Small Businesses [^]	1.8	-
COVID 19 Assistance to Non-Profits [^]	1.9	-
COVID-19 Aid to Impacted Industries [^]	1.10	-
Community Violence Interventions		
Community Violence Interventions ^{*,^}	1.11	3.16
Behavioral Health		
Mental Health Services ^{*,^}	1.12	1.10
Substance Use Services ^{*,^}	1.13	1.11
Other		
Other Public Health Services [^]	1.14	1.12
Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency	-	1.7
2: Negative Economic Impacts		
Assistance to Households		
Household Assistance: Food Programs ^{*,^}	2.1	2.1

²⁸ Under the final rule to be used starting with April 2022 reports

²⁹ Under the interim final rule to be used in Interim Report and January 2022 Project and Expenditure Report



Expenditure Category	EC²⁸	Previous EC²⁹
Household Assistance: Rent, Mortgage, and Utility Aid**^	2.2	2.2
Household Assistance: Cash Transfers**^	2.3	2.3
Household Assistance: Internet Access Programs**^	2.4	2.4
Household Assistance: Paid Sick and Medical Leave^	2.5	-
Household Assistance: Health Insurance**^	2.6	-
Household Assistance: Services for Un/Unbanked**^	2.7	-
Household Assistance: Survivor's Benefits^	2.8	-
Unemployment Benefits or Cash Assistance to Unemployed Workers**^	2.9	2.6
Assistance to Unemployed or Underemployed Workers (e.g. job training, subsidized employment, employment supports or incentives)**^	2.10	2.7
Healthy Childhood Environments: Child Care**^	2.11	3.6
Healthy Childhood Environments: Home Visiting**^	2.12	3.7
Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System**^	2.13	3.8
Healthy Childhood Environments: Early Learning**^	2.14	3.1
Long-term Housing Security: Affordable Housing**^	2.15	3.10
Long-term Housing Security: Services for Unhoused Persons**^	2.16	3.11
Housing Support: Housing Vouchers and Relocation Assistance for Disproportionately Impacted Communities**^	2.17	-
Housing Support: Other Housing Assistance**^	2.18	3.12
Social Determinants of Health: Community Health Workers or Benefits Navigators**^	2.19	3.14
Social Determinants of Health: Lead Remediation**^	2.20	3.15
Medical Facilities for Disproportionately Impacted Communities^	2.21	-
Strong Healthy Communities: Neighborhood Features that Promote Health and Safety^	2.22	-
Strong Healthy Communities: Demolition and Rehabilitation of Properties^	2.23	-
Addressing Educational Disparities: Aid to High-Poverty Districts^	2.24	3.2
Addressing Educational Disparities: Academic, Social, and Emotional Services**^	2.25	3.3
Addressing Educational Disparities: Mental Health Services**^	2.26	3.4
Addressing Impacts of Lost Instructional Time^	2.27	-
Contributions to UI Trust Funds^	2.28	2.8
Assistance to Small Businesses		
Loans or Grants to Mitigate Financial Hardship^	2.29	2.9
Technical Assistance, Counseling, or Business Planning**^	2.30	
Rehabilitation of Commercial Properties or Other Improvements^	2.31	-
Business Incubators and Start-Up or Expansion Assistance**^	2.32	
Enhanced Support to Microbusinesses**^	2.33	
Assistance to Non-Profits		
Assistance to Impacted Nonprofit Organizations (Impacted or Disproportionately Impacted)^	2.34	2.10
Aid to Impacted Industries		
Aid to Tourism, Travel, or Hospitality^	2.35	2.11
Aid to Other Impacted Industries^	2.36	2.12
Other		
Economic Impact Assistance: Other**^	2.37	2.13
Household Assistance: Eviction Prevention**^	-	2.5
Education Assistance: Other**^	-	3.5



Expenditure Category	EC ²⁸	Previous EC ²⁹
Healthy Childhood Environments: Other*^	-	3.9
Social Determinants of Health: Other*^	-	3.13
3: Public Health-Negative Economic Impact: Public Sector Capacity		
General Provisions		
Public Sector Workforce: Payroll and Benefits for Public Health, Public Safety, or Human Services Workers	3.1	1.9
Public Sector Workforce: Rehiring Public Sector Staff	3.2	2.14
Public Sector Workforce: Other	3.3	-
Public Sector Capacity: Effective Service Delivery	3.4	7.2
Public Sector Capacity: Administrative Needs	3.5	-
4: Premium Pay		
Public Sector Employees	4.1	4.1
Private Sector: Grants to Other Employers	4.2	4.2
5: Infrastructure		
Water and Sewer		
Clean Water: Centralized Wastewater Treatment	5.1	5.1
Clean Water: Centralized Wastewater Collection and Conveyance	5.2	5.2
Clean Water: Decentralized Wastewater	5.3	5.3
Clean Water: Combined Sewer Overflows	5.4	5.4
Clean Water: Other Sewer Infrastructure	5.5	5.5
Clean Water: Stormwater	5.6	5.6
Clean Water: Energy Conservation	5.7	5.7
Clean Water: Water Conservation	5.8	5.8
Clean Water: Nonpoint Source	5.9	5.9
Drinking water: Treatment	5.10	5.10
Drinking water: Transmission & Distribution	5.11	5.11
Drinking water: Lead Remediation, including in Schools and Daycares	5.12	5.12
Drinking water: Source	5.13	5.13
Drinking water: Storage	5.14	5.14
Drinking water: Other water infrastructure	5.15	5.15
Water and Sewer: Private Wells	5.16	-
Water and Sewer: IIJA Bureau of Reclamation Match	5.17	-
Water and Sewer: Other	5.18	-
Broadband		
Broadband: "Last Mile" projects	5.19	5.16
Broadband: IIJA Match	5.20	-
Broadband: Other projects	5.21	5.17
6: Revenue Replacement		
Provision of Government Services	6.1	6.1
Non-federal Match for Other Federal Programs	6.2	-
7: Administrative		
Administrative Expenses	7.1	7.1
Transfers to Other Units of Government	7.2	7.3
Transfers to Non-entitlement Units (States and territories only)	-	7.4



Treasury has prepared the additional guidance below to support recipients in implementing the new expenditure categories. This table includes only those previous expenditure categories that are changing under the new structure, aligned with the final rule.

January 2022 Expenditure Categories		April 2022 Guidance
1: Public Health		
1.7	Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency	EC removed, capital expenditures can be designated in any relevant PH-NEI EC (e.g., new hospital wing would be tracked under EC 1.4)
1.8	Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)	EC is 1.7
1.9	Payroll Costs for Public Health, Safety, and Other Public Sector Staff Responding to COVID-19	EC is 3.1
1.10	Mental Health Services*	EC is 1.12
1.11	Substance Use Services*	EC is 1.13
1.12	Other Public Health Services	EC is 1.14
2: Negative Economic Impacts		
2.5	Household Assistance: Eviction Prevention	EC is now included as part of 2.2
2.6	Unemployment Benefits or Cash Assistance to Unemployed Workers*	EC is 2.9
2.7	Job Training Assistance (e.g., Sectoral job-training, Subsidized Employment, Employment Supports or Incentives)*^	EC is 2.10
2.8	Contributions to UI Trust Funds	EC is 2.28
2.9	Small Business Economic Assistance (General)*^	If public-health related (e.g., providing rapid tests for small businesses), EC is 1.8; if related to negative economic impact eligible use (e.g., grants, technical assistance, rehabilitation, incubators, or microbusinesses), EC is 2.29-2.33
2.10	Aid to Nonprofit Organizations*	If public-health related (e.g., providing rapid tests for non-profits), EC is 1.9; if related to negative economic impact (e.g., grants to stabilize non-profit budget), EC is 2.34
2.11	Aid to Tourism, Travel, or Hospitality	EC is 2.35
2.12	Aid to Other Impacted Industries	EC is 2.36
2.13	Other Economic Support*^	EC is 2.37, re-named Other Economic Impact
2.14	Rehiring Public Sector Staff	EC is 3.2
3: Services to Disproportionately Impacted Communities		
3.1	Education Assistance: Early Learning*^	EC is 2.14
3.2	Education Assistance: Aid to High-Poverty Districts ^	EC is 2.24
3.3	Education Assistance: Academic Services*^	EC is 2.25, social and emotional services will now be tracked under this EC
3.4	Education Assistance: Social, Emotional, and Mental Health Services*^	EC is 2.26, if social and emotional services, EC is 2.25;



January 2022 Expenditure Categories		April 2022 Guidance
3.5	Education Assistance: Other**^	EC is 2.37, collected under Other Economic Impact
3.6	Healthy Childhood Environments: Child Care**^	EC is 2.11
3.7	Healthy Childhood Environments: Home Visiting**^	EC is 2.12
3.8	Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System**^	EC is 2.13
3.9	Healthy Childhood Environments: Other**^	EC is 2.37, collected under Other Economic Impact
3.10	Housing Support: Affordable Housing**^	EC is 2.15
3.11	Housing Support: Services for Unhoused Persons**^	EC is 2.16
3.12	Housing Support: Other Housing Assistance**^	EC is 2.18
3.13	Social Determinants of Health: Other**^	EC is 2.37, collected under Other Economic Impact
3.14	Social Determinants of Health: Community Health Workers or Benefits Navigators**^	EC is 2.19
3.15	Social Determinants of Health: Lead Remediation^	EC is 2.20
3.16	Social Determinants of Health: Community Violence Interventions**^	EC is 1.11
5: Infrastructure		
5.16	Broadband: "Last Mile" projects	EC is 5.19
5.17	Broadband: Other projects	EC is 5.20
7: Administrative		
7.2	Evaluation and Data Analysis	EC is 3.4 and has been renamed Effective Service Delivery
7.3	Transfers to Other Units of Government	EC is 7.2
7.4	Transfers to Non-entitlement Units (States and territories only)	To be separately reported as part of NEU/Non-UGLG module. Refer to Part 2 Section D.



Appendix 2: Evidenced-Based Intervention Additional Information

What is evidence-based?

For the purposes of the SLFRF, with the exception of investments in educational services (see additional information below), evidence-based refers to interventions with strong or moderate evidence as defined below:

Strong evidence means that the evidence base can support causal conclusions for the specific program proposed by the applicant with the highest level of confidence. This consists of one or more well-designed and well-implemented experimental studies conducted on the proposed program with positive findings on one or more intended outcomes.

Moderate evidence means that there is a reasonably developed evidence base that can support causal conclusions. The evidence base consists of one or more quasi-experimental studies with positive findings on one or more intended outcomes OR two or more non-experimental studies with positive findings on one or more intended outcomes. Examples of research that meet the standards include: well-designed and well-implemented quasi-experimental studies that compare outcomes between the group receiving the intervention and a matched comparison group (i.e., a similar population that does not receive the intervention).

Preliminary evidence means that the evidence base can support conclusions about the program's contribution to observed outcomes. The evidence base consists of at least one non-experimental study. A study that demonstrates improvement in program beneficiaries over time on one or more intended outcomes OR an implementation (process evaluation) study used to learn about and improve program operations would constitute preliminary evidence. Examples of research that meet the standards include: (1) outcome studies that track program beneficiaries through a service pipeline and measure beneficiaries' responses at the end of the program; and (2) pre- and post-test research that determines whether beneficiaries have improved on an intended outcome.

For investments in educational services, "evidence-based", consistent with the American Rescue Plan Act, has the meaning in section 8101(21) of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6301 *et seq.*). Please see page 16 of this [Frequently Asked Questions resource](#) on the Department of Education's Elementary and Secondary School Emergency Relief Programs and Governor's Emergency Education Relief Programs for more information.

**Appendix 3: Expenditure Categories aligned with the Interim Final Rule**

1: Public Health	
1.1	COVID-19 Vaccination ^
1.2	COVID-19 Testing ^
1.3	COVID-19 Contact Tracing
1.4	Prevention in Congregate Settings (Nursing Homes, Prisons/Jails, Dense Work Sites, Schools, etc.)*
1.5	Personal Protective Equipment
1.6	Medical Expenses (including Alternative Care Facilities)
1.7	Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency
1.8	Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)
1.9	Payroll Costs for Public Health, Safety, and Other Public Sector Staff Responding to COVID-19
1.10	Mental Health Services*
1.11	Substance Use Services*
1.12	Other Public Health Services
2: Negative Economic Impacts	
2.1	Household Assistance: Food Programs* ^
2.2	Household Assistance: Rent, Mortgage, and Utility Aid* ^
2.3	Household Assistance: Cash Transfers* ^
2.4	Household Assistance: Internet Access Programs* ^
2.5	Household Assistance: Eviction Prevention* ^
2.6	Unemployment Benefits or Cash Assistance to Unemployed Workers*
2.7	Job Training Assistance (e.g., Sectoral job-training, Subsidized Employment, Employment Supports or Incentives)* ^
2.8	Contributions to UI Trust Funds
2.9	Small Business Economic Assistance (General)* ^
2.10	Aid to Nonprofit Organizations*
2.11	Aid to Tourism, Travel, or Hospitality
2.12	Aid to Other Impacted Industries
2.13	Other Economic Support* ^
2.14	Rehiring Public Sector Staff
3: Services to Disproportionately Impacted Communities	
3.1	Education Assistance: Early Learning* ^
3.2	Education Assistance: Aid to High-Poverty Districts ^
3.3	Education Assistance: Academic Services* ^
3.4	Education Assistance: Social, Emotional, and Mental Health Services* ^
3.5	Education Assistance: Other* ^
3.6	Healthy Childhood Environments: Child Care* ^
3.7	Healthy Childhood Environments: Home Visiting* ^
3.8	Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System* ^
3.9	Healthy Childhood Environments: Other* ^
3.10	Housing Support: Affordable Housing* ^
3.11	Housing Support: Services for Unhoused Persons* ^



3.12	Housing Support: Other Housing Assistance* ^
3.13	Social Determinants of Health: Other* ^
3.14	Social Determinants of Health: Community Health Workers or Benefits Navigators* ^
3.15	Social Determinants of Health: Lead Remediation ^
3.16	Social Determinants of Health: Community Violence Interventions* ^
4: Premium Pay	
4.1	Public Sector Employees
4.2	Private Sector: Grants to Other Employers
5: Infrastructure	
5.1	Clean Water: Centralized Wastewater Treatment
5.2	Clean Water: Centralized Wastewater Collection and Conveyance
5.3	Clean Water: Decentralized Wastewater
5.4	Clean Water: Combined Sewer Overflows
5.5	Clean Water: Other Sewer Infrastructure
5.6	Clean Water: Stormwater
5.7	Clean Water: Energy Conservation
5.8	Clean Water: Water Conservation
5.9	Clean Water: Nonpoint Source
5.10	Drinking water: Treatment
5.11	Drinking water: Transmission & Distribution
5.12	Drinking water: Transmission & Distribution: Lead Remediation
5.13	Drinking water: Source
5.14	Drinking water: Storage
5.15	Drinking water: Other water infrastructure
5.16	Broadband: "Last Mile" projects
5.17	Broadband: Other projects
6: Revenue Replacement	
6.1	Provision of Government Services
7: Administrative	
7.1	Administrative Expenses
7.2	Evaluation and Data Analysis
7.3	Transfers to Other Units of Government
7.4	Transfers to Non-entitlement Units (States and territories only)



Revision Log

Version	Date Published	Summary of changes
1.0	June 17, 2021	Initial publication
1.1	June 24, 2021	- Pg. 12, removed references to “summary” level with respect to reporting by Expenditure Categories in the Interim Report to avoid confusion. - Pg. 13, revised the coverage period end date for the Interim Report from June 30, 2021 to July 31, 2021 to align with the IFR. - Pg. 13, removed references to “summary” level with respect to reporting by Expenditure Categories in the Interim Report to avoid confusion. - Pg. 31, removed references to “summary level” with respect to Expenditure Categories in Appendix 1 to avoid confusion.
1.1	September 30, 2021	Announced the extension in the Project and Expenditure Report submission date, originally due on October 31, 2021.
2.0	November 5, 2021	- Updated Subrecipient Monitoring section to clarify beneficiaries and recipients. - Updated references to Interim Final Rule comment period as comment period is closed. - Updated reporting tiers, thresholds and timelines in Part 2 Table 2, Reporting Requirements by recipient type, as well as Part 2 A and Part 2 B. - Updated reporting periods for Interim Report and Project and Expenditure reports. - Added concept of Adopted Budget to Project and Expenditure Report data fields. - Noted phase in of Required Programmatic Data in the Project and Expenditure Report. - Removed certain data fields from the Ineligible Activities: Tax Offset Provision under the Recovery Plan. - Separated reporting of NEU Distributions (for States and territories) from the Interim Report and Project and Expenditure Reports as information will be provided on an ongoing basis.
2.1	November 15, 2021	Updated pages 9 and 11 to note that civil rights certification is not applicable to Tribal Governments.
3.0	February 28, 2022	Updated to incorporate reporting updates under the final rule
4.0	June 10, 2022	- Updated Recovery Plan guidance to incorporate minor revisions - Updated language around certain data fields that were required for April 2022 reporting - Updated data fields for Ineligible Activities: Tax Offset Provision for the Project and Expenditure report - Updated Broadband data fields
4.1	June 17, 2022	Updated clerical errors in Ineligible Activities: Tax Offset Provision
4.2	August 15, 2022	Updated to clarify resources for Uniform Guidance applicability and add a reference to an alternative to the Single Audit available for eligible recipients
5.0	September 20, 2022	Updated to note phase in of broadband location by location data fields



MEETING OF MAY 16, 2023

TO: Mayor Jordan and City Council
THRU:
FROM: Blake Pennington, Assistant City Attorney
DATE:
SUBJECT:

RECOMMENDATION:

Council Member Harvey is sponsoring a resolution to approve the application of Arkansas United Community Coalition to provide funding for two community navigators to assist immigrants in Fayetteville with healthcare needs using ARPA funds in the amount of \$50,000.00

BACKGROUND:

DISCUSSION:

BUDGET/STAFF IMPACT:

Budget Adjustment in the amount of \$50,000 attached

ATTACHMENTS: Arkansas United Community Coalition - ARPA Funding Application, 2023-706 BA ARPA
Arkansas United



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2023-706

A RESOLUTION TO AUTHORIZE MAYOR JORDAN TO SIGN A SUBRECIPIENT AGREEMENT WITH ARKANSAS UNITED COMMUNITY COALITION TO PROVIDE FUNDING FOR TWO COMMUNITY NAVIGATORS TO ASSIST IMMIGRANTS IN FAYETTEVILLE WITH HEALTHCARE NEEDS UTILIZING AMERICAN RESCUE PLAN ACT FUNDS IN THE AMOUNT OF \$50,000.00, AND TO APPROVE A BUDGET ADJUSTMENT

WHEREAS, the City of Fayetteville has received funding from the American Rescue Plan Act (ARPA) and invited non-profit organizations to submit proposals for projects to fund with the available ARPA funding; and

WHEREAS, Arkansas United Community Coalition submitted an application requesting \$50,000.00 in American Rescue Plan Act funds to provide partial funding for two Community Navigators to assist immigrants in Fayetteville with healthcare needs; and

WHEREAS, the services provided by the Community Navigators include healthcare navigation, COVID/immunization education, and interpretive services in applying for programs and benefits which is expected to benefit approximately 2,500 Fayetteville residents.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby authorizes Mayor Jordan to sign a Subrecipient Agreement with Arkansas United Community Coalition to provide the amount of \$50,000.00 in American Rescue Plan Act funds to provide funding for two Community Navigators to assist immigrants in Fayetteville with healthcare needs.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment, a copy of which is attached to this Resolution.



CITY OF FAYETTEVILLE AMERICAN RESCUE PLAN ACT 2022 SUBRECIPIENT GRANT APPLICATION

NOTE: Submission of a Subrecipient Grant Application provides no guarantee that the applicant will receive funding. All organizations selected to receive funds will be subject to entering into a contract with the City of Fayetteville and subject to the rules and regulations pertaining to the American Rescue Plan Act.

Please review the City of Fayetteville American Rescue Plan Act 2022 Subrecipient Grant Application Guide for more information on the required items listed in this application.

PART 1 APPLICANT IDENTIFICATION	
Total Amount of Funding Requested (whole dollar) [Minimum \$50,000]	\$50,000
Applicant/Organization Name	Arkansas United Community Coalition
Mailing Address (street, city, zip)	1301 E. Robinson Avenue, Ste B6/Springdale 72764
Organization Website	www.arkansasunited.org
DUNS Number	116052017
Organization FEIN/SSN	27-5271968
PART 2 APPLICANT CONTACT INFORMATION	
Contact for Project (name & title)	Marci Bynum Robertson, Development Coordinator
Contact Phone Number	501-590-6495
Contact Email	marci@arkansasunited.org
Signature Authority (name, title & email address)	Mireya Reith, Founding Executive Director director@arkansasunited.org
PART 3 PROJECT INFORMATION	
Project Name	Arkansas United Community Navigators
Project Address (street, city, zip)	Various locations in Fayetteville and 1301 E. Robinson Ave

American Rescue Plan Act

PART 3 PROJECT INFORMATION continued

Is anyone with control over the Organization (i.e. owner, manager, director, board member, or other) or any member of that person's immediate family, an employee or elected official of the City of Fayetteville	☐ Yes ☒ No
If Yes, above, please identify person and position with the City	
Project Summary (brief synopsis of proposed project)	Arkansas United (AU) proposes an expansion of its successful Community Navigators program to Fayetteville. Community Healthcare Navigators have positively impacted the COVID-instigated public health crisis among immigrants throughout Arkansas by serving as leaders in their own communities. AU requests \$50,000 to help fund two Community Navigators to assist immigrants in Fayetteville with healthcare navigation, COVID/ immunization education, and interpretive services in applying for programs and benefits, as needed.
Describe previous experience in providing similar services	Healthcare Navigators launched in spring 2020 to educate immigrants about COVID. 35 "Promotores" offered accurate health information and key services navigation in Spanish throughout Arkansas. Our numbers demonstrate reach/impact already accomplished: 12,000+ masks and other PPE distributed; 4,789 COVID info packets; 800+ vaccinations given.
Programs will typically be funded for a time period not to exceed 12 months from the signed date of the subrecipient agreement. Please describe your organization's ability to plan and utilized requested funds within that timeframe.	AU began training an additional 40 Navigators during last fall's state meeting in addition to the 35 already active. Navigators begin as volunteers and a ladder of engagement gives them options to advance to paid positions in different areas of work. There are Navigators trained in Community Healthcare waiting on funding to advance to paid positions as Community Navigators, already living in NW Arkansas.

PART 4 PROJECT BENEFICIARIES

Projected number of Fayetteville beneficiaries	2,500
---	-------

Because the federal rules vary depending on the type of project for which funds are being requested, the city has grouped project requests in 3 focus categories: Social Services, Economic, and Environmental. Please choose the corresponding category below that most closely identifies your project.

PART 4A SOCIAL SERVICES APPLICATIONS ONLY

Will ALL beneficiaries live, work and/or go to school in Fayetteville	☒ Yes ☐ No
Will ALL beneficiaries meet US Treasury Low to Moderate Income (LMI) Guidelines (please see Application Guide, Exhibit A).	☒ Yes ☐ No
Will ALL beneficiaries have been negatively impacted by COVID-19	☒ Yes ☐ No
Does this request respond to a negative COVID-19 impact ?	☒ Yes ☐ No
If answering Yes to the question above , please describe the COVID-19 impact and how this proposal will aid in responding to the impact	Language and societal barriers kept immigrants from accessing even the limited services provided by public health outlets during COVID, with corresponding infection and mortality rates. Navigators are already part of the communities in which they educate and address misinformation, with built-in trust in often-insular immigrant communities.
Please indicate how the proposed project meets eligibility standards and requirements described in the Department of Treasury's Final Rule for Coronavirus State and Local Fiscal Recovery Funds	According to p. 4339, Public Health is a criteria for ARPA funding, and AU's request meets that standard. Page 4343 lists COVID-19 mitigation and prevention specifically, including "negative public health impact or harm experienced by an individual or class." Class is referred to as a specific population, and the immigrant community of Fayetteville qualifies, with the requisite "response designed to benefit population."

PART 4B ENVIRONMENTAL APPLICATIONS ONLY

Please describe the effect of the proposed environmental impact or benefit. Please indicate how the proposed project meets eligibility standards under the EPA's Clean Water State Revolving Fund ([CWSRF](#)), Drinking Water State Revolving Fund ([DWSRF](#)), or eligible projects as described in [Department of Treasury's Final Rule for Coronavirus State and Local Fiscal Recovery Funds](#). See Subrecipient Application Guide for more information.

PART 4C ECONOMIC APPLICATIONS ONLY

Please describe the residents or industry sector this grant request is intended to serve or benefit. Please indicate how the proposed project meets eligibility standards and requirements described in the [Department of Treasury's Final Rule for Coronavirus State and Local Fiscal Recovery Funds](#).

Does this request respond to a negative COVID-19 impact

☐ Yes

☐ No

If yes, please describe the COVID-19 impact and how this proposal will aid in the City's economic recovery

PART 5 FAYETTEVILLE BUSINESS LICENSE

City Code Chapter 118 Business Registry and Licenses delineates what businesses are required to have a Fayetteville Business License. Submission of this grant application indicates that, if required, a current business license is in place.

PART 6 SIGNATURE OF SIGNATURE AUTHORITY AND DATE

I am an authorized employee/agent of the applicant organization and I am authorized to submit this application.

I have read and reviewed the American Rescue Plan Act documentation. I understand that as a subrecipient of the City of Fayetteville's American Rescue Plan Act funds, I will be responsible for maintaining records, complying with provisions of the subrecipient agreement, and providing any/all records and information necessary for the City of Fayetteville to report on this award.

All applications and documentation are subject to disclosure pursuant to the Arkansas Freedom of Information Act. All documentation may be provided to Federal and/or State government agencies for accounting and auditing purposes.

Marci B. Robertson/Devo Coordinator/4-29-2022

Name/Title/Date

PART 7 ORGANIZATION DESCRIPTION Provide a brief description of your organization and the services offered.	
Year of Incorporation	2010
Philosophy, Purpose and/or Mission Statement	AU works to empower Arkansas immigrants to be Change Agents in advocacy and closing service gaps so that all Arkansans can achieve a greater civic and economic potential. We provide a cross-racial, cross-sector approach to organizing/advocacy, including bringing together groups that may have differing opinions, helping mediate compromise. AU envisions an Arkansas of inclusive and equitable communities where all multi-ethnic groups, newcomers, and native-born Arkansans work together to enhance their quality of life.

Provide a brief description of your organization including information about programs and/or services other than the proposed project.

AU was the first immigrant organizing and advocacy coalition in Arkansas. Our Immigrant Resource Centers, physical and virtual, offer guidance in both daily life skills and greater needs such as health information, legal services, and the rapidly growing need for workforce services navigation. Lack of English language acquisition, limited acculturation, and uncertainty about social mores often keep immigrants apart from greater communal engagement. AU works to remove these barriers through the Navigators program. Navigators are part of the community they serve, with an inherent element of trust. When Latinx, Vietnamese, and Marshallese populations are the focus of educational, health, or social programs, trust and access are common barriers to successful community engagement, even beyond language acquisition and/or low literacy. AU Navigators work with clients to obtain a GED or equivalent, become a citizen, obtain a driver's license, learn English, improve digital literacy, register to vote, participate in the Census, protect themselves against COVID, and communicate with school teachers and other authority figures such as doctors and police officers. AU wants to help its clients achieve their goals, and the variety of services makes it unique among advocacy and service-providing nonprofits.

AU visited 13 food processing plants to register immigrants in the US Census, an example of the type outreach we conduct. Immigrants are notoriously undercounted in each Census, so we made the concerted effort to improve those numbers in Arkansas. We provided language interpretation assistance for LIHEAP and rental assistance programs, and in partnering with Communities Unlimited, we were able to connect 868 essential workers in the agriculture and

PART 7 ORGANIZATION DESCRIPTION continued

poultry industries with one-time payments of \$550 for bills and necessities. Many of our clients were not eligible for federal pandemic/recovery assistance, so AU helped immigrant families in need, helping them pay everyday household expenses when many of them were not able to work. Our vaccination clinics, driver's license forums, language/digital literacy programs, and health education created public awareness of the needs of the immigrant community.

Between March and July 2020, COVID cases among Latinx and Marshallese residents were 400% higher than the general population, but AU intervention through an information campaign resulted in downward infection rates that UAMS classified as "unheard of in the public health arena and a testament to the success of the strategies and collaborations employed, including, notably, community." AU leveraged existing relationships while creating new partnerships with organizations such as the NWA Council and Arkansas Community Foundation to expand our reach, and we will continue to coalition-build to support our Navigators.

AR United provides advocacy, direct services, and systemic navigation services to traditionally underresourced community members. Among immigrants, our member base is traditionally Latinx origin/heritage, Vietnamese, and Marshallese. As our primary COVID responders, AU Navigators provided COVID-focused informational packets to Arkansas immigrants to promote healthy behaviors, including encouraging physical distancing, maskwearing, and immunizations. Funding support for two Navigators in Fayetteville will allow AU to continue reaching immigrant communities most heavily impacted by lack of accurate health information related to COVID. With new variants appearing, the threat to public health continues to impact already-vulnerable populations, and Arkansas United is poised to further engage our Navigators as Community Health Workers.

PART 8 PROJECT BUDGET Provide a descriptive line-item budget for the entire project including the American Rescue Plan Act (ARPA) funds being requested. **Provide specific information on how American Rescue Plan Act funds will be used and include any necessary supporting documentation. Please indicate whether any American Rescue Plan Act funds have been requested or received from other sources, and if so, provide detailed information on the source and proposed use of those funds.** Please indicate how you will spend all awarded ARPA funding by the project end date.

No other ARPA funding has been requested by AR United. AU is requesting \$50,000 in salary support for two Community Health Navigators to provide outreach and education related to COVID in Fayetteville. Benefits are included in a 32-hour, fulltime position.

Salary for 2 Navigators for 1 year @ \$20/hour, 32 hours/week:	\$66,560
Benefits for two Navigators for 1 year:	\$10,000
Personal Protective Equipment to distribute to immigrants	\$ 5,000
COVID information packets:	\$ 1,000
 TOTAL PROJECT COST:	 \$82,560
AR United request to City of Fayetteville/ARPA:	\$50,000

PART 9 PROJECT DESCRIPTION Describe the proposed project and provide the information requested under PART 9 of the American Rescue Plan Act 2022 Subrecipient Application Guide. Please provide any additional information that will assist in evaluating the project.

Funds will be used in conducting outreach and offer navigation services to the immigrant communities of Fayetteville to help counteract the impact of COVID as well as helping remove barriers created by language and cultural differences. Working with the Little Rock School District last year at a drive through Back to School event, AU provided services and information to 2,000 immigrants, and may be able to partner with Fayetteville Schools for a similar event. A driver's license forum with Mosaic Church had 200 attendees, and we serve approximately 5,000 Hispanic families, primarily in Southwest Little Rock. The Navigators program was successfully piloted from the beginning of the COVID pandemic, and we will continue to build on that model, increasing our Navigator presence in Fayetteville. We will offer health (particularly COVID and vaccination) education, personal protective equipment, and help in navigating the frequently confusing American healthcare system. The rural vaccination clinics conducted during our pilot phase were especially effective, and we resumed vaccination clinics in February 2022. We will use our SMS to reach out to our clients through emails, phone calls, texts, WhatsApp, churches, and community events. Navigators are part of the community they serve and have an inherent level of trust and immediate engagement capabilities that outside nonprofits and public entities do not. Legal counseling on citizenship pathways is a common topic for Navigators, and a level of trust between clients and service provide is imperative.

AU's members are predominantly first- and second- generation immigrants, unified in their identity as immigrant workers, prevailing largely from Mexico and Central American countries. We also provide services to significant Vietnamese and Marshallese populations, and are currently working to strengthen our relationships and expand our involvement with Black-Brown coalitions. AU provides significant services to Northwest Arkansas. ALICE (Asset Limited, Income Constrained, Employed) rates are often used as population economic indicators. Washington County has a 27% general population rate living at less than ALICE level, and immigrants have a 22.3% poverty rate--the more traditional measurement, and the one used by AU for reporting purposes. Latinx children are more than twice as likely as white children to live below the poverty level; 32.9% of Latinx children in NW Arkansas are below the poverty level. The vast majority of AU clients fall between the 185% low income and 300% middle income levels as determined by the federal government. The sample intake for for one of AU's programs (in attachments) demonstrates one way that information on economic status is collected by using form I-912p.

PART 9 PROJECT DESCRIPTION continued

The majority of immigrants AU works with are employed by factories, farms, and the service industry, with the resulting economic status of low-to-moderate income, as determined by the federal government. Minority populations face barriers of language, education, and unfamiliar cultural mores that prevent them from advancing and enculturation without significant guidance from a trusted source like an AU Navigator.

Community Navigators work with individuals and families on a case-by-case basis, tailoring efforts to help with specific needs. The children in immigrant families are often the most proficient in English, serving as interpreters for parents and other adults. The Navigators program allows adults to communicate in their native languages to allow for first-person discussions, a more efficient system for accurate assessment of services and guidance needed. Immigrants come to AU for assistance via our Immigrant Resource Center, calling our hotline (especially for legal questions), or attending an event where we have a table, but word of mouth within their community is the strongest pathway, and also the reason many nonprofits find it difficult to reach the often-insular immigrant community. Navigators attend the same churches, shop at the same stores, attend social events, and live within the communities they serve. When an immigrant needs services or guidance, they turn to someone they know, beginning their engagement with AU. Our Tracker database provides a record of each type of engagement an individual has, even hotline calls are logged for tracking purposes, and intake forms establish a client record.

AU's advocacy and services provides immediate assistance through such programs as food and supply giveaways, back-to-school events, and immunization clinics--all staffed by Navigators and volunteers. Once someone is an AU client, they can also participate in workforce training opportunities such as our new English Language acquisition or digital literacy classes. Citizenship pathway guidance also helps create self-sufficiency--all our classes improve employment opportunities, with Navigators often helping immigrants complete job applications and prepare for interviews. Self-sufficiency leads to long-term solutions, including improved career opportunities to gain, retain, or advance to family-supporting employment that creates economic stability for successive generations.

Helping immigrants reach their potential and become productive members of the larger community benefits all residents, furthering AU's purpose of improving the lives of immigrants and their children as well as strengthening the fabric of an entire community. When one segment of the population does well, it increases the opportunities and outcomes for all.

PART 10 PROJECT TIMELINE Provide a complete and specific timeline for all activities related to proposed project.

Navigators receive training in Community Healthcare and legal counseling for citizenship pathways, are already providing guidance in healthcare and typical governmental interactions, and are about to begin workforce counseling education. Navigators will be ready to plan outreach events, participate in tabling events, and reach out to contacts in Fayetteville to engage stakeholders and potential clients. Events such as this week's Tyson employee event, in which AU participated, will include information/education on COVID prevention and vaccination access as well as they other navigation services AU provides. Because the Navigator training has already been accomplished, AU will be able to begin working with immigrants in Fayetteville upon notification of a funding award, beginning the 12-month grant period. InfoSessions with employers, community leaders, and immigrant stakeholders are already planned for the next few months, and if funded, sites will be selected in Fayetteville, or community members will be invited to online sessions.

PART 11 DATA COLLECTION, RECORD MAINTENANCE, AND REPORTING Describe how the organization will collect data and maintain records to track program activities and eligibility verification. Please also describe your organization's ability to produce required documentation including financial reports, performance reports, progress reports, expenditure information, etc.

AU measures qualitative success based on the connections we forge and the services we provide. For quantitative evaluation, each activity conducted by a Community Navigator or Organizer is logged into an online database (Tracker) where we can calculate how many people were engaged or assisted at any given event. For example, this monitoring system shows that since July 2020, AU has held more than 110 in-person distribution/outreach events at which 19,814+ Arkansans were engaged. During those events 12,006 protective face masks, 1,211 food baskets, 600 backpacks with school supplies and 700 Christmas-themed, critical needs items for both parents and children (including toothpaste, pajamas, winter gear, bedding and cooking sets), and 4,789 COVID informational packets were distributed. AU staff members are able to complete reporting paperwork based on the Tracker. A new finance consultant is joining AU at the start of May, and the use of QuickBooks online allows for easy access to any report we may need. The new finance contractor has significant experience with nonprofits and is prepared to "upscale" the previous reporting systems; AU is expanding its programs and services, resulting in increased demand for more detailed financial reporting. AU has local, state, regional, and national funding sources, and each funder requests a specific set of reporting requirements.

AU is a member-based organization, and we often look to our members to determine community needs and initiative success. For example, we know there is a need in our community for economic support in response to the pandemic based on a recent survey we conducted with 451 Arkansas immigrants who had applied to the Emergency Workers' Fund administered by AU. Of those surveyed, 15% had lost their job due to the pandemic, and 100% had lost wages at some point over the last six months as a result of COVID-19. Intake forms assess client needs, and also collect demographic information that includes economic status.

PART 12 PROJECT EVALUATION | OBJECTIVES AND OUTCOMES List the objectives (not activities) of the proposed project. Describe how each objective will be measured to determine if it has been met.

Use the following format

Objective #:

Outcome(s):

Method of Measurement:

Objective #1: Assist immigrants in Fayetteville with Community Navigation services to help improve their lives and advance their engagement with the broader community

Outcome(s): Provide services to 2,500 immigrants in Fayetteville.

Method of Measurement: Events, activities, and engagements between Navigators, AU staff/volunteers will be recorded in the Tracker for quantitative assessment.

Objective #2: Work with immigrants individually and in groups to educate them on health precautions, correct COVID information, and vaccination education and support

Outcome(s): Long-term, positive impact with improved health outcomes related to COVID.

Method of Measurement: COVID infection and mortality rates decrease in the immigrant community. AU is a cohort in the “Made to Save” coalition, and its focus is COVID education, protection, and vaccination support as well as gathering statistics on a regular basis.

Objective #3: Help put immigrants on career pathways and counsel them on such topics as obtaining citizenship, a driver’s license, and/or municipal ID.

Outcome(s): Create lasting improvements in the socioeconomic standing and enculturation of immigrant populations in Fayetteville.

Method of Measurement: The broad goal of this outcome makes longterm followup problematic. We may be able to track through reported driver’s license, ID, and citizenship acquisition. AU may also hear of clients obtaining, retaining, or advancing in family-support employment. Without significant staff to track these achievements, measurement will be qualitative, rather than quantitative.

PART 13 PARTIAL FUNDING Indicate whether the project can proceed with partial funding. If **YES**, indicate the minimum amount the applicant will accept with line items arranged from highest to lowest priority. Describe the impact that partial funding will have on the project. If **NO**, the project will not be considered for partial funding.

Yes, the program can proceed with partial funding, but not at the full capacity described in this request. The project would be scaled, according to funding awarded, as an attempt to serve the immigrant community in Fayetteville with education and services related to COVID. The highest priority for funding would be salary support, and depending on the amount awarded, either two staff members might have fewer hours, or if only one is funded, that person may work 32 hours a week or more, while still decreasing the organizational capacity of our nonprofit to provide COVID resistance programming to the City of Fayetteville. We would be able to accept \$25,000 and fund one Community Healthcare Navigator position. With additional funding, we would be able to add limited hours for work in Fayetteville to a Navigator whose primary work is typically focused on a different town.

PART 14 ADDITIONAL DOCUMENTATION CHECKLIST

Please provide these items with your application. See page 10 of the 2022 American Rescue Plan Act Subrecipient Application Guide for more information

☒	Accessibility Narrative
☒	Board of Directors
☒	Bylaws
☒	Certificate of Good Standing
☒	Financial Audit (see Application Guide for more information)
☒	Intake Forms
☒	Non-Profit Status Verification [IRS 501(c)(3) letter, IRS form 990 or 990-EZ, etc.]
☒	Resumes
☒	System Award Management (SAM) registration
☐	Status of Funding (if applicable)
☐	Additional Documentation Checklist (this page)
☐	Additional Information

Budget Year	Division	Adjustment Number
2023	Non-Departmental (800)	
	Requestor: Council Member Harvey	

A RESOLUTION TO AUTHORIZE MAYOR JORDAN TO SIGN A SUBRECIPIENT AGREEMENT WITH ARKANSAS UNITED COMMUNITY COALITION TO PROVIDE FUNDING FOR TWO COMMUNITY NAVIGATORS TO ASSIST IMMIGRANTS IN FAYETTEVILLE WITH HEALTHCARE NEEDS UTILIZING AMERICAN RESCUE PLAN ACT FUNDS IN THE AMOUNT OF \$50,000.00.

	COUNCIL DATE:	5/16/2023
	ITEM ID#:	2023-706
	Holly Black	
	4/21/2023 12:45 PM	
	Budget Division	Date
	D - (City Council)	
TYPE:		
JOURNAL #:		
GLDATE:		
CHKD/POSTED:	/	
RESOLUTION/ORDINANCE		

[illegible]



MEETING OF MAY 16, 2023

TO: Mayor Jordan and City Council

THRU:

FROM: Mike Reynolds, Police Chief

DATE:

SUBJECT: **Acceptance of 2023 Justice Assistance Grant Addendum for Drug Task Force Funding**

RECOMMENDATION:

Staff recommends acceptance of the Edward Byrne Memorial Justice Assistance Grant (JAG) Addendum for the 4th Judicial District Drug Task Force (DTF) in the amount of \$29,087. This grant award addendum consists of federal funding in the amount of \$29,087. There are no required local matching funds associated with this grant award.

BACKGROUND:

The Arkansas Department of Finance and Administration (ADF&A) has provided federal and state grant funding to the City of Fayetteville for multi-jurisdictional drug task force activities since 1991. Use of these funds are dictated by the 2020-2025 Statewide Strategic Plan adopted by the Arkansas Alcohol and Drug Abuse Coordinating Council. We are the subgrantee of the Arkansas Alcohol and Drug Abuse Coordinating Council, and these grant funds can only be used for law enforcement purposes.

Participating law enforcement agencies include Fayetteville, Springdale, Prairie Grove, Elkins, Farmington, Lincoln, Greenland, West Fork, Elm Springs, Tontitown, Goshen, Huntsville, and Washington County. The DTF Control Group consists of top law enforcement officials from Fayetteville, Springdale, Prairie Grove, and Washington County. Fayetteville continues to provide fiduciary oversight of this grant and provides a DTF Supervisor, three (3) DTF Officers, and a DTF Secretary. Springdale provides four (4) DTF Officers and Washington County provides a DTF Officer. Also, Prairie Grove provides a DTF Officer who is a representative for all of the rural agencies.

At the beginning of the DTF's current grant period (July 2022-June 2023), ADF&A awarded grant funding through the Arkansas State Drug Crime Enforcement and Prosecution Fund to the DTF in the amount of \$91,319 in state funding with a local match requirement of \$27,396. The Arkansas State Drug Crime Enforcement and Prosecution Grant Fund award was approved by City Council on September 20, 2022, via Resolution #215-22. On March 21, 2023, additional grant funding from ADF&A through the Edward Byrne Memorial JAG was approved by City Council, via Resolution #76-23, in the amount of \$62,232 in federal funding and \$43,597 in state funding with a local match requirement of \$18,670.

DISCUSSION:

The 4th Judicial District DTF's total grant budget of all agencies for the current grant period is \$592,325. On

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

April 1, 2023, ADF&A awarded additional federal funding through a grant addendum via the Edward Byrne Memorial JAG Program in the amount of \$29,087. There are no required local matching funds associated with this grant addendum award. This grant award addendum brings the total grant funding for the 4th Judicial District DTF to prior year funding amounts. The grant addendum award will be distributed as follows: Fayetteville – \$17,241.68, Springdale – \$4,380.33, Washington County – \$3,856.79, Prairie Grove – \$3,608.20. This Edward Byrne Memorial JAG addendum award brings the total grant funding in support of the 4th Judicial District DTF to \$226,235 or approximately 38%.

BUDGET/STAFF IMPACT:

There will be no impact on existing 4th Judicial District DTF budgets as both grant revenue and expenses were incorporated in the 2023 annual operating budget. This grant funding will have no impact on current staffing levels.

ATTACHMENTS: SRF - 2023 DTF - JAG Grant Award Addendum, 4th JD DTF JAG Award Document 2022-23, 4th DTF-Fayetteville JAG 22-23_Addendum Approved Budget-signed

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2023-717

Acceptance of 2023 Justice Assistance Grant Addendum for Drug Task Force Funding

A RESOLUTION TO AUTHORIZE ACCEPTANCE OF THE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT AWARD ADDENDUM FOR THE 4TH JUDICIAL DISTRICT DRUG TASK FORCE IN THE AMOUNT OF \$29,087.00, AND TO AUTHORIZE MAYOR JORDAN TO SIGN ALL NECESSARY DOCUMENTS TO RECEIVE THE GRANT FUNDS

WHEREAS, this grant award addendum consists of Federal funding in the amount of \$29,087.00 with no local match requirement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby authorizes acceptance of the Edward Byrne Memorial Justice Assistance Grant Award Addendum for the 4th Judicial District Drug Task Force in the amount of \$29,087.00 and authorizes Mayor Jordan to sign all necessary documents to receive the grant funds.

City of Fayetteville Staff Review Form

2023-717

Item ID

5/16/2023

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Mike Reynolds

4/25/2023

POLICE (200)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Acceptance of the Edward Byrne Memorial Justice Assistance Grant (JAG) Addendum for the 4th Judicial District Drug Task Force (DTF) in the amount of \$29,087. This grant award addendum consists of federal funding in the amount of \$29,087. There are no required local matching funds associated with this grant award.

Budget Impact:

2930.200.2960-various

Drug Enforcement

Account Number

Fund

31604.2223.4309

2023 4th JDDTF JAG - Amended

Project Number

Project Title

Budgeted Item? Yes

Total Amended Budget

\$ 91,319.00

Expenses (Actual+Encum)

\$ 62,232.00

Available Budget

\$ 29,087.00

Does item have a direct cost? No

Item Cost

\$ -

Is a Budget Adjustment attached? No

Budget Adjustment

\$ -

Remaining Budget

\$ 29,087.00

V20221130

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:



**ARKANSAS DEPARTMENT OF
FINANCE AND ADMINISTRATION**

OFFICE OF INTERGOVERNMENTAL SERVICES

1515 West Seventh Street, Suite 404

P.O. Box 8031

Little Rock, Arkansas 72203-8031

Phone: (501) 682-1074

Fax: (501) 682-5206

<https://www.dfa.arkansas.gov/intergovernmental-services>

☒

JAG

☐

RSAT

☐

DCF

☐

LLEEG

CATALOG OF DOMESTIC FEDERAL ASSISTANCE (CFDA Number)

16.738 - Edward Byrne Memorial Justice Assistance Grant Program

FEDERAL AWARD NUMBER: 15PBJA-21-GG-00264-JAGX

FEDERAL AWARD DATE: 9/22/2021

1. SUBGRANTEE NAME AND ADDRESS (Including Zip Code)

Lioneld Jordan, Mayor

4th JD /City of Fayetteville Drug Task Force (DTF)

113 West Mountain Street

Fayetteville, AR 72701

2. FEDERAL IDENTIFICATION NUMBER/UEI:

075657742/FKCQRMDULFH9

3. MODIFICATION EFFECTIVE DATE:

4. MODIFICATION AMOUNT

\$

FEDERAL AMOUNT: \$

STATE AMOUNT: \$

LOCAL MATCH: \$

6. SUBGRANT NUMBER: 235041-21AJ

7. START DATE: July 1, 2022

END DATE: June 30, 2023

8. AWARD DATE: April 1, 2023

9. ACTION:

ADDENDUM

☒

10. ADDENDUM \$ 29,087.00

AWARD AMOUNT:

FEDERAL AMOUNT: \$ 29,087.00

STATE AMOUNT: \$

LOCAL MATCH: \$

No Indirect Rate Cost

5. PROJECT DESCRIPTION

Identify arrest and prosecute individuals who are manufacturing, selling, or transporting drugs in or through the program's jurisdictional area of operations. This subaward is not an R&D.

11. SPECIAL CONDITIONS (Check if applicable)

☒

THE ABOVE GRANT PROJECT IS APPROVED SUBJECT TO SUCH CONDITIONS OR LIMITATIONS AS SET FORTH IN IT'S APPLICATION AND ALL CERTIFICATIONS, ASSURANCES AND SPECIAL CONDITIONS PREVIOUSLY AGREED TO.

The JAG Program is authorized by Title I of Pub. L. No. 90-351 (generally codified at 34 U.S.C. 10151-10726), including subpart 1 of part E (codified at 34 U.S.C. 10151 - 10158); see also 28 U.S.C. 530C(a).

AGENCY APPROVAL

12. TYPED NAME AND TITLE OF APPROVING IGS OFFICIAL

Doris Smith, DFA Administrator
Intergovernmental Services

13. SIGNATURE OF APPROVING OFFICIAL

14. DATE:

SUBGRANTEE APPROVAL

15. TYPED NAME AND TITLE OF AUTHORIZED SUBGRANTEE OFFICIAL

Lioneld Jordan, Mayor
4th JD/City of Fayetteville Drug Task Force (DTF)

16. SIGNATURE OF AUTHORIZED OFFICIAL

17. DATE:



DEPARTMENT OF FINANCE AND ADMINISTRATION
OFFICE OF INTERGOVERNMENTAL SERVICES

APPROVED BUDGETS

AGENCY NAME:		SUBGRANT NO:		PROJECT PERIOD:			
4th DTF-Fayetteville JAG 22		235041-22 JL		July 1, 2022-June 30,2023			
		ORIGINAL_BUDGET		REVISION_1			
BUDGETED LINE ITEM	ORIGINAL BUDGET AMOUNT (J22)	ORIGINAL BUDGET AMOUNT (\$)	ORIGINAL BUDGET AMOUNT (L)	BUDGETED LINE ITEM	REVISION 1 BUDGET AMOUNT (J22)	REVISION 1 BUDGET AMOUNT (\$)	REVISION 1 BUDGET AMOUNT (L)
SALARIES				SALARIES			
DTF Supervisor/Jacob Lawson	12,778.02	20,002.22	-	DTF Supervisor/Jacob Lawson	12,778.02	20,002.22	-
DTF Investigator/Dalton Frazier	15,537.97	7,413.25	-	DTF Investigator/Dalton Frazier	15,537.97	7,413.25	-
DTF Investigator/Charles Molloy	4,739.00	2,261.00		DTF Investigator/Charles Molloy	4,739.00	2,261.00	-
DTF Secretary/Cara Murdoch			11,066.88	DTF Secretary/Cara Murdoch		-	11,066.88
Contract Service/Springdale PD	10,789.49	5,147.73	2,811.59	Contract Service/Springdale PD	10,789.49	5,147.73	2,811.59
Contract Service/Washington County SO	9,499.92	4,532.47	2,475.55	Contract Service/Washington County SO	9,499.92	4,532.47	2,475.55
Contract Service/Prairie Grove PD	8,887.60	4,240.33	2,315.98	Contract Service/Prairie Grove PD	8,887.60	4,240.33	2,315.98
MANDATED BENEFITS				MANDATED BENEFITS			
EMPLOYER BENEFITS				EMPLOYER BENEFITS			
MAINTENANCE AND OPERATIONS				MAINTENANCE AND OPERATIONS			
PROFESSIONAL SERVICES				PROFESSIONAL SERVICES			
TRAVEL/ TRAINING EQUIPMENT				TRAVEL/ TRAINING EQUIPMENT			
CAPITAL OUTLAY				CAPITAL OUTLAY			
Addendum				Addendum			
TOTAL	\$ 62,232.00	\$ 43,597.00	\$ 18,670.00	TOTAL	\$ 91,319.00	\$ 43,597.00	\$ 18,670.00

Category	JAG 22	State	Local	Category	JAG 22	State	Local
SALARIES	62,232.00	43,597.00	18,670.00	SALARIES	62,232.00	43,597.00	18,670.00
MANDATED BENEFITS	-	-	-	MANDATED BENEFITS	-	-	-
EMPLOYER BENEFITS	-	-	-	EMPLOYER BENEFITS	-	-	-
MAINTENANCE AND OPERATIONS	-	-	-	MAINTENANCE AND OPERATIONS	-	-	-
PROFESSIONAL SERVICES	-	-	-	PROFESSIONAL SERVICES	-	-	-
TRAVEL/ TRAINING EQUIPMENT	-	-	-	TRAVEL/ TRAINING EQUIPMENT	-	-	-
CAPITAL OUTLAY	-	-	-	CAPITAL OUTLAY	-	-	-
Total	\$ 62,232.00	\$ 43,597.00	\$ 18,670.00	Total	\$ 94,319.00	\$ 13,692.00	\$ 18,670.00

Signature of Authorized Official/ Date

William J. Lawrence 04/26/2023
Signature of Fiscal Officer/Date



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2022-319

AN ORDINANCE TO AMEND §51.136 MONTHLY WATER RATES AND §51.137 MONTHLY SEWER RATES TO CHANGE WATER AND SEWER RATES:

AN ORDINANCE TO AMEND §51.136 MONTHLY WATER RATES AND §51.137 MONTHLY SEWER RATES TO CHANGE WATER AND SEWER RATES AS RECOMMENDED BY THE COST OF SERVICE STUDY CONDUCTED BY BLACK & VEATCH

WHEREAS, the City of Fayetteville's current water and sewer rates were adopted in 2008 based on a Cost of Service Study conducted by HDR Engineering; and

WHEREAS, on August 18, 2020, the City Council approved Resolution 212-20 authorizing a contract with Black & Veatch for an updated Cost of Service Study; and

WHEREAS, the Black & Veatch Cost of Service Study recommends initial changes in both water and sewer rates that reflect the true cost of service by customer class and a 3% annual increase in rates each year thereafter until a new study is conducted; and

WHEREAS, the City Council has determined, after the public hearing required by Ark. Code Ann. § 14-235-223, that the proposed rate changes reflecting the true cost of service should be adopted and that the new rates shall take effect on January 1, 2023.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby repeals §51.136 Monthly Water Rates and enacts a new §51.136 as shown in Exhibit A attached to this Ordinance.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby repeals §51.137 Monthly Sewer Rates and enacts a new §51.137 as shown in Exhibit B attached to this Ordinance.

City of Fayetteville Staff Review Form

2022-0517

Legistar File ID

6/21/2022

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Paul Becker

6/2/2022

WATER SEWER (720)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of the Water and Sewer Rate changes, rescinding and replacing sections 51.136 and 51.137 of the City Code of Ordinances and holding a Public Hearing based on a Rate Study conducted by Black and Veatch recommended by the Fayetteville Water and Sewer Committee.

Budget Impact:

N/A		Water/Sewer	
Account Number		Fund	
N/A		N/A	
Project Number		Project Title	
Budgeted Item?	No	Current Budget	\$ -
		Funds Obligated	\$ -
		Current Balance	\$ -
Does item have a cost?	No	Item Cost	\$ -
Budget Adjustment Attached?	No	Budget Adjustment	\$ -
		Remaining Budget	\$ -

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF JUNE 21, 2022

TO: Mayor and City Council

FROM: Paul Becker, Chief Financial Officer

DATE: June 3, 2022

SUBJECT: Approval of the Water and Sewer Rate changes, rescinding and replacing sections 51.136 and 51.137 of the City Code of Ordinances and the holding of a Public Hearing based on a Rate Study conducted by Black and Veatch recommended by the Fayetteville Water and Sewer Committee

RECOMMENDATION:

Administration recommends approval of an ordinance changing the water and sewer rates based on a Cost of Service Study conducted by Black and Veatch as presented to the Water and Sewer Committee in open meetings. These recommended rates are reflected in the attached replacement for sections 51.136 and 51.137 of the Fayetteville code of Ordinances.

BACKGROUND:

The City of Fayetteville has been conducting a water and sewer rate study since August 2020. Black and Veatch was selected pursuant to RFQ 20-01 by the City Council on August 18, 2020 with the approval of Resolution 212-20.

The intent of the rate study is to establish water and sewer rates that fully recover the cost of providing service to customers, adequately provide for maintaining and expanding the City's infrastructure, and provide adequate reserves for future needs. The study is based on a comprehensive review of the City of Fayetteville's water and sewer funds and budgets, comprehensive Water Master Plan, Wastewater Master Plan, planned wastewater facilities upgrades, customer classes, current usage data, future planned growth of the City of Fayetteville, and any other information deemed necessary.

The current water and sewer rates were adopted by the City of Fayetteville in 2008 based on a Cost of Service Study reformed by HDR Engineering. As a part of that study an annual 3% inflationary increase for each rate classification was authorized. This was sufficient to fund operations and capital need until now without a full rate study. Rate studies were delayed during the period between 2008 and 2020 primarily because the City was working on the permitting process for our two plants.

The Noland Plant was conducting a Use Attainability Analysis (UAA) on the receiving stream (The White River) to determine acceptable Chloride, Sulfate and Total Dissolved Solids discharge limitations. Based on the outcome of the UAA there was the possibility of a major upgrade to the Noland Facility.

The West Side Plant discharges to Goose Creek and eventually the Illinois River, and the negotiations between Arkansas and Oklahoma concerning total phosphorus in the Illinois River Watershed could have had a significant impact on the plant's discharge limit for phosphorus. Based on the outcome, the West Side Plant could have significant capital upgrades.

It was not feasible for the City to conduct a rate study during this time period because the rates might have been inadequately adjusted prior to the outcome of these two issues, resulting in an additional rate adjustment soon after the initial change. Those issues have been resolved at this time and new permits have been, or are being issued. However, extensive new capital needs are required at this point in time and operating cost have increased above the revenue increases generated by an annual 3% proportional adjustment.

DISCUSSION:

State code dictates a schedule of events for any change in water and sewer rates. These require that the rate change ordinance be read, a public hearing be scheduled and announced, the ordinance be published, and the public hearing take place at least ten days after the initial reading and publication of the ordinance. The rate ordinance can then be approved any time after the public hearing. The public hearing attachment details the public notice process for the proposed rate study, and what the initial changes will be to the water and sewer rates. A copy of the notice that is required to be published in the newspaper is attached and shows the changes by customer class. Additionally, the Monthly Water and Sewer Rates attachment indicates the level of rate increases through 2025.

The rate study prepared by Black and Veatch reflects some of the following guidelines:

1. The City has adopted a cost of service rate schedule based on customer class.
2. The City is using a volumetric block system within customer class to encourage conservation
3. New rates reflecting the true cost of service by customer class as determined by the rate study will be implemented on January 1, 2023.
4. A 3% annual inflation increase shall be applied at the first of each new calendar year until a new study is adopted.

BUDGET/STAFF IMPACT:

Adoption of these new rates will provide necessary revenues to address current operating costs and capital needs.

Attachments:

Revised Sections 51.136 and 51.137 of the Fayetteville Code of Ordinances
Black and Veatch Water and Wastewater Comprehensive Rate Study
Exhibits A and B - 51.136 and 51.137 - Monthly Water and Sewer Rates
Public Hearing Notice - Water and Wastewater Rate changes 2023

51.136 Monthly Water Rates

Effective as of the first billing statements issued after December 31, 2022, the following monthly rates shall be fixed as rates to be charged for water furnished by the waterworks system of the city, which rates the City Council finds and declares to be reasonable and necessary minimum rates to be charged. All non-emergency water uses shall be billed to the user, to include but not limited to water used for: use within structures; business; manufacturing; irrigation; retail by another water utility; city uses; educational purposes; medical purposes; water system routine non-emergency uses; wastewater system routine non-emergency uses; non-profit uses; fire department non-emergency uses to include training and equipment calibration; construction of new water mains; street cleaning; and wet down of construction sites and materials. Emergency water use that does not pass through a water system meter shall not be billed, including firefighting, water leaks, water leak repair, and emergency water line flushing. The volumes used for these emergency purposes should be estimated and submitted monthly to the Business Office Manager and the Water/Sewer Operations Manager.

(A) Monthly Water Rates.

- (1) The water usage of each customer shall be determined each month by meter measurement and the amount per 1,000 gallons to be paid for water usage by each customer shall be computed on the basis of the following schedule of rates.

Table A-1 Monthly Water Rates Prior to January 1, 2023 Cost per 1,000 gallons			
Class	Usage Rate (In Gallons)	Inside City	Outside City
Residential	First 2,000	\$3.51	\$4.04
	Next 13,000	\$4.65	\$5.35
	Over 15,000	\$6.59	\$7.54
Non-Residential	First 300,000	\$3.79	\$4.38
	Over 300,000	\$3.39	\$3.90
Major Industrial	All Usage	\$2.96	\$3.40
Irrigation	First 300,000	\$5.04	\$5.80
	Over 300,000	\$4.53	\$5.22
Wholesale	Reduced Peak Demand	\$2.87	\$2.87
	Peak Demand	\$3.20	\$3.20

Table A-2 Monthly Water Rates After December 31, 2022 Cost per 1,000 gallons			
Class	Usage Rate (In Gallons)	Inside City	Outside City
Residential	First 2,000	\$3.30	\$4.47
	Next 13,000	\$4.37	\$5.91
	Over 15,000	\$6.20	\$8.38
Non-Residential	First 300,000	\$3.93	\$5.05
	Over 300,000	\$3.93	\$5.05

Major Industrial	All Usage	\$3.14	\$3.49
Irrigation	First 300,000	\$4.29	\$5.43
	Over 300,000	\$4.29	\$5.43
Wholesale	Reduced Peak Demand	\$3.16	\$3.16
	Peak Demand	\$3.16	\$3.16

Table A-3 Monthly Water Rates After December 31, 2023 Cost per 1,000 gallons			
Class	Usage Rate (In Gallons)	Inside City	Outside City
Residential	First 2,000	\$3.40	\$4.60
	Next 13,000	\$4.50	\$6.09
	Over 15,000	\$6.39	\$8.63
Non-Residential	First 300,000	\$4.05	\$5.20
	Over 300,000	\$4.05	\$5.20
Major Industrial	All Usage	\$3.23	\$3.59
Irrigation	First 300,000	\$4.42	\$5.59
	Over 300,000	\$4.42	\$5.59
Wholesale	Reduced Peak Demand	\$3.25	\$3.25
	Peak Demand	\$3.25	\$3.25

Table A-4 Monthly Water Rates After December 31, 2024 Cost per 1,000 gallons			
Class	Usage Rate (In Gallons)	Inside City	Outside City
Residential	First 2,000	\$3.50	\$4.74
	Next 13,000	\$4.64	\$6.27
	Over 15,000	\$6.58	\$8.89
Non-Residential	First 300,000	\$4.17	\$5.36
	Over 300,000	\$4.17	\$5.36
Major Industrial	All Usage	\$3.33	\$3.70
Irrigation	First 300,000	\$4.55	\$5.76
	Over 300,000	\$4.55	\$5.76
Wholesale	Reduced Peak Demand	\$3.35	\$3.35
	Peak Demand	\$3.35	\$3.35

- (2) Beginning January 1, 2026, all monthly water rates shall be increased by 3% per year.
 - (3) All bills under such schedules shall be computed by adding the applicable meter service charge prescribed by subsection (B) to the amount determined to be due for water usage under this schedule. Applicable sales tax and franchise fees shall be added to the bill so computed.
 - (4) When a common facility/building is served by multiple water meters and the water usage is for the same purpose, customers may petition the Water & Wastewater Director and/or the Finance & Internal Services Director to have the water consumption aggregated and have the tiered rates apply to the aggregated quantity.
 - (5) Water used for flushing and sampling of newly constructed water lines, Fire Department training and equipment calibration, and other similar uses requiring a large volume and/or high velocity of water movement shall employ a fire hydrant meter of the appropriate size for the use. If a fire hydrant meter cannot be used due to high flow or volume requirements, then the volume of water used shall be measured by using a pitot gauge to determine the gallons per minute and by timing the flow of water to be able to calculate total volume. In the cases of fire department training and equipment calibration, sewer line washing, street sweeping, and other uses where the equipment employed has a built-in water meter, these built in water meters may be used. All such meters other than those on fire trucks must be evaluated by the Meter Superintendent. These water uses shall be billed at the same rates as non-residential customers.
 - (6) Monthly wholesale treated water rates outside city limits are based on Cost of Service Methodology.
- (B) *Monthly Water Service Charge.*
- (1) In addition to the above, each customer shall pay a monthly water service charge in accordance with the following schedule:

Table B-1 Monthly Water Service Charge Prior to January 1, 2023			
Meter Size	Inside City	Outside City	Wholesale
¾ x ¾ inch	\$6.59	\$7.54	\$7.54
1 inch	\$9.14	\$10.52	\$10.52
1 ½ inch	\$15.93	\$18.31	\$18.31
2 inch	\$23.20	\$26.66	\$28.56
3 inch	\$54.05	\$62.18	\$64.38
4 inch	\$89.50	\$102.93	\$112.25
6 inch	\$178.99	\$205.82	\$213.02
8 inch	\$268.41	\$308.67	\$319.47

Table B-2 Monthly Water Service Charge After December 31, 2022			
Meter Size	Inside City	Outside City	Wholesale
¾ x ¾ inch	\$6.59	\$7.54	\$7.54
1 inch	\$9.14	\$12.26	\$12.26
1 ½ inch	\$15.93	\$24.22	\$24.22

2 inch	\$23.20	\$33.52	\$33.52
3 inch	\$54.05	\$69.84	\$69.84
4 inch	\$89.50	\$102.93	\$102.93
6 inch	\$178.99	\$205.82	\$205.82
8 inch	\$268.41	\$308.67	\$308.67

Table B-3
Monthly Water Service Charge After
December 31, 2023

Meter Size	Inside City	Outside City	Wholesale
½ x ¾ inch	\$6.79	\$7.77	\$7.77
1 inch	\$9.41	\$12.63	\$12.63
1 ½ inch	\$16.41	\$24.95	\$24.95
2 inch	\$23.90	\$34.53	\$34.53
3 inch	\$55.67	\$71.94	\$71.94
4 inch	\$92.19	\$106.02	\$106.02
6 inch	\$184.36	\$211.99	\$211.99
8 inch	\$276.46	\$317.93	\$317.93

Table B-4
Monthly Water Service Charge After
December 31, 2024

Meter Size	Inside City	Outside City	Wholesale
½ x ¾ inch	\$6.99	\$8.00	\$8.00
1 inch	\$9.70	\$13.01	\$13.01
1 ½ inch	\$16.90	\$25.69	\$25.69
2 inch	\$24.61	\$35.56	\$35.56
3 inch	\$57.34	\$74.09	\$74.09
4 inch	\$94.95	\$109.20	\$109.20
6 inch	\$189.89	\$218.35	\$218.35
8 inch	\$284.76	\$327.47	\$327.47

- (2) Beginning January 1, 2026, all monthly water service charges shall be increased by 3% per year.
- (3) The monthly treated water rates and the monthly meter service charge rates prescribed by subsections (A) and (B) of this section shall commence as of the first billing statements issued after December 31, 2022.
- (4) The State of Arkansas mandated Safe Drinking Water Act fee shall be added to the monthly water utility bill.

(C) *Monthly Standby Fire Protection Service Charge.*

- (1) Charges for unmetered service connections for standby fire protection and fire hydrants shall be based on the incoming line size or the backflow preventer size, whichever is smaller, as set forth in the following table:

Monthly Standby Fire Protection Service Charge		
Line Size or Backflow Preventer Size	Inside City	Outside City
1 inch	\$9.75	\$11.68
2 inch	10.17	12.10
2.5 inch	20.33	23.37
3 inch	30.48	35.06
4 inch	60.97	70.11
6 inch	169.34	194.74
8 inch	355.65	409.00
10 inch	609.68	701.11

- (2) The Utilities Department shall review the monthly standby fire protection service charges every two (2) years and shall make recommendations to the City Council following such review. Fire protection lines shall not be connected to the water system downstream from a meter.

(Code 1965, §21-25; Ord. No. 1165, 4-18-58; Ord. No. 2144, 9-2-75; Ord. No. 2594, 2-5-80; Ord. No. 3197, 7-1-86; Ord. No. 3409, 2-21-89; Ord. No. 3431, 6-6-89; Ord. No. 3491, 7-17-90; Ord. No. 3513, 9-18-90; Ord. No. 3519, 11-20-90; Ord. No. 4059, §1, 10-7-97; Ord. No. 4223, 2-15-00; Code 1991, §51.136; Ord. No. 4530 12-02-02; Ord. No. 4540, 02-03-04; Ord. No. 5123, 4-1-08; Ord. No. 6169 , §1, 4-2-2019)

51.137 Monthly Sewer Rates

(A) *Monthly Sewer Rates.*

- (1) All monthly sewer charges shall be calculated from the customer's monthly water usage. The following monthly rates are hereby fixed as rates to be charged for sewer services:

Table D-1 Monthly Sewer Rates Per 1,000 Gallons Before January 1, 2023		
Class	Usage Rate (In Gallons)	Cost per 1,000 gallons
Residential	First 2,000 gallons	\$4.35
	Greater than 2,000 gallons	\$5.80
Non-Residential	All Usage	\$4.40
Major Industrial	All Usage	\$4.71
Farmington	All Usage	\$7.52
Outside city	All Usage	\$8.18
Elkins	85% of metered water usage	\$5.19
	Usage above 85% of metered water usage	\$2.71

Table D-2 Monthly Sewer Rates Per 1,000 Gallons After December 31, 2022		
Class	Usage Rate (In Gallons)	Cost per 1,000 gallons
Residential	First 2,000 gallons	\$3.39
	Greater than 2,000 gallons	\$4.52
Non-Residential	All Usage	\$5.10
Major Industrial	All Usage	\$5.71
Farmington	All Usage	\$8.27
Outside city	All Usage	\$8.55
Elkins	85% of metered water usage	\$7.20
	Usage above 85% of metered water usage	\$7.20

Table D-3 Monthly Sewer Rates Per 1,000 Gallons After December 31, 2023		
Class	Usage Rate (In Gallons)	Cost per 1,000 gallons
Residential	First 2,000 gallons	\$3.49
	Greater than 2,000 gallons	\$4.66
Non-Residential	All Usage	\$5.25
Major Industrial	All Usage	\$5.88
Farmington	All Usage	\$8.52
Outside city	All Usage	\$8.81
Elkins	85% of metered water usage	\$7.42
	Usage above 85% of metered water usage	\$7.42

Table D-4 Monthly Sewer Rates Per 1,000 Gallons After December 31, 2024		
Class	Usage Rate (In Gallons)	Cost per 1,000 gallons
Residential	First 2,000 gallons	\$3.60
	Greater than 2,000 gallons	\$4.80
Non-Residential	All Usage	\$5.41
Major Industrial	All Usage	\$6.06
Farmington	All Usage	\$8.77
Outside city	All Usage	\$9.07
Elkins	85% of metered water usage	\$7.64
	Usage above 85% of metered water usage	\$7.64

- (2) Beginning January 1, 2026, all monthly sewer quantity charge- usage rates per 1,000 gallons shall be increased by 3% per year.
- (3) Sewer related fees levied by the Cities of Farmington or Greenland shall be added to the wastewater utility bill at the request of Farmington or Greenland. These fees may be calculated on a per-thousand volumetric usage or a per month basis.
- (B) *Monthly Sewer Service Charge.*

- (1) In addition to the above, each customer shall pay a monthly sewer service charge in accordance with the following schedule:

Table E-1 Monthly Sewer Service Charge Prior to January 1, 2023			
Meter Size	Inside City	Outside City†	Farmington†
¾ x ¾ inch	\$18.28	\$18.28	\$16.74
1 inch	\$23.74	\$33.92	\$31.28
1½ inch	\$38.77	\$60.37	\$55.50
2 inch	\$55.43	\$79.73	\$73.45
3 inch	\$128.73	\$184.24	\$169.29
4 inch	\$212.13	\$303.44	\$278.93
6 inch	\$420.39	\$601.46	\$553.70
8 inch	\$628.73	\$899.76	\$826.81

Table E-2 Monthly Sewer Service Charge After December 31, 2022			
Meter Size	Inside City	Outside City†	Farmington†
¾ x ¾ inch	\$18.28	\$18.28	\$25.10
1 inch	\$23.74	\$33.92	\$52.62
1½ inch	\$38.77	\$66.73	\$109.78
2 inch	\$55.43	\$93.11	\$154.24
3 inch	\$128.73	\$196.10	\$327.83
4 inch	\$212.13	\$303.44	\$482.37
6 inch	\$420.39	\$601.46	\$897.30
8 inch	\$628.73	\$899.76	\$998.92

Table E-3 Monthly Sewer Service Charge After December 31, 2023			
Meter Size	Inside City	Outside City†	Farmington†
¾ x ¾ inch	\$18.83	\$18.83	\$25.85
1 inch	\$24.45	\$34.94	\$54.20
1½ inch	\$39.93	\$68.73	\$113.07
2 inch	\$57.09	\$95.90	\$158.87
3 inch	\$132.59	\$201.98	\$337.66
4 inch	\$218.49	\$312.54	\$496.84
6 inch	\$433.00	\$619.50	\$924.22
8 inch	\$647.59	\$926.75	\$1,028.89

Table E-4 Monthly Sewer Service Charge After December 31, 2024			
Meter Size	Inside City	Outside City†	Farmington†
¾ x ¾ inch	\$19.39	\$19.39	\$26.63
1 inch	\$25.19	\$35.99	\$55.82
1½ inch	\$41.13	\$70.79	\$116.47
2 inch	\$58.81	\$98.78	\$163.63
3 inch	\$136.57	\$208.04	\$347.79
4 inch	\$225.05	\$321.92	\$511.75
6 inch	\$445.99	\$638.09	\$951.95
8 inch	\$667.02	\$954.56	\$1,059.75

†Cost of Service Methodology required by contract.

- (2) Beginning January 1, 2026, all monthly sewer service charges shall be increased by 3% per year.
- (C) *Determination of Sewer Quantity Charge for Residential Customers.*
- (1) In the case of residential customers residing in a single family home, duplex, triplex, and/or fourplex, the average monthly water consumption for the preceding months of December, January, and February shall be computed separately for each customer, and a uniform monthly charge for each customer shall be determined by applying the schedule of rates set out in subsection (A) of this section to such average monthly water consumption. In the case of a residential user for whom a uniform monthly charge has been established and who moves to a new location the same uniform monthly charge shall apply at the new location. In the case of new residential customers, sewer averages shall be established based on the number of individuals residing within the dwelling unit, at a rate of 2,100 gallons per customer per month. This methodology of sewer averaging shall not apply to multi-family structures containing five (5) or more units in a contiguous building.
- (2) In the case of sewer customers who do not have a water meter provided by a public water utility, the sewer usage volume billed shall be the average volume of all users in the sewer system in like dwellings from the most recent system-wide sewer average calculation.
- (D) *Determination of Charge for Non-residential and Major Industrial Customers.* In the case of non-residential and/or major industrial customers, the monthly sewer charge shall be determined by applying the schedule of rates prescribed in subsection (A) of this section to the monthly water usage of such customers. In the event that a non-residential or major industrial customer discharging waste into the city's sanitary sewer system produces evidence to the Water and Wastewater Director demonstrating that a substantial portion of the total amount of water from all sources used for all purposes does not reach the sanitary sewer which is in excess of the factors used in establishing the rates in subsection (A) of this section, an estimated percentage of total water consumption to be used in computing charges may be established by the Water and Wastewater Director. The factors used in establishing said rates are on file in the office of the Water and Wastewater Director and are incorporated herein by reference thereto. Any rate so adjusted by the Water and Wastewater Director shall be effective for a twelve (12) month period beginning with the billing for the month when rates adjudged hereby go into effect.
- (E) *Extra Strength Surcharge.*
- (1) For all significant industrial users as defined in §51.074, whose wastewater discharge is greater than 300 mg/l of BOD₅ and/or TSS, the city shall levy an Extra Strength Surcharge for each parameter in accordance with the following unit charges:

Table F3 Extra Strength Surcharges	
	After 12/31/2022
Extra Strength BOD ₅	\$0.5426 per pound
Extra Strength TSS	\$0.6921 per pound

- (2) Starting after December 31, 2023, Extra Strength Surcharges shall be increased by 3% per year.
- (3) Extra Strength Surcharges shall be billed monthly and shall be computed on the basis of water meter reading (wastewater discharge volume).
- (4) All sampling and analyses of the wastewater characteristics shall be performed in accordance with U.S. Environmental Protection Agency 40 Code of Federal Regulations Part 136 approved methods.
- (5) The volume of flow used in computing surcharge shall be based upon metered water consumption as shown in the records of meter readings maintained by the city's business office. In the event that a user discharging waste into the city sanitary sewer system produces evidence to the city demonstrating that a portion of the total amount of water used for all purposes is not discharged into the sanitary sewer, a separate meter or meters or other approved flow measuring device may be installed at the user's expense, upon its request, to measure only that portion of the total flow being discharged into the city sewer system. If a surcharge is assessed by the city, it shall be shown separately on the monthly billing.
- (6) Any person discharging industrial waste into the sanitary sewers of the city who procures any part or all of the user's water supply from sources other than the city, all or part of which is discharged into the sanitary sewer, shall install and maintain at the user's expense water meters of the type approved by the city for the purpose of determining the proper volume of flow to be used in computing sewer service charges. Such meter will be read monthly and tested for accuracy when deemed necessary by the city. Where it can be shown that a portion of the water measured by the aforesaid meter or meters does not enter the sanitary sewer system of the city, a separate meter or meters or other approved flow measuring device may be installed at the user's expense, upon its request, to measure only that portion of the total flow being discharged into the city sewer system. If a surcharge is assessed by the city, it shall be shown separately on the monthly billing.
- (7) Computation of extra strength surcharges shall be based on the following formula:
 - (a) Extra strength surcharge:

S	= $V \times 8.34 \times [\text{BOD Unit Charge (BOD - 300)} + \text{SS Unit Charge (TSS - 300)}]$
---	---

(b) Where:

S	= Surcharge in dollars
V	= Sewer volume in million gallons
8.34	= Pounds per gallon of water
BOD Unit Charge	= Unit charge for BOD in dollars per pound
BOD	= BOD strength in parts per million
300	= Allowed BOD strength in parts per million
TSS Unit Charge	= Unit charge for suspended solids in dollars per pound

TSS	= Suspended solids strength in parts per million
300	= Allowed TSS Strength in parts per million

(F) *Elkins Sewer Charges.*

- (1) Elkins' payment for wastewater treatment shall be based on 85% of the metered water purchased. The volume of wastewater received by Fayetteville at the "Point of Connection" shall be measured by the installed wastewater meter. Volumes of wastewater below or above the agreed upon percentage (85%) of metered water, as measured by the wastewater meter, shall be recorded on a monthly basis, with a reconciliation of the net difference to occur semiannually in June and December. If the reconciliation volume is over the agreed upon percentage, this amount shall be billed to Elkins in June and December at the actual computed cost of wastewater collection to and treatment at the Noland Wastewater Treatment Plant, not including the calculated rate of return and not including depreciation charges, but including any capacity surcharge, based on the most recent rate as determined in paragraph B of this contract. If the reconciliation volume is below the agreed upon percentage, the actual amount billed for the difference shall be refunded to Elkins in June and December
- (2) Elkins Impact Fee Charges. The City of Elkins shall pay an additional \$0.25 per 1,000 gallons of wastewater, for all wastewater volume charges including both the 85% of metered water volume and for wastewater in excess of the 85% of the metered water purchased billed volume.

(G) *Hauled Wastewater Fees.*

- (1) Application fee. An application to discharge hauled domestic waste must be accompanied by a fee of \$100.00.
- (2) Discharge fee. A fee of \$50.00 must be paid for each hauled domestic waste load discharged.

(H) *Industrial Wastewater Discharge Permit Fee.*

- (1) Application Fee. An application for an industrial wastewater discharge permit must be accompanied by a fee of \$500.00.

(Code 1965, §21-26; Ord. No. 1165, 4-18-58; Ord. No. 3197, 7-1-86; Ord. No. 3285, 8-4-87; Ord. No. 3398, 1-3-89; Ord. No. 3491, 7-17-90; Ord. No. 3637, §§1, 2, 8-18-92; Ord. No. 4059, §2, 10-7-97; Code 1991, §51.137; Ord. No. 4530, 12-02-03; Ord. No. 4803, 12-20-05; Ord. No. 4998, 4-3-07; Ord. No. 5129, 4-15-08; Ord. No. 5438, 9-20-11; Ord. No. 5739, 2-17-15)

Draft

WATER AND WASTEWATER COMPREHENSIVE RATE STUDY

B&V PROJECT NO. 406577

PREPARED FOR

City of Fayetteville, Arkansas

26 MAY 2022



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1.0 Executive Summary

The City of Fayetteville (City) provides water and wastewater services to retail and wholesale customers. The Water and Wastewater fund is an Enterprise Fund, which is funded by the operating and capital revenues from the users of the system. Due to multiple factors including increasing operating costs, significant capital investments to meet regulatory requirements, and the need for infrastructure rehabilitation and replacement, revenues under existing rates are not adequate to meet the annual revenue requirements. Therefore, to maintain financial sufficiency and to assure equitable cost recovery, the City engaged Black & Veatch Management Consulting, LLC (Black & Veatch) to perform a Water and Wastewater Comprehensive Rate Study (Study).

The primary objectives of the Study are to develop a balanced financial plan, determine cost of service allocations for each customer class and design rates to recover costs from customer classes in reasonable accord with the allocated costs of service. The financial plan was developed for the six-year period of 2021 through 2026, also referred to as the study period or the forecast period. The city's fiscal year is a calendar year, starting on January 1 and ending on December 31.

As a result of our evaluations and analyses, the following summary of findings and recommendations are offered for the City's consideration.

1.1 Summary of Findings

1.1.1 Revenue Under Existing Rates

1. The City provides retail water services to approximately 40,800 customers inside the City and about 7,000 customers outside the City. The number of retail water service customers inside the City is projected to increase to about 44,800 by 2026 and the number of outside City water customers is projected to increase to about 8,000. The City also provides treated water to four wholesale customers. Retail wastewater collection and treatment service is provided to approximately 36,900 customers inside the City and about 2,600 customers outside the City. The number of inside City wastewater service customers is projected to increase to about 40,600 by 2026 and the number of outside City wastewater service customers is projected to increase to about 2,700.
2. Treated water sales to inside City retail customers are projected to increase from approximately 3,146,800 1,000 gallons (kgals) in 2021 to approximately 3,388,000 kgals by 2026. Treated water sales to outside City retail customers are projected to increase from approximately 507,600 kgals in 2021 to approximately 519,400 kgals by 2026. Treated water sales to wholesale customers is projected to be approximately 219,100 kgals in 2021 and decrease to 202,300 kgals in 2022 and remain at that level through 2026. Billed wastewater volume from inside City retail customers is projected to increase from approximately 2,806,700 kgals in 2021 to approximately 2,961,800 kgals by 2026. Billed wastewater volume from outside City retail customers is projected to increase from 109,800 kgals in 2021 to about 117,400 kgals by 2026. Billed wastewater volume from wholesale customers is projected to increase from 81,000 kgals in 2021 to 126,600 kgals in 2026 due to the addition of West Fork as a wholesale wastewater customer starting December 2020. The annual wholesale wastewater volume is projected to remain at the 2021 level through 2026.

3. The City's current water rates became effective January 1, 2022. For both retail and wholesale customers, the water rates include a monthly base charge, which varies by meter size and a volume charge that varies by customer class. The existing schedule of rates for wastewater service became effective on January 1, 2022. For retail customers, the wastewater rates include a monthly base charge, which varies by meter size. The volume charge varies by customer class. Surcharge rates are based on excess strength of Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS). The existing wastewater rate structure is described in Section 3.3.2.
4. Revenue is currently derived principally from charges for treated water and wastewater service, with some revenue also obtained from fire protection charges and other miscellaneous sources. Revenue from treated water sales, under existing rates, is projected to increase from \$21,186,400 in 2021 to about \$22,986,800 in 2026, reflecting a 5-year cumulative increase of 8%. Miscellaneous water revenues are estimated to increase from \$1,484,700 in 2021 to approximately \$1,608,600 in 2026, reflecting a 5-year cumulative increase of 8%. Revenue for wastewater collection and treatment services is projected to increase from \$24,461,900 in 2021 to about \$26,697,600 in 2026, under existing rates, reflecting a 5-year cumulative increase of 9%. Miscellaneous wastewater revenue is estimated at \$1,297,100 in 2021 and \$1,420,200 per year through 2022 to 2026, reflecting a 5-year cumulative increase of 9%.

1.1.2 Revenue Requirements

1. Costs of service to be recovered from water and wastewater service charges include (1) operation and maintenance (O&M) expenses; (2) bad debt; (3) Payment In Lieu of Taxes; (4) Safe Drinking Water Fee Reimbursement; (5) debt service (consisting of principal and interest payments); (6) transfer to shop fund; (7) transfer to operating reserve; (8) cash financed capital; and (9) transfer to capital reserve. The water and wastewater utilities do not have any outstanding debt service. There are no future debt issuances planned over the study period and no transfers to the shop fund over the study period.
2. The annual O&M expense includes the cost of labor, materials, power, chemicals, purchased water, contract services and other expenses associated with each utility's operation. In this study, FY 2021 is defined as the base budget year, based on which the O&M costs are projected for the forecast period. O&M expense for the water utility is projected to increase from \$15,949,600 in 2021 to \$18,739,400 by 2026 due to the combined effects of inflation and system growth. O&M expense for the wastewater utility is projected to increase from \$15,674,800 in 2021 to \$18,395,700 by 2026 due to the combined effects of inflation and system growth.
3. Bad debt expenses refer to outstanding balances from customers that are deemed uncollectible. The water and wastewater bad debt in 2019 was 0.5% of revenue. Bad debt projections for the study period assume 0.5% of annual revenues. Annual bad debt expenses for water utility is projected to increase from \$105,900 in 2021 to \$129,000 by 2026. Annual bad debt expenses for wastewater utility is projected to increase from \$122,300 in 2021 to \$149,900 by 2026.
4. The Payment In Lieu of Taxes (PILOT) are paid by public utilities to municipal entity as a compensation for utilization of streets, easements, right of ways or other public places. The PILOT amount is determined per City Ordinance 4449 that requires the water and wastewater funds to pay 4.25% of annual total gross sales revenues to the City. Annual PILOT amount for the water utility is anticipated to increase from \$900,400 in 2021 to \$1,096,900 in 2026. Annual

PILOT amount for the wastewater utility is projected to increase from \$1,039,600 in 2021 to \$1,274,000 in 2026.

5. The Safe Drinking Water Fee (SDWF) revenue collected for each metered customer is reimbursed to the state of Arkansas Department of Public Health. The SDWF reimbursement is projected to increase from \$230,000 in 2021 to \$250,200 in 2026. The SDWF is a pass-through fee and is treated as a “revenue reduction” by the City.
6. The City maintains an operating reserve balance equivalent of ninety (90) days of following years’ O&M budget. The transfer to operating reserve for the water utility is projected to increase from \$133,000 in 2022 to \$151,800 in 2026. The transfer to operating reserve for wastewater is projected to increase from \$129,600 in 2022 to \$147,900 in 2026.
7. The City currently utilizes the following two sources of funding for the water and wastewater utility capital projects (1): transfer from operating revenues and (2) transfer from the impact fee fund. A capital project meets the requirements of using impact fees if the existing water or wastewater capacity is expanded due to growth. The wastewater capital improvement program for the study period is \$69 million, of which \$67 million is projected to be funded from operating revenues and \$2 million is from the impact fee fund.

1.1.3 Summary of Cash Flow Results

1. The cash flow analysis performed based on the projected annual revenues under existing rates and the projected annual revenue requirements indicates a funding gap for both utilities beginning in 2021.
2. Therefore, a series of 3% annual revenue adjustment is needed in both the water and wastewater utilities to achieve the goal of the operating fund revenues being self-sufficient and adequate to cover all of the O&M expenses, cash financing of the capital program, required transfers, and to maintain the minimum reserve requirements. Table W - 9, in Appendix 1 presents the cash flow analysis and the proposed series of revenue increases for the water utility, and Table S - 9, in Appendix 2 presents the same for the wastewater utility.

1.1.4 Cost of Service Analysis

1. The revenue requirements less any revenues from other sources provides the “net” annual operating fund revenue requirements (also referred to as “cost of service”) that needs to be recovered through user rates and charges. A summary of the projected annual cost of service for 2022 is shown for water and wastewater in tables ES-1 and ES-2, respectively.

Table ES - 1 –Water 2022 Cost of Service

Line No.	Description	Operating Expense	Capital Cost	Total Cost
		\$	\$	\$
1	O&M Expenses	17,231,900		17,231,900
2	Depreciation		2,672,900	2,672,900
3	Return		1,895,900	1,895,900
4	Net Cost of Service	17,231,900	4,568,800	21,800,700

Table ES - 2 –Wastewater 2022 Cost of Service

Line No.	Description	Operating Expense	Capital Cost	Total Cost
		\$	\$	\$
1	O&M Expenses	16,801,000		16,801,000
2	Depreciation		8,060,600	8,060,600
3	Return		567,200	567,200
4	Net Cost of Service	16,801,000	8,627,800	25,428,800

2. As a basis for design of a schedule of water and wastewater rates, the costs of service are allocated to the classes of customers in accordance with respective service requirements of each customer class. The resulting costs of service allocated to customer classes are summarized in Table W - 17 for water and Table S - 17 for wastewater.

1.2 Proposed Recommendations

Based on the financial planning and cost of service analysis performed for the study period, the Black & Veatch team proffers the following series of recommendations:

1. Implement a series of 3% annual revenue increase from 2022 to 2026 for both water and wastewater utilities.
2. Implement cost of service-based rates for water and wastewater utilities in 2022.
3. Transition the existing monthly Base charge to the proposed Base Charge, derived based on cost of service, if cost of service based proposed Base Charge is greater than the existing Base charge.
4. Eliminate the minimum volume charge billing of 1,000 gallons from the volumetric portion of the rate structure.
5. Continue with the existing tier block structure for customer classes that have an inclining block (residential) or a uniform block (industrial) for the volumetric rate structure.
6. Change to uniform block for customers that currently have a declining block (non-residential and irrigation) volumetric rate structure.

The aforementioned recommendations enable the water and wastewater utilities to meet all its financial obligations, so that the City can continue to provide reliable service to serve the needs of existing and future customers.

1.3 Disclaimer

This report was prepared for the City of Fayetteville (Client) by Black & Veatch Management Consulting, LLC (Black & Veatch) and is based on information provided by the Client not within the control of Black & Veatch. While it is believed that the information, data and opinions contained herein will be reliable

under the conditions and subject to the limitations set forth in this report, Black & Veatch does not guarantee the accuracy thereof. Black & Veatch has assumed that the information provided by others, both verbal and written, is complete and correct. The projections set forth in this report are intended as "forward-looking statements." In formulating these projections, Black & Veatch has made certain assumptions with respect to conditions, events, and circumstances that may occur in the future. While Black & Veatch believes the assumptions are reasonable actual results may differ materially from those projected, as influenced by the conditions, events, and circumstances that occur. As such, Black & Veatch does not take responsibility for the accuracy of data or projections provided by or prepared on behalf of the Client, nor does Black & Veatch have any responsibility for updating this report for events occurring after the date of this report.

Use of this report or any information contained therein by any party other than the Client, shall constitute a waiver and release by such third party of Black & Veatch from and against all claims and liability, including but not limited to liability for special, incidental, indirect or consequential damages in connection with such use. Such use of this report by a third party shall constitute agreement by the third party user that its rights, if any, arising from this report shall be subject to the terms of this Report Limitations, and in no event shall the third party's rights, if any, exceed those of the Client under its contract with B&V. The benefit of such releases, waivers, or limitations of liability shall extend to the related companies and subcontractors of any tier of B&V, and the shareholders, directors, officers, partners, employees, and agents of all released or indemnified parties.

2.0 Introduction

The City of Fayetteville water utility provides treated water and water distribution services to approximately 40,800 customers within the corporate limits of Fayetteville, and to approximately 7,000 customers in areas contiguous to, but outside of the City's corporate limits. The wastewater utility provides retail wastewater collection and treatment service to approximately 37,000 customers within the corporate city limits and to approximately 2,600 customers outside of the City's corporate limits. The City also provides treated water to four wholesale customers and wastewater treatment to two wholesale customers.

In providing water and wastewater service, the City incurs considerable expense related to the ongoing operating and capital needs of the utilities. These operating and capital expenditures tend to increase annually due to the combined effects of inflation and the need to repair, replace, or extend existing service facilities to meet customer service requirements, as well as to meet more stringent state and federal water quality requirements and EPA requirements.

The City of Fayetteville, recognizing the importance of financial planning and cost of service analysis to equitably recover the increasing costs to replace, renew, expand, improve, and operate its water and wastewater service facilities, retained Black & Veatch to perform this comprehensive study of revenue requirements, cost of service, and rates for potable water service and wastewater service.

2.1 Purpose

This report examines the respective projected revenue and rate requirements of the water and wastewater systems of the City. The purpose of this report is (1) to project the future revenues of the water and wastewater utilities under existing rates and charges, as well as the operating expenses and capital financing revenue requirements of the two utilities, and to examine the adequacy of projected revenues to meet these revenue requirements through calendar year 2026; (2) to allocate these revenue requirements, or costs of service, for a representative test year to the various customer classes in accordance with the respective service requirements that each class places on the systems; and (3) to develop a suitable schedule of water and wastewater rates that will produce revenues adequate to meet the financial needs of the utility on a basis that recognizes customer costs of service, existing wholesale service agreements and practical bill impact considerations.

2.2 Scope

This report presents the results of a comprehensive study of the projected revenue and revenue requirements, costs of service allocations, and proposed rates for treated water and wastewater service. Revenue and revenue requirements are projected for the five calendar years from 2022 through 2026, recognizing anticipated growth in number of customers, water use, and wastewater flows throughout the service area. The study of revenue requirements recognizes projected operation and maintenance expense, capital improvement requirements met from revenues, principal and interest payments on outstanding and proposed bond issues, and reserve fund requirements. Requirements of existing revenue bond indentures are also recognized.

Costs of treated water and wastewater service are developed for each group of customers and type of service based on consideration of utility revenue needs and projected customer service requirements. Rate adjustments are designed for retail and wholesale customers in accordance with allocated costs of service, wholesale service agreement terms, and customer bill impact considerations.

2.3 Study Methodology

The development of user rates and charges requires the integration of three critical components: (i) financial plan; (ii) cost of service allocations; and (iii) rate design.

2.3.1 Financial Plan

The development and update of a financial plan is necessary to continue to focus on financial discipline, build financial stability, and maintain sustainable financial planning practices. The financial planning process helps to establish a financial roadmap to meet all of the water and wastewater utility's obligations.

As illustrated in Figure 2 - 1, the key components of a financial plan are: (i) projection of revenues from user rates and other sources; (ii) development of a capital financing plan to decide the mix of debt and cash funding of capital program; (iii) projection of revenue requirements (O&M and capital costs, and target reserves); and (iv) determination of the level and timing of revenue adjustments needed to maintain financial viability.

The annual revenue requirements are typically developed on a *cash-needs basis* for public utility rate setting. The revenue requirements, under the cash-needs basis approach, include the following:

- O&M expenditures;
- Debt service expenses;
- Cash financing of capital program;
- Contributions to operating reserves; and
- Other obligations such as payments and transfers for specific purposes.

To establish financial stability, a financial plan is typically prepared for a multi-year period. A six-year financial plan was developed for the water and wastewater utility to achieve the financial objectives and target metrics defined to build and sustain financial integrity. 2022 through 2026 is the forecast period for both revenues and revenue requirement projections.

The revenue adjustments represent the level of annual revenue increases necessary to meet the annual net revenue requirements.

2.3.2 Cost of Service

Cost of service can be described as the revenue that the water and wastewater utility need to generate, *net of funding from other miscellaneous sources of revenues*. Therefore, Cost of Service is essentially the "net revenue requirement" that is to be recovered through user rates and charges. As illustrated in Figure 2 - 2, Cost of service analysis enables an equitable apportioning of the net annual revenue requirements (also referred to as cost of service) to the various cost components and customer

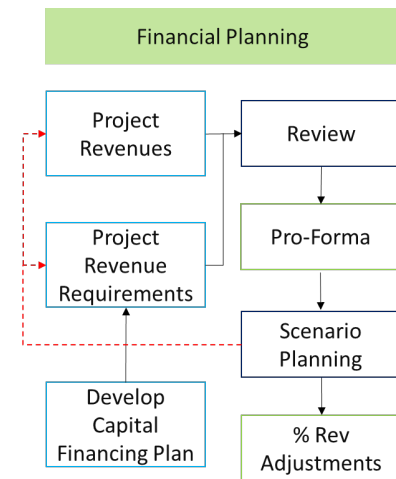


Figure 2 - 1: Financial Plan

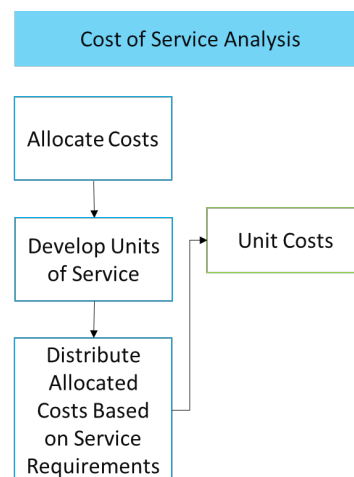


Figure 2 - 2: Cost of Service

classes. The level and types of allocation performed depend on the existing and anticipated rate structure.

As municipal utilities are *public utilities that cannot make a profit*, the equitable allocation of costs is a critical step that is necessary to establish a reasonable nexus between costs incurred in providing service and the fees charged from customers, and to establish defensible user rates and charges.

2.3.3 Rate Design

The third and final component is an evaluation of the existing rate structure components and the development of proposed user rates and charges. The user rates and charge schedules typically include fixed charge, volumetric charge, and other special charge rate components. As illustrated in Figure 2 - 3, the rates and charges are designed to recover the annual cost of service allocated to these different rate components and based on local policy and practical considerations.

The study methodology described above and used in the financial planning, cost of service and rate design analysis reflect the application of industry accepted rate setting approaches that are provided in the following two guidance manuals:

- American Water Works Association (AWWA) *Manual M-1: Principles of Water Rates, Fees, and Charges* for water rate setting; and
- Water Environment Foundation (WEF) *Financing and Charges for Wastewater Systems* for wastewater.

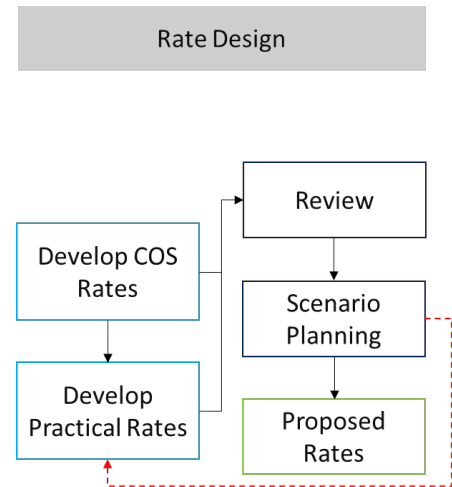


Figure 2 - 3: Rate Design

3.0 Rate Structure Overview

The revenue requirements of a water and wastewater utility, net of any miscellaneous sources of revenues, are recovered from user rates and charges. A water rate structure usually consists of two primary components, namely, a fixed charge and a volumetric charge. Similarly, a wastewater rate structure more commonly consists of a fixed charge, a volumetric charge, and pollutant charge (for wastewater pollutants such as Bio-chemical Oxygen Demand (BOD) and Total Suspended Solids (TSS)). Occasionally, a utility's water and wastewater rate structures may include special surcharges and/or special assessments to recover costs associated with certain service situations such as purchased water, pumping to elevations, drought conditions, readiness-to-serve, environmental conditions, and extra-strength wastewater discharges.

3.1 Fixed Charge

A utility's annual revenue requirements comprise mostly of fixed costs such as salaries and benefits, pension obligations, debt service, cash financing for infrastructure renewal, and costs related to the provision of adequate capacity for service. These types of fixed costs occur on a recurring basis regardless of the amount of water used by the customer.

Therefore, rate structures need to afford the ability to recover at least some of the fixed costs based on billing parameters that are not related to water usage or wastewater flow. The fixed charge, which is assessed regardless of the volume of water used, provides a mechanism to reliably recover some of the fixed annual operating costs of the utility, and provide for some level of revenue stability.

In the utility industry, fixed charges are designed to recover one or more of the following types of costs, namely, (i) metering; (ii) billing; (iii) readiness-to-serve cost; (iv) specific capital investment; and (v) other specific costs. The costs of providing these functions vary among types of customers and/or by factors such as size and capacity of the meters. Therefore, to provide for equitable cost recovery, water and wastewater fixed charges are usually assessed based on meter size and also by customer class.

3.2 Volumetric (Usage) Charge

In the utility industry, usage charges are designed to recover all other costs (except those that are recovered through fixed charge) associated with the treatment and delivery of water service and the collection, treatment, and disposal of wastewater.

The three common types of volumetric charge are: (i) inclining block rate, where the usage in the next higher usage block is priced at a higher rate per unit; (ii) uniform block rate, where all units of usage are priced at the same unit rate; and (iii) declining block rate, where the usage in the next higher usage block is priced at a lower rate per unit. As usage patterns vary among customer classes and consequently different classes place different levels of service demands, different volumetric rates can be established for the various customer classes. In designing the volumetric rate structure, practical considerations including conservation, equity, affordability, and ease of administration are addressed.

3.3 Existing Rate Structure

3.3.1 Water Rate Structure

Consistent with industry rate structures, the City's water rate structure comprises of both Fixed Charge and Volumetric Charge components. The water rate structure includes the following two components:

- Base Charge (Fixed Charge); and
- Volume Charge (Volumetric Charge).

Some of these components are applicable to only specific customer classes. The revenues derived from the above charges are collectively referred to as **“Water Service Revenues.”**

- **Base Charge:** The existing Base Charge for all customer classes is based on meter size.
- **Volume Charge:** The existing Volume Charge is based on the quantity of water used by the customers.
- **Safe Drinking Water Fee:** This is a regulatory charge per bill that is collected by the City on behalf of the state of Arkansas Department of Public Health.

The customer classes to which the specific charge components apply is illustrated in Figure 3 - 1. The existing water rate schedule for 2021, for these rate components, is presented in Table W - 3 in Appendix 1. All customers are billed monthly.

Figure 3 - 1: Existing Water Rate Structure

Rate Component	Applicable Customer Classes
● Base Charge by Meter Size	● Retail Inside City (Residential, Non-Residential, Major Industrial, Irrigation, Fire Protection); ● Retail Outside City (Residential, Non-Residential, Major Industrial, Irrigation, Fire Protection); ● Wholesale
● Volume Rate (3-Tier Inclining Block) ● Minimum Usage (1,000 Gallons)	● Retail Inside City Residential; and ● Retail Outside City Residential
● Volume Rate (2-Tier Declining Block) ● Minimum Usage (1,000 Gallons)	● Retail Inside City Non-Residential, Irrigation; and ● Retail Outside City Non-Residential, Irrigation
● Volume Rate (Uniform) ● Minimum Usage (1,000 Gallons)	● Retail Inside City Major Industrial ● Retail Outside City Major Industrial
● Volume Rate (Uniform) ● 2 rates (Reduced Peak Demand and Peak Demand)	● Wholesale
● Safe Drinking Water Fee (per month)	● All customer classes

3.3.2 Wastewater Rate Structure

The City’s Operating Fund wastewater rate structure also comprises of both Fixed Charge and Volumetric Charge components. The wastewater rate structure includes the following three components:

- Base Charge (Fixed Charge);

- Volume Charge (Volumetric Charge); and
- BOD and TSS Charge (Surcharge).

The revenues derived from all these three sources are collectively referred to as **“Wastewater Service Revenues.”** Some of these user rate components are applicable to only specific customer classes.

- **Base Charge:** The existing Base Charge for all retail customers is based on meter size.
- **Volume Charge:** The existing volume wastewater charge is based on the quantity of water used by the customer classes.

Surcharge: The existing wastewater surcharge is based on the excess strengths of BOD and TSS, of certain customers.

The customer classes to which the specific rate components are applicable is illustrated in Figure 3 - 2. The existing wastewater rate schedule for 2021 is presented in [Table S - 3](#) in Appendix 2.

Figure 3 - 2: Existing Wastewater Rate Structure

Rate Component	Applicable Customer Classes
Base Charge by Meter Size	- Retail Inside City (Residential, Non-Residential and Major Industrial); - Retail Outside City (Residential, Non-Residential and Major Industrial);
- Volume Rate (2-Tier Inclining Block) - Based on winter water usage of December, January and February	Retail Inside City Residential
Volume Rate (Uniform)	- Retail Inside City (Non-Residential and Major Industrial) - Retail Outside City (Residential, Non-Residential and Major Industrial)
- Volume Rate (Uniform) 2 tiered rates (85% of metered water usage and Above 85% of metered water usage)	Wholesale

4.0 Water Utility

The financial plan and rate design were developed to meet all the funding obligations of the water utility, and to achieve the financial adequacy and equitable cost recovery discussed in Section 2.3.

The water utility financial plan was developed for the six-year forecast period of 2021 through 2026, and includes the following key components:

- Revenue projections (user rate revenues and non-rate revenues);
- Capital improvement program financing;
- Annual revenue requirement projections; and
- Annual proposed revenue increases

4.1 Water Revenue Projections Under Existing Rates

The water utility revenues are derived from the following sources:

- Water Service Revenues (Base and Volume Charge)
- Other Revenues

As a first step in the development of the financial plan, Water Service Revenues under the 2022 existing rates are projected for the forecast period.

4.1.1 Water Revenue Under Existing Rates

As described in Section 3.3.1, the Water Service Revenue consists of two charge components. For each of the two components, revenues are projected based on billing units and applicable existing rate schedules. The billing units necessary to compute the Base Charge revenues are the *number of accounts* based on meter size and customer class. The billing units necessary to compute the Volume Charge are the *annual water usage* by customer class and by applicable blocks of usage.

4.1.1.1 Projection of Customer Accounts

Typically, historical billing units are reviewed and used to project billing units for the forecast period. The project team reviewed historical accounts and average usage trends for each customer class referenced in Section 3.3.1.

Based on the review of historical trends, two annual adjustment factors were applied to project billing units for the forecast period. The two adjustment factors applied at the customer class level are *accounts growth rate* and *usage factor*. The number of accounts is projected to grow in all customer classes except for Fire protection and wholesale where the number of accounts is anticipated to remain at the 2020 level.

The total number of water accounts (not including private fire connections) is anticipated to increase from about 48,620 in 2021 to about 52,850 in 2026, at an overall annual system growth rate of 1.7%. The number of private fire connections is anticipated to remain at 727 throughout the study period. Table W - 1 in Appendix 1 presents the projected annual number of water accounts and private fire connections for the period of 2021 through 2026.

Figure 4-1 presents both the historical and projected number of accounts for the water utility.

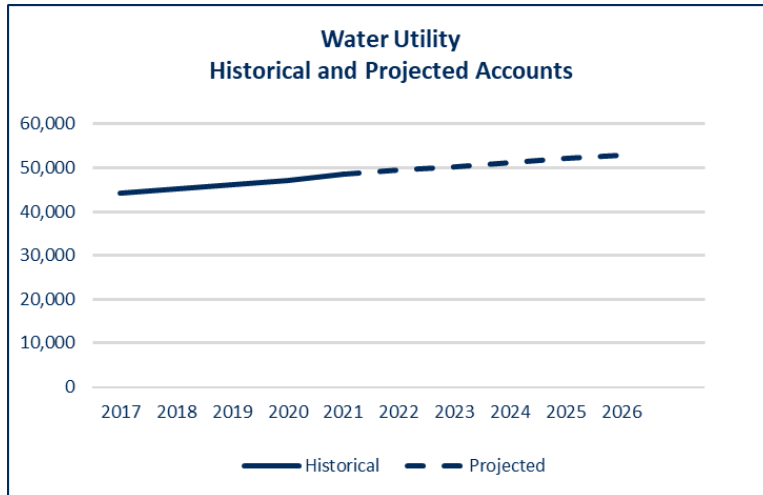


Figure 4-1 - Historical and Projected Water Accounts

4.1.1.2 Projection of Water Usage

Billed water volumes are projected based on estimates of the number of water accounts and the average billed usage per account. Average water use per account is determined based on historical usage. The historical usage per account for all customer classes varies each year between 2016 and 2020. In 2020, the COVID pandemic led to stay-at-home measures and shut down of non-essential businesses across the country. Consequently, the residential customers used more water in 2020, whereas the non-residential customers used less water as compared to previous years. The average use per account for 2021 was projected to remain at the 2020 levels assuming a lingering effect of the pandemic. The average usage per account for 2022 and beyond was projected to return to the 2019 level for all customer classes assuming a return to pre-pandemic levels.

Total system water usage is projected to increase from 3,873,500 kgals in 2021 to 4,109,400 kgals in 2026. Table W - 2 in Appendix 1 presents the projected annual volume for the period of 2021 through 2026.

Figure 4-2 presents both the historical and projected annual billed volume for the water utility.

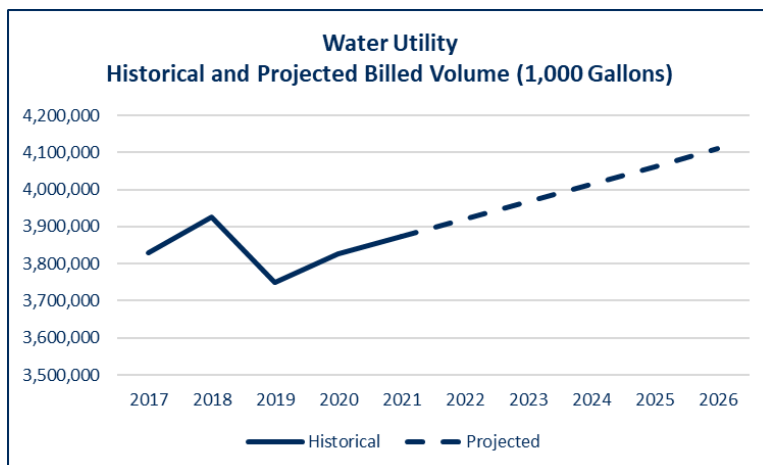
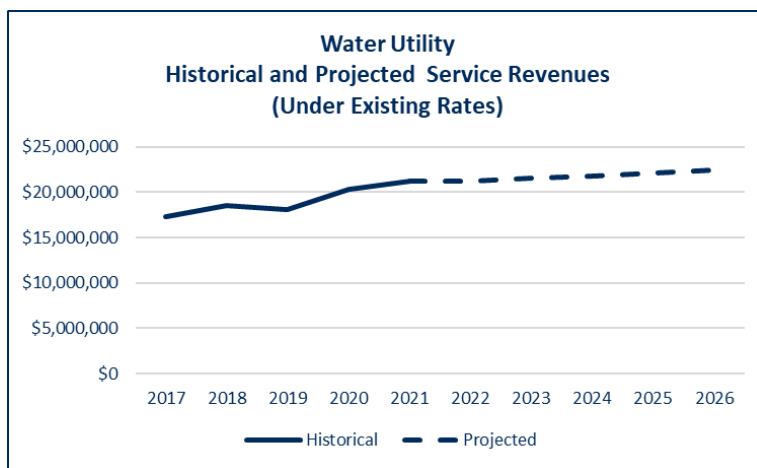


Figure 4-2 - Historical and Projected Water Billed Volume**4.1.2 Projection of Service Revenue Under Existing Rates**

Water service revenues for the period 2021 through 2026 are projected for each charge component (base and volume) based on the projections of accounts by meter size, projected water usage for each customer class, and the application of the 2021 rate schedule for 2021 revenues and 2022 rate schedule for 2022 through 2026 revenues. Water service revenue under existing rates is projected to increase slightly from \$21.2 million in 2021 to \$23.0 million in 2026. This growth is due to increase in water sales due to the growth in the number of accounts over the study period. Table W - 4 in Appendix 1 presents the projected annual service revenues for the period of 2021 through 2026.

Figure 4-3 presents both the historical and projected annual service revenues under existing rates for the water utility.

**Figure 4-3 - Historical and Projected Water Service Revenue****4.1.3 Other Water Revenues**

The other revenues include the following major components:

- Impact Fee Revenue;
- Water/Rural Water Connection Fees;
- Miscellaneous Fees (Water Sales Not on Computer, Trip Fees, Tampering-Billed Service)
- Penalties; and
- Safe Drinking Water Fee (pass-through)

The annual revenues from water impact fees, water connection fees and miscellaneous fees for 2021 to 2026 are projected based on historical three-year (2018 to 2020) average revenues for each of the fees. The penalties revenue in 2020 reflects only the first two and half months of revenues, as the City stopped assessing penalties for non-payment due to the pandemic. The revenue for penalties in 2021 is projected to be half of the historical three -year (2017 to 2019) average revenues due to continued waiver of the penalties as a result of the COVID pandemic during the first half for 2021. The revenue

from penalties in 2022 and beyond is projected as the historical three-year average (2017 to 2019) average revenues. Table W - 5 in Appendix 1 presents the historical and projected annual service revenues for the period of 2021 through 2026.

The Safe Drinking Water Fee (SDWF) is assessed for all water users in the state of Arkansas. The current rate is \$0.40 per bill per month and is collected by all water utilities in the state. The SDWF revenue is projected by applying the current rate to the number of meters for the period 2021 to 2026. The revenue collected as part of this fee is reimbursed to the state.

4.2 Water Capital Improvements Program

The capital project costs provided by the City were based on 2020 dollars. Based on discussions with the City, the project costs are inflated at an annual rate of 3.0% to accurately reflect the costs of projects for 2021 and beyond. The water utility Capital Improvement Plan (CIP) provides for a total of \$49.0 million of investments during the study period of 2021 through 2026. Table W - 6 in Appendix 1 presents the CIP list of projects and schedule for 2021 through 2026. The CIP is expected to be financed from a funding mix of cash financing from service revenue and impact fees.

4.3 Water Revenue Requirements

Projection of reliable revenue requirements includes: (1) operation and maintenance expenses; (2) bad debt; (3) Payment In Lieu of Taxes; (4) SDWF Reimbursement; (5) debt service (consisting of principal and interest payments); (6) transfer to shop fund; (7) transfer to operating reserve; (8) cash financed capital; and (9) transfer to capital reserve. The projections of annual revenue requirements for the study period is discussed in this section.

4.3.1 Water Operation and Maintenance Expenses

The O&M expenses for the water utility include the annual expenses associated with the water purchases from Beaver Water District; storage and distribution; meters and services; billing and collection, and general administrative services. These expenses include personnel costs (salaries and benefits), costs for materials and supplies, costs of utilities, and contracted services.

The 2021 O&M budget provided by the City was used as the baseline for projection of O&M expenses for the study period. In addition, costs associated with a water inspector (not included in the 2021 budget) recurring salary and benefits costs, recurring vehicle maintenance costs and one-time cost of the vehicle purchase was added per City's direction. Based on historical O&M costs, industry experience, and discussions with the City management, appropriate escalation factors were applied to various categories of costs to project future annual O&M expenses. Annual escalation factors used for major cost categories include the following:

- Salaries: 4.00%
- Benefits: 5.00%
- Energy: 3.00%
- Chemicals: 3.00%
- Purchased Water: 3.00%

The annual O&M expenses for water utility are budgeted at \$15.9 million in 2021 and are projected to grow to \$18.8 million by 2026. Table W - 7 in Appendix 1 presents a summary of total projected operation and maintenance expense for the period 2021 through 2026.

Figure 4-4 presents the historical and projected O&M expenses for the water utility.

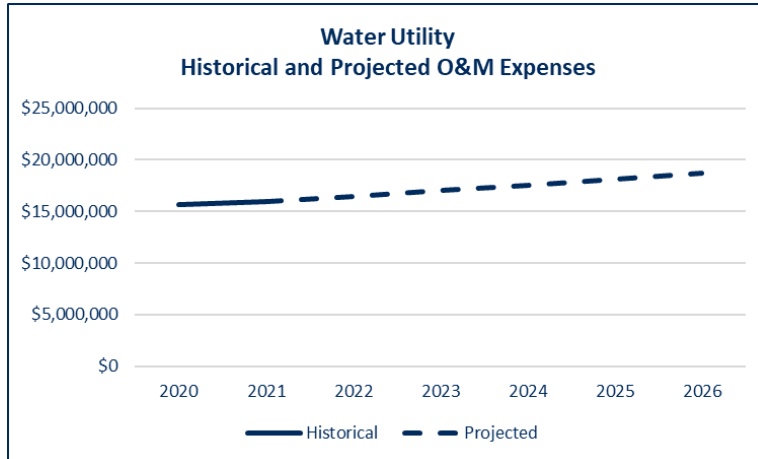


Figure 4-4 - Projected Annual Water O&M Expenses

4.3.2 Water Bad Debt

Bad debt expenses refer to outstanding balances owed that are deemed uncollectible. The water bad debt in 2019 was 0.5% of revenue. Hence, bad debt projections for the study period assume 0.5% of annual revenues. Annual bad debt expenses for water utility is projected to increase from \$105,900 in 2021 to \$129,500 by 2026 reflecting the increase in projected revenues. Line 12 in Table W - 9 in Appendix 1 presents the projected bad debt for the period 2021 through 2026.

4.3.3 Water Payment In Lieu of Taxes

The PILOT costs are paid by public utilities to municipal entity as a compensation for utilization of streets, easements, right of ways or other public places. The PILOT amount is determined per City Ordinance 4449 that requires that the water and wastewater funds to pay 4.25% of annual total gross sale revenues to the City. Annual PILOT amount for the water utility is calculated by multiplying actual water revenues from prior year (Water sales on Computer and Water sales not on Computer/ Bulk Water Sales, and Fire Hydrant and Protection). Annual PILOT amount for the water utility is anticipated to increase from \$900,400 in 2021 to \$1,100,700 in 2026. Line 13 in Table W - 9 in Appendix 1 presents the projected PILOT expenses for the period 2021 through 2026.

4.3.4 Safe Drinking Water Fee Reimbursement

The SDWF revenue collected for each metered customer is reimbursed to the state of Arkansas department of Public Health. The SDWF reimbursement is projected to increase from \$230,000 in 2021 to \$250,200 in 2026. Line 14 in Table W - 9 in Appendix 1 presents the projected SDWF reimbursement for the period 2021 through 2026.

4.3.5 Water Debt Service Requirements

The water utility does not have any outstanding debt service obligations. The City does not anticipate any debt issuances during the study period, therefore there is no projected debt service for future debt as shown in Line 15 in Table W - 9 in Appendix 1.

4.3.6 Transfer to Shop Fund

The transfer to the shop fund is made by the utility whenever a new vehicle (associated with new personnel) is purchased, thereby expanding the existing fleet. There are no projected transfers to the shop fund over the study period as shown in Line 17 in Table W - 9 in Appendix 1.

4.3.7 Transfer to Operating Reserve

The City maintains an operating reserve balance equivalent of ninety (90) days of following years' O&M budget. The transfer to operating reserve is projected to increase from \$133,000 in 2022 to \$151,800 in 2026 reflecting the growth in the O&M budget. Line 18 in Table W - 9 in Appendix 1 presents the projected transfers to the operating reserve for the period 2021 through 2026.

4.3.8 Water Cash Financed Capital

The City currently utilizes the following two sources of funding for the water utility capital projects (1): transfer from operating revenues and (2) transfer from the impact fee fund. As stated in Section 4.2, the water capital improvement program for the study period is \$52 million, of which \$50 million is projected to be funded from operating revenues and \$2 million is from the impact fee fund. A capital project meets the requirements of using impact fees if the existing water capacity is expanded due to growth. The construction contract and the budget amendment to change the source of funding to impact fee must be approved by the City Council. Table W - 8 in Appendix 1 presents the sources of funding for the water capital improvement program. Line 19 in Table W - 9 in Appendix 1 presents the projected transfers for cash financed capital for the period 2021 through 2026.

4.3.9 Transfer to Capital Reserve

The water utility, after meeting all the obligations stated in sections above, transfers the excess funds to the capital reserve fund. The capital reserve fund is used as a source for funding the capital program in the years that the revenues are not sufficient to meet the capital funding requirements. Line 20 in Table W - 9 in Appendix 1 presents the projected transfers to and from the capital reserve for the period 2021 through 2026.

4.4 Water Proposed Revenue Adjustments

The annual revenue adjustments that are needed to achieve the defined financial performance objectives are determined by evaluating the funding gap between the projected annual revenue requirements and the projected revenues under existing rates. Table W - 9 in Appendix 1, provides a summary of the revenue and revenue requirements (financial plan) for the study period.

Projected Revenue Under Existing Rates: Line 1 indicates that under existing rates (2022 rates) water utility revenues will increase from \$21.8 million in 2022 to \$23.0 million in 2026.

Projected Other Revenues: Line 8 indicates that the other revenues are anticipated to increase from \$641,500 in 2022 to \$665,900 in 2026. This increase is due to the growth in SDWF, which is a pass-through. It is anticipated that all other categories of other revenues will remain flat throughout the study period.

Projected Expenses: Line 15 indicates the total annual expenses for the water utility are anticipated to increase from \$17.7 million in 2022 to \$20.2 million in 2026.

Projected Transfers: Line 20 indicates the total annual transfers for the water utility are anticipated to increase from \$4.8 million in 2022 to \$6.3 million in 2026.

Funding Gap: The cash flow analysis indicates that the sum of revenues under existing rates and the other revenues is not adequate to fund the projected annual revenue requirements, thereby causing an operating deficit.

Proposed Revenue Adjustments: To address the funding gap in the water utility, a series of revenue adjustments are proposed as follows:

- 2022: 3% effective (January 1, 2022)
- 2023: 3% effective (January 1, 2023)
- 2024: 3% effective (January 1, 2024)
- 2025: 3% effective (January 1, 2025)
- 2026: 3% effective (January 1, 2026)

Lines 2 through 7 present the amount of additional revenues generated each year with the proposed magnitude and timing of revenue adjustments. Figure 4-5 presents the projected revenue and revenue requirements through 2026 for the wastewater utility.

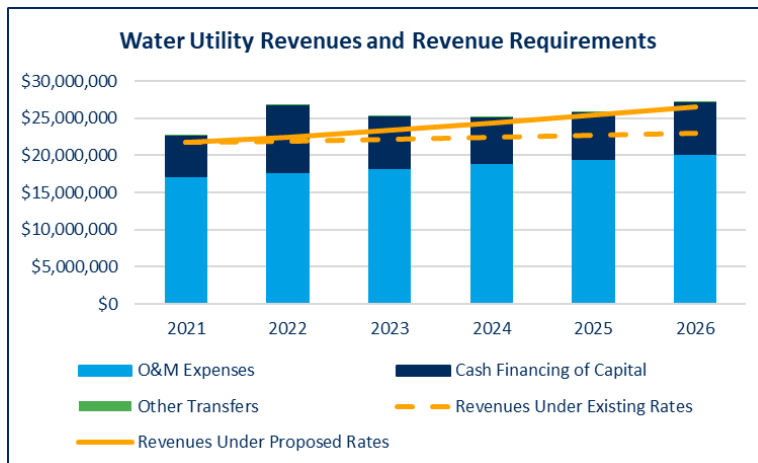


Figure 4-5 - Water Revenues and Revenue Requirements

Table W - 10 in Appendix 1 presents the water utility's operating reserve, capital reserve and impact fee fund balances. The City has identified the minimum balance requirements for each of the following funds:

- **O&M Reserve Balance:** A cash balance of at least 90 days of the follow's year operating expenses.

- **Operating Fund Balance:** A minimum target of \$100,000.
- **Capital Fund Balance:** A minimum target of \$500,000.
- **Capital Reserve Fund Balance:** An amount necessary to fully fund anticipated capital projects.

As shown in Table W - 10, the proposed annual revenue adjustments will allow the water utility to meeting the minimum fund balance requirements for all funds through 2026.

4.5 Water Cost of Service

A key step to developing an equitable rate structure involves the cost of service analysis. The financial plan discussed in sub sections 4.1 through 4.4 provides an estimate of the total annual revenue requirements for a given fiscal year. The cost of service analysis provides a mechanism to defensibly allocate the total annual revenue requirements to the various customer classes.

The cost of service is typically performed for a single year, referred to as the “Test Year” for which the rates are to be designed. The test year for which the cost of service study was performed is 2022.

The key components of the cost of service analysis are:

- Determination of Cost of Service (net revenue requirements);
- Determination of Functional Costs;
- Allocation of Functional Costs to Cost Components; and
- Distribution of Water Utility Costs to Customer Classes

4.5.1 Determination of Cost of Service

The first step is to determine the cost of service that is to be recovered from user rates and charges. As briefly discussed in Section 2.3, cost of service is defined as, and synonymous with, the “net revenue requirement” that is to be recovered for the test year through user rates and charges. Table W - 11 in Appendix 1 presents the derivation of the cost of service to be recovered through water charges. As Line 18 in Table W - 11 indicates, the water cost of service for 2022 is projected to be \$21.8 million. This cost of service consists of \$17.2 million of net O&M expense and \$4.6 million of net capital costs.

Costs of service is apportioned among customer classes in this study on a “Utility Basis”, that is, in terms of operating expense, depreciation expense, and return. For a municipal utility, the total of depreciation expense and return is equal to the capital cost related portion of the total cost of service.

Depreciation is the loss in value of the original plant investment, not restored by current maintenance, due to wear, decay, inadequacy, and obsolescence. Annual depreciation is determined as a percentage of original investment based on expected service lives of the various facilities. Unless funds are provided for normal annual replacement of original plant items, operating reliability of the system, as well as the value, will decrease. Depreciation funds are used to finance principal payments on bond issues and provide normal annual capital expenditures.

The depreciation expense associated with the water utility is estimated in this study recognizing depreciation rates presently in use by the water utility. This results in a projected test year depreciation

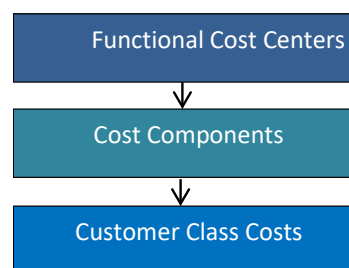
expense of \$2.7 million exclusive of depreciation on contributed plant, which is not recognized for cost allocation or rate design purposes. The contributed plant adjustment is consistent with generally accepted regulatory practices.

Total return on the system investment provides funds for bond interest payments and any other costs that may be incurred. In developing the level of return on net plant serving the requirements of outside City customers, provisions for a reasonable margin should be made to meet interest on borrowed funds, and to recognize the business risk assumed by the City in providing reliable facilities to serve nonresident customers. Total return for the test year is projected to be \$1,895,900 as shown on Line 17 of Table W - 11 in Appendix 1.

4.5.2 Determination of Functional Costs

As a basis for developing an equitable rate structure, the test year cost of service should be allocated to the various customer classes according to respective service requirements.

The basic underlying principle in developing cost of service rates is the determination of what elements in a water system are responsible for causing the level of revenue requirements that is needed. To allocate the costs to customer classes, first the operating and capital costs of service are aggregated into “Functional Cost Centers.” The functional costs are then further allocated to cost components. Each component cost is then apportioned to customer classes



Functional Cost Centers

Functional cost centers of a water utility represent the activities that contribute to the incurrence of O&M and capital costs. For a water utility, they often include source of *water supply, pumping, treatment, storage, distribution, meters, billing, and other administration* costs. Both the O&M and capital costs defined for the Test Year, discussed in 4.5.1, need to be allocated to functional cost centers.

Functional Costs

The **capital costs** associated with the functional cost centers are determined using detailed fixed assets data, provided by the City, for each class of asset that is currently in service, construction work in progress and projected capital improvement program for the test year. The total value of the fixed assets (referred to as “Net Plant Investment”) in the system is usually presented as Original Cost Less Depreciation (“OCLD”). The total estimated OCLD of the water system is \$96.2 million, as presented in Line 9 in Table W - 12 in Appendix 1. This plant investment data is subsequently used as a basis for the allocation to cost components, discussed in the following subsection 4.5.3.2.

The **O&M costs** for the Test Year are allocated to the various functional cost centers based on the specific nature of costs. The allocation of the projected O&M cost of service (net operating revenue requirement) of \$17.2 million, to the various functional cost centers, is presented in Table W - 14 in Appendix 1.

The various cost elements of water service are assigned to functional cost components as the first step in the subsequent distribution of the costs of service to customer classes.

4.5.3 Allocation of Costs to the Functional Cost Components

The principal functional cost components consist of *Base Costs*, *Extra-Capacity Costs*, and *Customer Costs*.

Base costs are those which vary directly with the quantity of water used, as well as those costs associated with serving customers under average load conditions without the elements necessary to meet water use variations or peak demands. Base costs include purchased power and treatment chemicals, and other operating and capital costs of the water system associated with serving customers to the extent required for a constant, or average annual rate of use.

Extra-Capacity costs represent those operating costs incurred due to demands in excess of average, and capital related costs for additional plant and system capacity beyond that required for the average rate of use. Total extra capacity costs are subdivided into costs associated with maximum day and maximum hour demand.

Customer Costs are defined as costs which tend to vary in proportion to the number of customers connected to the system. These include meter reading, billing, collection and accounting costs, and maintenance and capital charges associated with meters and services.

The delineation of costs of service into these principal categories provides the means of further allocating such costs to the various customer classes based on the respective base, extra capacity, and customer service requirements of each customer class.

Wholesale customers generally do not use smaller water distribution mains as do retail users. Therefore, separate functional cost of service categories are designated for costs which are common to all customer classes and those which are common to retail service classes only.

4.5.3.1 Water Utility Allocation to Cost Components

The water utility is comprised of a variety of service facilities, each designed and operated to fulfill a given function. In order to provide adequate service to its customers at all times, the utility must be capable of not only providing the total amount of water used, but also supplying water at maximum rates of demand.

Since all customers do not exert their maximum demand for water at the same time, capacities of water facilities are designed to meet the peak coincidental demands that all classes of customers, as a whole, place on the system. For every water service facility on the system, there is an underlying average demand, or uniform rate of usage exerted by the customers for which the base cost component applies. For those facilities designed solely to meet average day demand, costs are allocated 100% to the base cost component. Extra capacity requirements associated with coincidental demands in excess of average use are further related to maximum daily and maximum hourly demands.

Analysis of historical system maximum day and maximum hour demands to average day demands results in appropriate ratios for the allocation of capital costs and operating expenses to base and extra capacity cost components. A maximum day to average day ratio of 2.10 is used based on experienced demands in the water system. This indicates that approximately 47.6% of the capacity of facilities designed and operated to meet maximum day demand is required for average or base use. According, the remaining 52.4% is required for maximum day extra capacity requirements.

The costs associated with facilities required to meet maximum hour demand are allocable to base, maximum day extra capacity, and maximum hour extra capacity. A ratio of maximum hour to annual average day water use of 2.73 is used, based on demands experienced by the system. This ratio indicates that 36.6% of the capacity of facilities designed and operated for maximum hour demand is needed for average or base use, while 40.3% is utilized for maximum day extra capacity uses, and the remaining 23.1% is required to meet maximum hour extra capacity demand in excess of maximum day needs.

4.5.3.2 Allocation of Net Water Plant Investment

The estimated test year net plant investment in water facilities consists of net plant in service as of December 31, 2019, the 2020 construction work in progress, and the estimated cost of proposed capital improvements expected to be in service by the end of calendar year 2022. As the wholesale customers have their own storage tanks, the plant investment associated with tanks was allocated to the retail customers only. The total estimated OCLD of the water system is \$96.2 million, as presented in Line 9 in Table W - 12 in Appendix 1.

Plant investment is allocated to cost components on a design basis recognizing the principal function governing the design of the facility. The allocation of net plant investment provides the basis for allocation of depreciation expense.

4.5.3.3 Allocation of Water Facilities Depreciation Expense

Depreciation is a real part of the cost of operating a utility. In utility accounting, it is generally accepted practice to use depreciation funds to finance system replacements, improvements, and extensions. While such action does not restore the value lost in each property unit every year, the total value lost through depreciation is restored to the system as a whole. Depreciation funds can be reinvested in the system either by direct payment of routine capital additions and replacements or by principal payments on bonded debt.

The total estimated depreciation cost (excluding depreciation on contributed facilities) for the water system is \$2.7 million, as presented on Line 9 in Table W - 13 in Appendix 1. As the wholesale customer have their own storage tanks, the depreciation costs associated with tanks was allocated to the retail customers only.

4.5.3.4 Allocation of Water Utility Operating Expenses

Table W - 14 in Appendix 1 presents the allocation of O&M expense to functional cost components. Total test year O&M expense, as shown on Line 7 of this table, amounts to \$17.2 million. Operating expenses are allocated to functional cost components in generally the same manner as plant investment.

4.5.4 Distribution of Water Utility Costs to Customer Classes

As a basis for determining the cost of water service to each customer class, the elements of cost of service previously allocated to functional cost components are distributed among the classes in proportion to their respective service requirements. Estimates of these requirements, or units of service, reflect the average number of accounts with recognition to relative meter sizes serving each account, annual water sales, and estimated peak water demands placed on the system by each customer class. Analysis of resulting costs of service to each class and comparison of allocated costs with revenues under existing rates provide a basis for future water rate adjustments.

4.5.4.1 Water Customer Classification

Customer classes consist of residential, non-residential, industrial, irrigation, wholesale, and public and private fire protection. The residential class includes single family residential, duplex, fourplex, apartment, multi-unit residential, and rooming house customers. The non-residential class includes commercial, combination, construction, government, and non-profit classes. Industrial includes major and minor industrial. Outside City includes Farmington, Greenland, Washington/Growth Area, Johnson, and Goshen/ White River. Wholesale includes the communities of Elkins, West Fork, Mt. Olive, and RDA/WWA. These classes group together customers with similar service requirement characteristics and provide a means for allocating costs to customers.

4.5.4.2 Water Units of Service

The cost of service responsibility for base costs varies with the annual volume of water usage and is distributed to customer classes on that basis. Extra capacity costs are those costs associated with meeting peak rates of water use and are distributed to customer classes on the basis of their respective system capacity requirements in excess of average requirement rates. Customer costs, which consist of meter related costs, billing, collection and accounting costs, are allocated on the basis of the number of equivalent meters and monthly bills.

The estimated units of service for the various customer classifications are presented in Table W - 15 in Appendix 1. Estimates of test year annual water volumes, shown in Column 1, are based on the projections of total water sales for the test year 2022. Average daily water use is presented in Column 2. Columns 3 through 8 present the estimated maximum day and maximum hour capacity factors for each customer class, the resulting demands, and extra capacity requirements, respectively.

Customer related meter and service costs are allocated on the basis of the number of equivalent 3/4 inch meters serving each customer class. The number of equivalent meters in each customer class (Column 10) is estimated by relating typical costs for meters and services larger than 5/8 inch in size to the typical cost of a 3/4 inch meter and its related service line. Customer billing and accounting costs are distributed to classes on the basis of the number of bills for each customer class in Column 11.

Extra capacity requirements for fire protection service recognize, in part, peak fire flow requirements, and system capabilities established by the Insurance Service Office. One fire is estimated with peak fire flow requirements of 9,000 gallons per minute for 10 hours (maximum day) and 24 hours (maximum hour). Direct fire protection costs have been allocated between inside City and outside City customers in proportion to the number of equivalent 6-inch fire hydrants, as shown in Columns 12 and 13.

4.5.4.3 Water Utility Customer Class Costs of Service

Unit costs of service are developed by dividing the total cost allocated to each functional cost component by the total applicable units of service. The customer class responsibility for service is obtained by applying unit costs of service to the number of units for which the customer class is responsible.

The water utility has been built with provision for service to customers outside the City, yet the inside City customers must bear the responsibility for providing system facilities by undertaking the necessary investment. Revenues derived from outside City service should provide a margin of return on capital adequate to induce the citizens of Fayetteville to bear the risks of providing outside City service. To recognize the proprietary interest and responsibility of inside City customers in the system, it is proper to charge outside City customers, in addition to their share of operating expense and depreciation, a

reasonable return on their allocated portion of value. A 7.0% (4.0% for future debt service plus 3.0% risk component) annual rate of return on the value of water facilities serving outside City customers is recognized for purposes of this study.

Table W - 16 in Appendix 1 shows the development of the unit costs of service applicable to each cost function. Lines 1 through 3 summarize the units of service developed in Table W - 15. Total allocated costs or investment shown on Lines 4, 6, and 8 were previously developed in Table W - 12, Table W - 13 and Table W - 14 respectively. Unit costs of service for each component are determined by dividing the allocated cost or investment by the total units of service.

Total allocated unit costs of service for inside and outside City customers (Lines 15 and 16) are determined by adding the unit costs for net operating expense (Line 5) and depreciation expense (Line 7) to the respective inside and outside City unit costs for return on investment (Lines 10 and 11). These unit costs applied to the respective units of service shown on Lines 1 and 2 determine the allocated total costs of service for inside and outside City customers shown on Lines 17 and 18. In order to determine the allocated costs for each customer class, the costs are allocated to the various customer classes by applying the appropriate unit cost of service to the respective service requirements of each customer class.

Table W - 17 in Appendix 1 shows the resulting allocated and adjusted cost of service by customer class, revenue under existing rates, and the additional revenue required from each class. Costs associated with public fire protection are not recovered through direct charges, therefore, the cost of service for this class is reallocated to all other retail customers in proportion to their allocated cost of service as shown in Column 3. The test year adjusted cost of service, reflecting the reallocation of these costs, is shown in Column 4. The indicated increase or decrease in revenue required to meet adjusted cost of service is shown in Column 6.

5.0 Water Rate Design

The principal consideration in establishing water rate schedules is to establish rates to customers to recover costs that reasonably commensurate with the cost of providing water service. Theoretically, the only method of assessing entirely equitable rates for water service would be the determination of each customer's bill based upon each customer's particular service requirements. Since this is impractical, schedules of rates are normally designed to meet average conditions for groups of customers having similar service requirements. Rates should provide for equitable cost recovery, ease of customer understanding and be simple to administer.

The revenue requirements and cost of service allocations described in the preceding sections provide the basis for adjusting water rates. The revenue requirements reflect the need for adjustment and the level of revenue required. The cost of service analysis provides the unit costs of service used in the rate design process and gives a basis for determining whether resultant rates will develop revenues which recover costs of service from customer classes in proportion to service required and provide the total level of revenue required.

5.1 Existing Water Rates

The existing schedule of rates for water service became effective on January 1, 2022. For both retail and wholesale customers, these rates include a monthly base charge bill, which varies by meter size. The volume charge varies by customer class. The existing water rate structure is described in Section 3.3.1. The existing schedule of base and volumetric water rates is shown in Table W - 3.

5.2 Proposed Water Rates

The cost of service analysis described in the preceding sections of this report provides a basis for the design of a schedule of water rates to meet those costs. Proposed water base charge and volume rates have been designed to meet the test year allocated costs of service and are presented in Table W - 18. The proposed rate structure eliminates the minimum volume charge associated with 1,000 gallons. Additionally, volumetric rate structure for non-residential and irrigation customers classes both inside and outside city were changed from declining block rates to uniform block rates Figure 5 - 1 below presents the proposed water rate structure.

Figure 5 - 1 Proposed Water Rate Structure

Rate Component	Applicable Customer Classes
Base Charge by Meter Size	- Retail Inside City (Residential, Non-Residential, Major Industrial, Irrigation, Fire Protection); - Retail Outside City (Residential, Non-Residential, Major Industrial, Irrigation, Fire Protection); - Wholesale
Volume Rate (3-Tier Inclining Block)	- Retail Inside City Residential; and - Retail Outside City Residential
Volume Rate (Uniform)	Retail Inside City Non-Residential, Major Industrial, Irrigation; and

Rate Component	Applicable Customer Classes
	Retail Outside City Non-Residential, Irrigation
Volume Rate (Uniform)	Wholesale
Safe Drinking Water Fee (per month)	All customer classes

In developing proposed schedules of water rates, it must be recognized that the cost of service studies are the result of engineering estimates, based to some extent upon judgment and experience, and detailed results should not be used as literal and exact answers but as guides for potential rate adjustments. Practical considerations such as previous rate levels, bill impact on customers, and magnitude of cost of service shifts among customer classes, and past local practices are commonly recognized in making rate adjustments.

A comparison of estimated test year revenue under the proposed rates with allocated costs of service for each of the customer classes is presented in Table W - 19 in Appendix 1. This comparison indicates the proposed rates will recover revenues from inside and outside City customer groups reasonably commensurate with the cost of service and practical considerations previously noted.

To better reflect the total effect the proposed rates have on customer bills, a comparison of typical inside city and outside city customer water charges under existing rates and the rates proposed to become effective August 1, 2022, is presented in Table W - 20.

6.0 Wastewater Utility

The financial plan and rate design were developed to meet all the funding obligations of the wastewater utility, and to achieve the financial adequacy and equitable cost recovery discussed in Section 2.3.

The wastewater utility financial plan was developed for the forecast period of 2021 through 2026, and includes the following key components:

- Revenue projections (user rate revenues and non-rate revenues);
- Capital improvement program;
- Annual revenue requirement projections; and
- Annual proposed revenue increases

6.1 Wastewater Revenue Projections Under Existing Rates

The wastewater utility revenues are derived from the following sources:

- Wastewater Service Revenues (Base and Volume Charge)
- Other Revenues

As a first step in the development of the financial plan, Wastewater Service Revenues under the 2021 existing rates are projected for the forecast period.

6.1.1 Wastewater Revenue Under Existing Rates

As described in Section 3.3.2, the Wastewater Service Revenue consists of two charge components. For each of the two components, revenues are projected based on billing units and applicable existing rate schedules. The billing units necessary to compute the Base Charge revenues are the *number of accounts* based on meter size and customer class. The billing units necessary to compute the Volume Charge are the *annual wastewater billed volumes* by customer class and by applicable blocks of billable wastewater volume.

6.1.1.1 Projection of Customer Accounts

Typically, historical billing units are reviewed and used to project billing units for the forecast period. The project team reviewed historical accounts and billed volume trends for each customer class referenced in Section 3.3.1.

Based on the review of historical trends, two annual adjustment factors were applied to project billing units for the forecast period. The two adjustment factors applied at the customer class level are *accounts growth rate* and *volume factor*. The number of accounts is projected to grow for residential customer classes Fayetteville (Inside City) and Farmington (Outside City), whereas all other customer classes are anticipated to remain at the 2020 level.

The total number of wastewater accounts is anticipated to increase from about 40,100 in 2021 to about 43,300 in 2026, at an overall annual system growth rate of 1.6%. Table S - 1 in Appendix 2 presents the projected annual number of accounts for the period of 2021 through 2026.

Figure 6-1 presents both the historical and projected number of accounts for the wastewater utility.

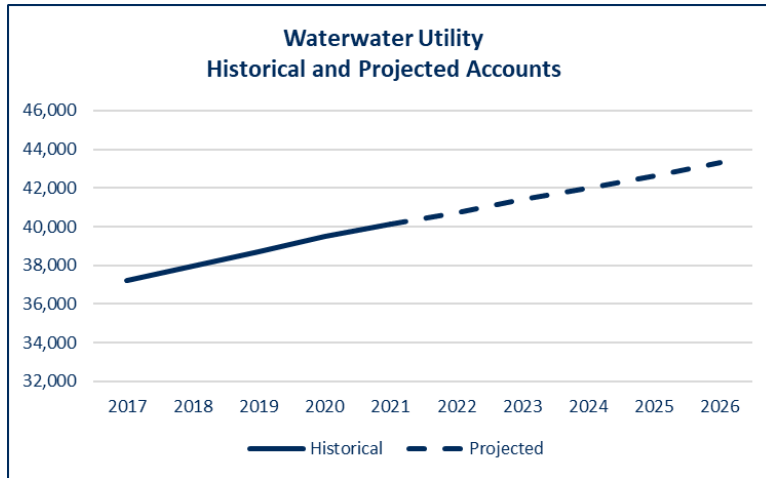


Figure 6-1 - Historical and Projected Wastewater Accounts

6.1.1.2 Projection of Wastewater Volume

Billed wastewater volumes are projected based on estimates of the number of wastewater accounts and the average billed volume per account. Average billed volume per account is determined based on historical billed volume. The historical billed volume per account for all customer classes varies each year between 2016 and 2020. In 2020, the COVID pandemic led to stay-at-home measures and shut down of non-essential businesses across the country. Consequently, the residential customers used more water in 2020, whereas the non-residential customers used less water as compared to previous years. The average billed volume per account for 2021 was projected to remain at the 2020 levels assuming a lingering effect of the pandemic. The average billed volume per account for 2022 and beyond was projected to return to the 2019 level for all customer classes assuming a return to pre-pandemic levels.

Total system wastewater billed volume is projected to increase from 3,043,100 kgals in 2021 to 3,205,800 kgals in 2026. Table S - 2 in Appendix 2 presents the historical and projected annual volume for the period of 2020 through 2026.

Figure 6-2 presents both the historical and projected annual billed volume for the wastewater utility.

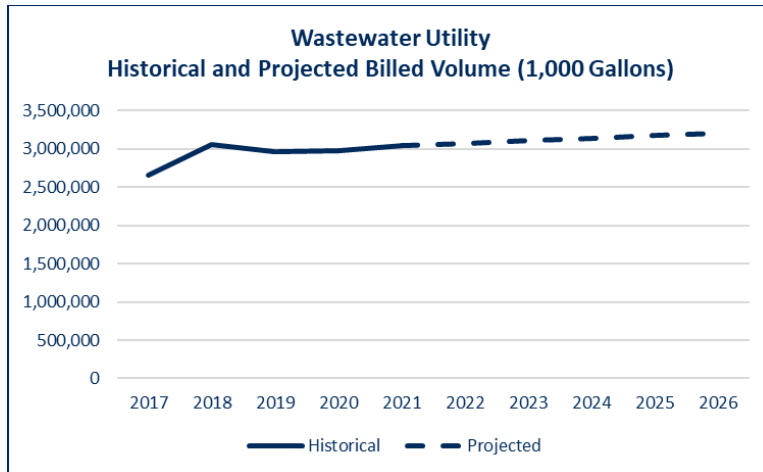


Figure 6-2 - Historical and Projected Wastewater Billed Volume

6.1.2 Projection of Service Revenue Under Existing Rates

Wastewater service revenues for the period 2021 through 2026 are projected for each charge component (base and volume) based on the projections of accounts by meter size, projected billed volume for each customer class, and the application of the 2021 rate schedule for 2021 revenues and 2022 rate schedule for 2022 through 2026. Wastewater service revenue under existing rates is projected to increase slightly from \$24.5 million in 2021 to \$26.7 million in 2026. This growth is due to increase in wastewater sales due to the growth in the number of accounts over the study period. Table S - 4 in Appendix 2 presents the historical and projected annual service revenues for the period of 2021 through 2026.

Figure 6-3 presents both the historical and projected annual service requirements under existing rates for the wastewater utility.

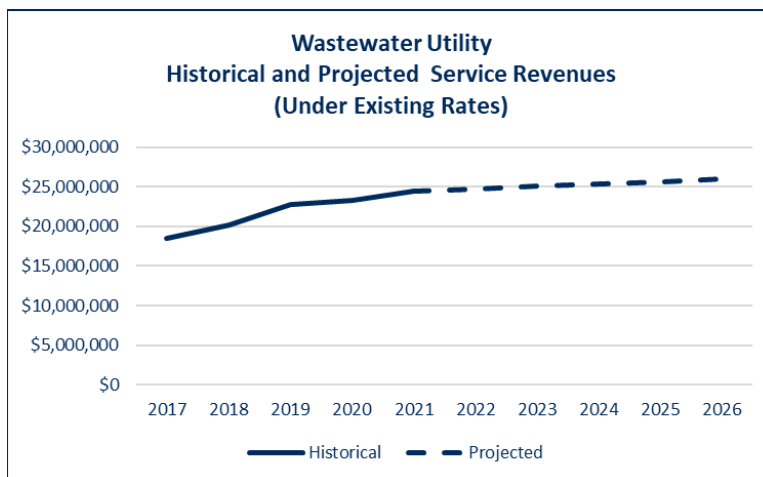


Figure 6-3 - Historical and Projected Wastewater Service Revenue

6.1.3 Other Wastewater Revenue

The other revenues include the following major components:

- Impact Fee Revenue;
- Wastewater Connection Fees;
- Wastewater Sales Not on Computer
- Penalties; and
- WWTP Fees (Hay Sales, Biosolids/ Fertilizer Sales & Water Treatment Residual)

The annual revenues from wastewater impact fees, wastewater connection fees, wastewater sales not on computer, and WWTP Fees for 2021 to 2026 are projected based on historical three-year (2018 to 2020) average revenues for each of the fees. The penalties revenue in 2020 reflects only the first two and half months of revenues, as the City stopped assessing penalties for non-payment due to the pandemic. The revenue for penalties in 2021 is projected to be half of the historical three-year (2017 to 2019) average revenues due to continued waiver of the penalties as a result of the COVID pandemic during the first half for 2021. The revenue from penalties in 2022 and beyond is projected as the historical three-year average (2017 to 2019) average revenues. Table S - 5 in Appendix 2 presents the historical and projected annual other revenues for the period of 2020 through 2026.

6.2 Wastewater Capital Improvements Program

The capital project costs provided by the City were based on 2020 dollars. Based on discussions with the City, the project costs are inflated at an annual rate of 3.0% to accurately reflect the costs of projects for 2021 and beyond. The City's wastewater utility Capital Improvement Plan (CIP) provides for a total of \$69.3 million of investments during the study period of 2021 through 2026. Major wastewater projects include sanitary wastewater rehabilitation totaling \$15.7 million and Biosolids Dryer Replacement totaling \$31.1 million. Table S - 6 in Appendix 2 presents the CIP list of projects for 2021 through 2026. The CIP is expected to be financed from a funding mix of cash financing from service revenue and impact fees.

6.3 Wastewater Utility Revenue Requirements

Projection of reliable revenue requirements includes: (1) O&M expenses; (2) bad debt; (3) Payment In Lieu of Taxes; (4) debt service (consisting of principal and interest payments); (5) transfer to shop fund; (6) transfer to operating reserve; (7) cash financed capital; and (8) transfer to capital reserve. The projections of annual revenue requirements for the study period is discussed in this section.

6.3.1 Wastewater Operation and Maintenance Expenses

The O&M expenses for the wastewater utility include the annual expenses associated with the wastewater conveyance, pumping, treatment and disposal; meters and services; billing and collection, and general administrative services. These expenses include personnel costs (salaries and benefits), costs for materials and supplies, costs of utilities, and contracted services.

The 2021 O&M budget provided by the City was used as the baseline for projection of O&M expenses for the study period. In addition, costs associated with a wastewater inspector (not included in the 2021 budget) recurring salary and benefits costs, recurring vehicle maintenance costs and one-time cost of the vehicle purchase was added per City's direction. Based on historical O&M costs, industry experience, and discussions with the City management, appropriate escalation factors were applied to various

categories of costs to project future annual O&M expenses. Annual escalation factors used for major cost categories include the following:

- Salaries: 4.00%
- Benefits: 5.00%
- Energy: 3.00%
- Chemicals: 3.00%
- Wastewater Treatment Plant Contract: 3.00%

The annual O&M expenses for wastewater utility are budgeted at \$15.7 million in 2021 and are projected to grow to \$18.4 million by 2026. Table S - 7 in Appendix 2 presents a summary of projected operation and maintenance expense for the period 2021 through 2026.

Figure 6-4 presents the historical and projected O&M expenses for the wastewater utility.

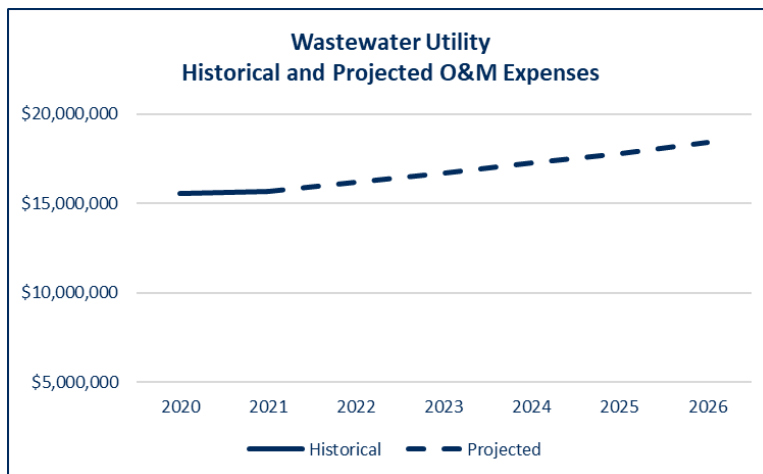


Figure 6-4 - Projected Annual Wastewater O&M Expense

6.3.2 Wastewater Bad Debt

Bad debt expenses refer to outstanding balances owed that are deemed uncollectible. The wastewater bad debt in 2019 was 0.5% of revenue. Hence, the bad debt projections for the study period assume 0.5% of annual revenues. Annual bad debt expenses for wastewater utility is projected to increase from \$122,300 in 2021 to \$149,900 by 2026 reflecting the increase in projected revenues. Line 16 in Table S - 9 in Appendix 2 presents bad debt expense for the period 2021 through 2026.

6.3.3 Wastewater Payment In Lieu of Taxes

The PILOT costs are paid by public utilities to municipal entity as a compensation for utilization of streets, easements, right of ways or other public places. The PILOT amount is determined per City Ordinance 4449 that requires that the water and wastewater funds to pay 4.25% of annual total gross sale revenues to the City. Annual PILOT amount for the wastewater utility is calculated by multiplying actual wastewater revenues from prior year (Wastewater sales on Computer and Wastewater sales not

on Computer/ Dump Fees) and is projected to increase from \$1,039,600 in 2021 to \$1,274,000 in 2026. Line 17 in in Appendix 2 presents PILOT expense for the period 2021 through 2026.

6.3.4 Wastewater Debt Service Requirements

The wastewater utility does not have any outstanding debt service obligations. The City does not anticipate any debt issuances during the study period, therefore no projected debt service for future debt as shown in Line 18 in Table S - 9 in Appendix 2.

6.3.5 Transfer to Shop Fund

The transfer to the shop fund is made by the utility whenever a new vehicle (associated with new personnel) is purchased, thereby expanding the existing fleet. There are no projected transfers to the shop fund over the study period as shown in Line 20 in Table S - 9 in Appendix 2

6.3.6 Transfer to Operating Reserve

The City maintains an operating reserve balance equivalent of ninety (90) days of following years' O&M budget. The transfer to operating reserve is projected to increase from \$129,600 in 2022 to \$147,900 in 2026 reflecting the growth in the O&M budget. Line 21 in Table S - 9 in Appendix 2 presents transfer to the operating reserve for the period 2021 through 2026.

6.3.7 Wastewater Cash Financed Capital

The City currently utilizes the following two sources of funding for the wastewater utility capital projects (1): transfer from operating revenues and (2) transfer from the impact fee fund. As stated in Section 6.2, the wastewater capital improvement program for the study period is \$69 million, of which \$67 million is projected to be funded from operating revenues and \$2 million is from the impact fee fund. A capital project meets the requirements of using impact fees if the existing wastewater capacity is expanded due to growth. The construction contract and the budget amendment to change the source of funding to impact fee must be approved by the City Council. Table S - 8 in Appendix 2 presents the sources of funding for the wastewater capital improvement program. Line 22 in Table S - 9 in Appendix 2 presents transfer for cash financing of capital program for the period 2021 through 2026.

6.3.8 Transfer to Capital Reserve

The wastewater utility, after meeting all the obligations stated in sections above, transfers the excess funds to the capital reserve fund. The capital reserve fund is used as a source for funding the capital program in the years that the revenues are not sufficient to meet the capital funding requirements. Line 23 in Table S - 9 in Appendix 2 presents transfer to and from the capital reserve for the period 2021 through 2026.

6.4 Wastewater Proposed Revenue Adjustments

The annual revenue adjustments that are needed to achieve the defined financial performance objectives are determined by evaluating the funding gap between the projected annual revenue requirements and the projected revenues under existing rates. Table S - 9 in Appendix 2 provides a summary of the revenue and revenue requirements (financial plan) for the study period.

Projected Revenue Under Existing Rates: Line 1 indicates that under existing rates (2022 rates) wastewater utility revenues will increase from \$25.4 million in 2022 to \$26.7 million in 2026.

Projected Other Revenues: Line 8 indicates that the other revenues and interest income are anticipated to increase from \$720,500 in 2022 to \$731,200 in 2026. It is anticipated that all categories of other revenues will remain flat throughout the study period. The slight growth is due to the increase in interest income on the operating reserve.

Projected Expenses: Line 14 indicates the total annual expenses for the wastewater utility are anticipated to increase from \$17.4 million in 2022 to \$19.8 million in 2026.

Projected Transfers: Line 19 indicates the total annual transfers for the wastewater utility are anticipated to increase from \$8.8 million in 2022 to \$10.9 million in 2026.

Funding Gap: The cash flow analysis indicates that the sum of revenues under existing rates and the other revenues is not adequate to fund the projected annual revenue requirements, thereby causing an operating deficit.

Proposed Revenue Adjustments: To address the funding gap in the wastewater utility, a series of revenue adjustments are proposed as follows:

- 2022: 3% effective (January 1, 2022)
- 2023: 3% effective (January 1, 2023)
- 2024: 3% effective (January 1, 2024)
- 2025: 3% effective (January 1, 2025)
- 2026: 3% effective (January 1, 2026)

Lines 2 through 7 in Table S - 9 present the amount of additional revenues generated each year with the proposed magnitude and timing of revenue adjustments. Figure 6-5 presents the projected revenue and revenue requirements through 2026 for the wastewater utility.

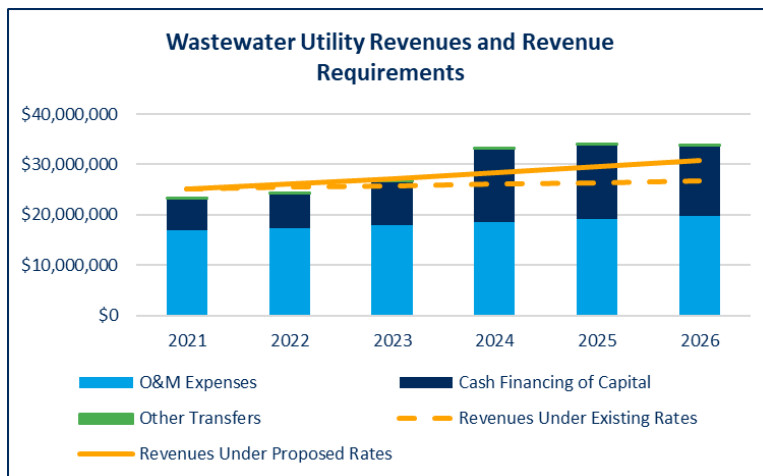


Figure 6-5 - Wastewater Revenues and Revenue Requirements

Table S - 10 in Appendix 2 presents the wastewater utility's operating reserve, capital reserve and impact fee fund balances. The City has identified the minimum balance requirements for each of the following funds:

- **O&M Reserve Balance:** A cash balance of at least 90 days of the follow's year operating expenses.
- **Operating Fund Balance:** A minimum target of \$100,000.
- **Capital Fund Balance:** A minimum target of \$500,000.
- **Capital Reserve Fund Balance:** An amount necessary to fully fund anticipate capital projects.

As shown in Table S - 9, the proposed annual revenue adjustments will allow the water utility to meet the minimum fund balance requirements for all funds through 2026.

6.5 Wastewater Cost of Service

A key step to developing an equitable rate structure involves the cost of service analysis. The financial plan discussed in sub sections 6.1 through 6.4 provides an estimate of the total annual revenue requirements for a given fiscal year. The test year for which the cost of service study was performed is 2022.

The key components of the cost of service analysis are:

- Determination of Cost of Service (net revenue requirements);
- Determination of Functional Costs;
- Allocation of Functional Costs to Cost Components; and
- Distribution of Wastewater Utility Costs to Customer Classes

6.5.1 Determination of Cost of Service

The first step is to determine the cost of service that is to be recovered from user rates and charges. As briefly discussed in Section 2.3, cost of service is defined as, and synonymous with, the "net revenue requirement" that is to be recovered for the test year through user rates and charges. Table S - 11 in Appendix 2 presents the derivation of the cost of service to be recovered through the wastewater charges. As Line 18 in Table S - 11 indicated, wastewater cost of service for 2022 is projected to be \$25.4 million. This cost of service consists of \$16.8 million of net operation and maintenance expense and \$8.6 million of net capital costs.

As performed for the water utility, costs of services are apportioned among customer classes in this study on a Utility Basis.

The depreciation expense and return on system investments that were already explained in Section 4.5.1 are applicable to the wastewater utility cost of service analysis as well. The depreciation expense associated with the wastewater utility is estimated in this study recognizing depreciation rates presently in use by the wastewater utility. This results in a projected test year depreciation expense of \$8.1 million

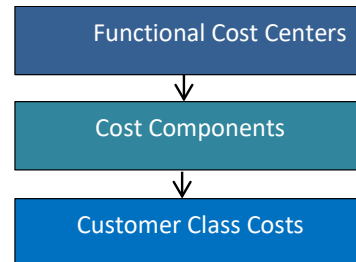
exclusive of depreciation on contributed plant, which is not recognized for cost allocation or rate design purposes. The contributed plant adjustment is consistent with generally accepted regulatory practices.

Total return for the test year is projected to be \$567,200 as shown on Line 17 of Table S - 11.

6.5.2 Determination of Functional Costs

As a basis for developing an equitable rate structure, the test year cost of service should be allocated to the various customer classes according to respective service requirements.

The basic underlying principle in developing cost of service rates is the determination of what elements in a wastewater system are responsible for causing the level of revenue requirements that is needed. To allocate the costs to customer classes, first the operating and capital costs of service are aggregated into “Functional Cost Centers.” The functional costs are then further allocated to cost components. Each component cost is then apportioned to customer classes.



Functional Cost Centers

Functional cost centers of a wastewater utility represent the activities that contribute to the incurrence of O&M and capital costs. For a wastewater utility, they often include source of *collection, pumping, conveyance, treatment, disposal, meters, billing, and other administration* costs. Both the O&M and capital costs defined for the Test Year, discussed in 6.5.1, need to be allocated to functional cost centers.

Functional Costs

The **capital costs** associated with the functional cost centers are determined using detailed fixed assets data, provided by the City, for each class of asset that is currently in service, construction work in progress and projected capital improvement program for the test year. The total value of the fixed assets (referred to as “Net Plant Investment”) in the system is usually presented as Original Cost Less Depreciation (“OCLD”). The total estimated OCLD value of the wastewater system is \$190.7 million, as presented in Line 26 in Table S - 12 in Appendix 2. This plant investment is subsequently used as a basis for the allocation to cost components, discussed in the following subsection 6.5.3.2.

The **O&M costs** for the Test Year are allocated to the various functional cost centers based on specific nature of costs. The allocation of the projected O&M cost of service (net operating revenue requirement) of \$16.8 million, to the various functional cost centers is presented in Table S - 14 in Appendix 2.

The various cost elements of wastewater service are assigned to functional cost components as the first step in the subsequent distribution of the costs of service to customer classes.

6.5.3 Allocation of Costs to the Functional Cost Components

The principal functional cost components consist of volume related costs, strength related costs, and customer related costs.

Volume costs are those which vary directly with the quantity of wastewater contributed. They consist of capital costs related to investment in system facilities which are sized on the basis of, or required

because of, wastewater volume. This also includes operation and maintenance expense related to those facilities, and the expense of volume related treatment chemicals and purchased power.

Wastewater strength costs consist of the operation and maintenance expense and capital costs related to system facilities which are designed principally to treat the wastewater pollutant loadings of pollutants such as BOD, TSS, and other pollutants. BOD costs reflect costs associated with the treatment of influent BOD and include costs related to activated sludge aeration and disposal of BOD related sludge. Suspended solids strength costs are those costs of wastewater treatment which tend to vary according to the quantity of suspended solids in the raw wastewater.

Customer costs are those which tend to vary in proportion to the number of customer bills or customers served. These include the wastewater utility share of customer related meter reading, billing, collection, and account expense.

The delineation of costs of service into functional components provides a means of distributing such costs to the various customer classes based on the respective total wastewater volume, strength, and customer cost requirements of each.

Wholesale customers generally do not use lateral wastewater lines as do retail users. Therefore, separate functional cost of service categories are designated for costs which are common to all customer classes and those which are common to retail service classes only.

6.5.3.1 Wastewater Utility Cost Allocation to Cost Components

In establishing the costs associated with each functional cost component, the return portion of the test year cost of service is distributed to cost functions based on an allocation of the estimated test year value of wastewater system facilities. The test year depreciation expense associated with each major element of plant facilities is allocated to cost functions in the same manner as the plant value. Operating expense is similarly allocated to cost functions based on the projected test year expense estimated for each wastewater system component.

6.5.3.2 Allocation of Net Wastewater Plant Investment

The estimated test year value of wastewater facilities consists of net plan in service as of December 31, 2019, the 2020 construction work in progress, and the estimated cost of proposed capital improvements expected to be in service by the end of calendar year 2022. Table S - 12 in Appendix 2 presents the allocation of the wastewater utility's total estimated plant value less contributions on an original cost less depreciation value basis. Total plant investment is estimated to be \$190.7 million as indicated by Line 26 of the Table S - 12.

Plant investment is allocated to cost components on a design basis recognizing the principal purpose governing the design of the facility. The allocation of net plant investment provides the basis for allocation of depreciation expense.

The Owl Creek Lift Station and Force Main serve only the City of Fayetteville, hence the plant investment associated with Owl Creek is allocated directly to the City of Fayetteville customers. Additionally, the outside City customers maintain their own wastewater connections, hence, the plant investment associated with wastewater connections is allocated 100% to the City of Fayetteville customers.

The City has a contract with the City of Farmington stipulating that Farmington will be allocated 8.2% of the costs associated with the West Treatment Plant. Hence, 8.2% of the West Treatment Plant's investment is allocated directly to the City of Farmington customers.

Wastewater collection net plant is allocated 41% to both retail and wholesale (common to all) and 59% to retail only based on the ratio of interceptors (large diameter mains) which is 41% of the collection system.

6.5.3.3 Allocation of Wastewater Facilities Depreciation Expense

As explained in Section 4.5.3.3, depreciation expense is a real part of the cost of operating a utility.

The total estimated depreciation cost (excluding depreciation on contributed facilities) for the wastewater system is \$8,060,600 as presented on Line 26 in Table S - 13 in Appendix 2. The items of expense are allocated to cost components on the same design or cost causative basis used to allocate plant investment. Hence, the depreciation expense associated with Owl Creek Lift Station and Force main and Wastewater connections is directly allocated to the City of Fayetteville customers and 8.2% of the West Treatment Plant's depreciation is allocated directly to the City of Farmington customers.

6.5.3.4 Allocation of Wastewater Utility Operating Expenses

Table S - 14 in Appendix 2 presents the allocation of operation and maintenance expense to functional cost components. Total test year operation and maintenance expense, as shown on Line 14 of this table, amounts to \$16.8 million. Operating expenses are allocated to functional cost components in generally the same manner as plant investment.

6.5.4 Distribution of Wastewater Utility Costs to Customer Classes

The total cost responsibility of each customer class is determined by developing unit costs of service for each cost component and applying the unit costs to the respective service requirements of each class. In accomplishing this, each customer class is allocated the share of volume, strength, and customer costs for which it is responsible.

6.5.4.1 Wastewater Customer Classification

Customer classes consist of residential, non-residential, industrial and wholesale. The residential class includes single family residential, duplex, fourplex, apartment, multi-unit residential and rooming house customers. The non-residential class includes commercial, combination, construction, government, and non-profit customers. Outside City includes Farmington, Greenland, Washington County/Growth Area and Johnson. Wholesale includes the community of Elkins and West Fork.

6.5.4.2 Wastewater Units of Service

Derivation of the responsibility of customer classes for costs of service require that each class be allocated a portion of the volume, strength, and customer costs of service according to their respective service requirements.

The cost of service responsibility for volume costs, which vary with the volume of wastewater contributed to the wastewater system, is distributed to customer classes on that basis. Strength costs are principally related to the function of reducing wastewater suspended solids, and BOD strength loading. Customer costs, which consist of meter related costs, billing, collection and accounting costs, are allocated on the basis of equivalent meters and monthly bills.

The estimated test year service requirements or units of service for the various customer classes are shown in Table S - 15 in Appendix 2. Wastewater collected and treated consists of two elements: (1) sanitary wastewater flow and (2) infiltration/inflow (I/I) of ground water into the sewers. Contributed wastewater flow is that portion of the annual water use and/or other flows from each customer class that are discharged to the wastewater system. Estimates of the contributed volume of each class is generally based upon wastewater billing records. For residential customers, the billed wastewater volume is based on average water consumption for the preceding months of December, January and February. This methodology of using a winter quarter average for quantity of wastewater flows is used to exclude outdoor uses such as irrigation, which do not return water to the collection system. For all other customer classes, the billed wastewater volume is the same as the water volume.

The difference between the measured plant influent and the customer contributed wastewater flow is attributed to Infiltration and Inflow (I/I) volume. Based on discussions with the City staff, 40% of the total treated volume is assumed to be I/I flows. Each customer class should bear its proportionate share of the costs associated with I/I, as it is integral aspect of wastewater system costs. The number of customer connections to a wastewater collection system and the volume of customer flows conveyed both influence the extent of I/I in a system. Recognizing that the major cost responsibility for I/I is allocable on an individual connection basis, two-thirds of the total I/I volume projected is allocated to customer classes based on the number of customers with the remaining one-third allocated on the basis of contributed volume.

Estimated total strength units shown for each customer class are based on an average BOD concentration of 365 milligrams per liter (mg/l) and an average suspended solids concentration of 285 mg/l. I/I strength allowances for BOD and suspended solids are assumed at 25 mg/l and 50 mg/l, respectively. Estimated BOD and suspended solids responsibilities of each customer class presented in Table S - 15 in Appendix 2 are based on the respective indicated average strength concentrations and contributed wastewater and I/I volumes for each class.

Customer billing and accounting costs are distributed to classes on the basis of the number of bills for each customer class (Column 7) in Table S - 15. Customer related meter and service costs are allocated on the basis of the number of equivalent 3/4 inch meters serving each customer class. The number of equivalent meters in each customer class (Column 8) is estimated by relating typical costs for meters and services larger than 3/4 inch in size to the typical cost of a 3/4 inch meter.

6.5.5 Wastewater Utility Customer Class Costs of Service

Unit costs of service are developed by dividing the total cost allocated to each functional cost component by the total applicable units of service. The customer class responsibility for service is obtained by applying unit costs of service to the number of units for which the customer class is responsible.

The wastewater utility has been built with the provision for service to customers outside the City, yet the inside City customers must bear the responsibility of providing system facilities by undertaking the necessary investment. Revenues derived from outside City service should provide a margin of return on capital adequate to induce the citizens of Fayetteville to bear the risks of providing outside City service. To recognize the proprietary interest and responsibility of inside City customers in the system, it is proper to charge outside City customers, in addition to their share of operating expense and depreciation, a reasonable return on their allocated portion of value. A 7.0% (4.0 % for future debt

service plus 3.0% risk component) annual rate of return on the value of wastewater facilities serving outside City customers is recognized for purposes of this study.

Table S - 16 in Appendix 2 shows the development of the unit costs of service applicable to each cost function. Lines 1 through 3 summarize the units of service developed in Table S - 15. Total allocated costs or investment shown on Lines 5, 7, and 9 were previously developed in Table S - 14, Table S - 13 and Table S - 12, respectively.

Total allocated unit costs of service for inside City and outside City customers (Line 18, Line 19, Line 20 and Line 21) are determined by adding the unit costs for net operating expense (Line 6) and depreciation expense (Line 8) to the respective inside and outside City unit costs for return on investment (Lines 11 and 12). These unit costs applied to the respective units of service shown on Lines 1, 2 and 3 determine the allocated total costs of service for inside and outside City customers shown on Lines 18 through 21. In order to determine the allocated costs for each customer class, the costs are allocated to the various customer classes by applying the appropriate unit cost of service to the respective service requirements of each customer class.

Table S - 17 in Appendix 2 shows the resulting allocated cost of service by customer class, revenue under existing rates, and the indicated increase or decrease in revenue required to meet the allocated cost of service.

7.0 Wastewater Rate Design

The principal consideration in establishing wastewater rate schedules is to establish charges to recover costs that are reasonably commensurate with the cost of providing wastewater service.

The revenue requirements and cost of service allocations described in the preceding sections provide the basis for adjusting wastewater rates. The revenue requirements show the need for adjustment and the level of revenue required. This cost of service analysis provides the unit costs of service to be used in the rate design process and gives a basis for determining whether resultant rates will generate revenues which recover costs of service from customer classes in proportion to service required and provide the total level of revenue required.

7.1 Existing Wastewater Rates

The existing schedule of rates for wastewater service became effective on January 1, 2022. For retail customers, these rates include a monthly base charge bill, which varies by meter size. The volume charge varies by customer class. Surcharge rates are based on excess strength of BOD and TSS. The existing wastewater rate structure is described in Section 3.3.2. The existing schedule of base and volume rates for wastewater service is shown in Table S - 3 in Appendix 2.

7.2 Proposed Wastewater Rates

The cost of service study described in preceding sections of this report provides a basis for the design of a schedule of wastewater rates to meet those costs. Proposed wastewater rates have been designed to meet the test year allocated costs of service and are presented in Table S - 18. The proposed rate structure presented in Figure 7 - 1 is similar to the existing structure.

Figure 7 - 1 Proposed Wastewater Rate Structure

Rate Component	Applicable Customer Classes
Base Charge by Meter Size	- Retail Inside City (Residential, Non-Residential and Major Industrial); - Retail Outside City (Residential, Non-Residential and Major Industrial);
- Volume Rate (2-Tier Inclining Block) - Based on winter water usage of December, January and February	Retail Inside City Residential
Volume Rate (Uniform)	- Retail Inside City (Non-Residential and Major Industrial) - Retail Outside City (Residential, Non-Residential and Major Industrial)
Volume Rate (Uniform)	Wholesale

As already explained in Section 5.2, practical rate design should consider multiple factors including previous rate levels, customer bill impact, and magnitude of cost shifts among customer classes.

A comparison of estimated test year revenue under the proposed rates with allocated costs of service for each of the customer classes is shown in Table S - 19 in Appendix 2. This comparison indicates the proposed rates will recover revenues from inside and outside City customer groups reasonably commensurate with the cost of service and practical considerations previously noted.

To better reflect the total effect the proposed rates have on customer bills, a comparison of typical bills under existing rates and the rates proposed to become effective 1, 2022, is shown in Table S - 20.

8.0 Combined Water and Wastewater Utilities

Table C - 1 in Appendix 3 presents the combined operating reserve, capital reserve and impact fee fund balances.

Table C - 2 in Appendix 3 provides a summary of the combined revenue and revenue requirements (financial plan) for the study period.

The revenue under existing rates are not sufficient to meet the obligations of the two utilities. As discussed in Section 4 and Section 6, a series of annual 3% proposed revenue adjustments enable the utilities to meet their operating, capital and reserve obligations. Figure 8-1 presents the projected revenue and revenue requirements through 2026 for the wastewater utility.

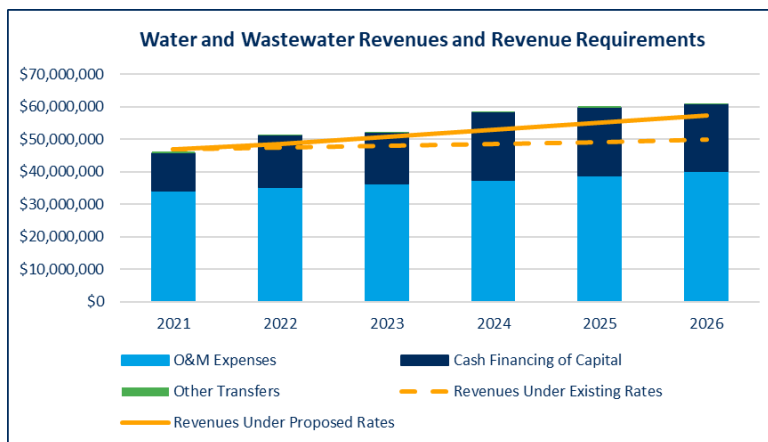


Figure 8-1 - Water and Wastewater Revenues and Revenue Requirements

Table C - 2 in Appendix 3 presents the combined water and wastewater operating reserve, capital reserve and impact fee fund balances. The City has identified the minimum balance requirements for each of the following funds:

O&M Reserve Balance: A cash balance of at least 90 days of the follow's year operating expenses.

Operating Fund Balance: A minimum target of \$200,000.

Capital Fund Balance: A minimum target of \$1,000,000.

Capital Reserve Fund Balance: An amount necessary to fully fund anticipated capital projects.

As shown in Table C - 2, the proposed annual revenue adjustments will allow the utilities on a combined basis to meet the minimum fund balance requirements for all funds through 2026.

A comparison of combined water and wastewater typical bills under existing rates and the rates proposed to become effective 1, 2022, is shown in Table C - 3.

9.0 Disclaimer

This report was prepared for the City of Fayetteville (Client) by Black & Veatch Management Consulting, LLC (Black & Veatch) and is based on information provided by the Client not within the control of Black & Veatch. While it is believed that the information, data and opinions contained herein will be reliable under the conditions and subject to the limitations set forth in this report, Black & Veatch does not guarantee the accuracy thereof. Black & Veatch has assumed that the information provided by others, both verbal and written, is complete and correct. The projections set forth in this report are intended as "forward-looking statements." In formulating these projections, Black & Veatch has made certain assumptions with respect to conditions, events, and circumstances that may occur in the future. While Black & Veatch believes the assumptions are reasonable actual results may differ materially from those projected, as influenced by the conditions, events, and circumstances that occur. As such, Black & Veatch does not take responsibility for the accuracy of data or projections provided by or prepared on behalf of the Client, nor does Black & Veatch have any responsibility for updating this report for events occurring after the date of this report.

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10.0 Appendix 1: Water Tables

Table W - 1 - Water Projected Number of Accounts

Line	Customer Class	Projected						Change
No.		2021	2022	2023	2024	2025	2026	5-Year
Inside City								
1	Residential	35,200	35,800	36,400	37,100	37,700	38,400	3,200
2	Non-Residential	3,500	3,500	3,500	3,500	3,500	3,500	0
3	Industrial	21	21	21	21	21	21	0
4	Irrigation	2,000	2,100	2,100	2,100	2,200	2,200	200
5	Private Fire	713	713	713	713	713	713	0
6	Subtotal	41,434	42,134	42,734	43,434	44,134	44,834	3,400
Outside City								
7	Residential	6,500	6,600	6,800	6,900	7,100	7,200	700
8	Non-Residential	400	400	400	500	500	500	100
9	Industrial	0	0	0	0	0	0	0
10	Irrigation	271	277	285	292	299	307	37
11	Private Fire	14	14	14	14	14	14	0
12	Subtotal	7,185	7,291	7,499	7,706	7,913	8,021	837
Wholesale								
13	Elkins	1	1	1	1	1	1	0
14	Mount Olive	2	2	2	2	2	2	0
15	West Fork	1	1	1	1	1	1	0
16	RDA/WWA	4	4	4	4	4	4	0
17	Subtotal	8	8	8	8	8	8	0
18	Total	48,627	49,433	50,241	51,148	52,055	52,863	4,237
19	% Change	3.26%	1.66%	1.63%	1.81%	1.77%	1.55%	8.71%

Table W - 2 - Water Projected Billed Volume (1,000 Gallons)

Line No.	Customer Class	Projected						Change
		2021	2022	2023	2024	2025	2026	5-Year
		1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.	
	Inside City							
1	Residential	1,896,300	1,769,800	1,800,800	1,832,300	1,864,400	1,897,000	700
2	Non-Residential	678,600	827,100	827,100	827,100	827,100	827,100	148,500
3	Industrial	322,300	401,800	401,800	401,800	401,800	401,800	79,500
4	Irrigation	249,600	244,300	248,600	252,900	257,300	261,800	12,200
5	Subtotal	3,146,800	3,243,000	3,278,300	3,314,100	3,350,600	3,387,700	240,900
	Outside City							
6	Residential	427,900	385,700	394,600	403,800	413,300	423,100	-4,800
7	Non-Residential	51,300	65,600	66,400	67,300	68,300	69,200	17,900
8	Irrigation	28,400	24,400	25,000	25,700	26,400	27,100	-1,300
9	Subtotal	507,600	475,700	486,000	496,800	508,000	519,400	11,800
	Wholesale							
10	Elkins	81,000	75,000	75,000	75,000	75,000	75,000	-6,000
11	Mount Olive	68,900	62,100	62,100	62,100	62,100	62,100	-6,800
12	West Fork	69,200	65,200	65,200	65,200	65,200	65,200	-4,000
13	RDA/WWA	0	0	0	0	0	0	0
14	Subtotal	219,100	202,300	202,300	202,300	202,300	202,300	-16,800
15	Total	3,873,500	3,921,000	3,966,600	4,013,200	4,060,900	4,109,400	235,900
16	% Change	1.26%	1.23%	1.16%	1.17%	1.19%	1.19%	6.09%

Table W - 3 - Water Existing Rates

Existing Water Rates Effective January 1, 2022

Monthly Base Charge					
Meter Size	Inside City	Outside City	Wholesale	Inside City Private Fire	Outside City Private Fire
Inches	\$/month	\$/month	\$/month	\$/month	\$/month
5/8	6.59	7.54	8.31		
3/4	6.59	7.54	8.31		
1	9.14	10.52	11.49	9.75	11.68
1 1/2	15.93	18.31	20.00	10.17	12.10
2	23.20	26.66	29.07	20.33	23.37
3	54.05	62.18	64.38	30.48	35.06
4	89.50	102.93	112.25	60.97	70.11
6	178.99	205.82	212.76	169.34	197.74
8	268.41	308.67	332.91	355.65	409.00
10				609.68	701.11

Volume Charge			
Monthly Water Usage	Inside City	Outside City	Wholesale
1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.

Residential

0 - 2,000 Gallons	3.51	4.04
2,000 - 15,000 Gallons	4.65	5.35
Over 15,000 Gallons	6.59	7.54

Non-Residential

First 300,000 Gallons	3.79	4.38
Over 300,000 Gallons	3.39	3.90

Major Industrial

All Usage	2.96	3.40
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Irrigation

First 300,000 Gallons	5.04	5.80
Over 300,000 Gallons	4.53	5.22

Wholesale

Reduced Peak Demand	2.87
Peak Demand	3.20

Table W - 4 - Water Projected Revenues Under Existing Rates

Line No.	Customer Class	Projected						Change
		2021	2022 (a)	2023	2024	2025	2026	5-Year
		\$	\$	\$	\$	\$	\$	
Inside City								
1	Residential	11,196,100	11,001,700	11,194,200	11,390,100	11,589,500	11,792,300	596,200
2	Non-Residential	2,844,700	3,476,000	3,476,000	3,476,000	3,476,000	3,476,000	631,300
3	Industrial	933,000	1,196,700	1,196,700	1,196,700	1,196,700	1,196,700	263,700
4	Irrigation	1,410,700	1,431,200	1,456,300	1,481,800	1,507,700	1,534,100	123,400
5	Private Fire	967,600	967,600	967,600	967,600	967,600	967,600	0
6	Subtotal	17,352,100	18,073,200	18,290,800	18,512,200	18,737,500	18,966,700	1,614,600
Outside City								
7	Residential	2,743,800	2,614,600	2,674,900	2,737,200	2,801,400	2,867,700	123,900
8	Non-Residential	258,700	328,200	333,000	338,000	343,300	348,800	90,100
9	Industrial	0	0	0	0	0	0	0
10	Irrigation	190,000	173,400	177,900	182,500	187,400	192,400	2,400
11	Private Fire	27,100	27,100	27,100	27,100	27,100	27,100	0
12	Subtotal	3,219,600	3,143,300	3,212,900	3,284,800	3,359,200	3,436,000	216,400
Wholesale								
13	Elkins	226,800	216,200	216,200	216,200	216,200	216,200	-10,600
14	Mount Olive	193,900	179,800	179,800	179,800	179,800	179,800	-14,100
15	West Fork	194,000	188,100	188,100	188,100	188,100	188,100	-5,900
16	RDA/WWA	0	0	0	0	0	0	0
17	Subtotal	614,700	584,100	584,100	584,100	584,100	584,100	-30,600
18	Total	21,186,400	21,800,600	22,087,800	22,381,100	22,680,800	22,986,800	1,800,400
19	% Change	4.28%	2.90%	1.32%	1.33%	1.34%	1.35%	8.50%

(a) Reflects 3.0% revenue increase effective January 1, 2022.

Table W - 5 - Water Projected Other Revenues

Line No.	Description	Projected						Change
		2021	2022	2023	2024	2025	2026	5-Year
		\$	\$	\$	\$	\$	\$	
1	Water Impact Fee Revenue	976,300	976,300	976,300	976,300	976,300	976,300	0
2	Water Sales Not on Computer	300	300	300	300	300	300	0
3	Water Connection Fees	162,000	162,000	162,000	162,000	162,000	162,000	0
4	Rural Water Connection Fees	2,700	2,700	2,700	2,700	2,700	2,700	0
5	Service Charge/Trip Fee - Billed Service	9,500	9,500	9,500	9,500	9,500	9,500	0
6	Tampering Fee - Billed Service	200	200	200	200	200	200	0
7	Penalties	103,700	207,400	207,400	207,400	207,400	207,400	103,700
8	Safe Drinking Water Fee	230,000	233,800	237,800	241,800	245,900	250,200	20,200
9	Total	1,484,700	1,592,200	1,596,200	1,600,200	1,604,300	1,608,600	123,900
10	% Change	-0.99%	7.24%	0.25%	0.25%	0.26%	0.27%	8.35%

Table W - 6 - Water Capital Improvement Program

Line No.	Description	Projected (a)					
		2021	2022	2023	2024	2025	2026
		\$	\$	\$	\$	\$	\$
1	Water System Rehabilitation/Replacement	2,060,000	0	2,185,500	2,251,000	2,318,500	0
2	Water Tank Improvements	1,030,000	1,060,900	1,092,700	1,125,500	1,159,300	2,149,300
3	Water Storage & Pump Station Maintenance	103,000	106,100	109,300	112,600	115,900	0
4	Water Meters	849,800	875,200	901,500	928,500	956,400	0
5	Backflow Prevention Assemblies	51,500	53,000	54,600	56,300	58,000	0
6	W/S Improvements defined by Study (West Water Transmission Line)	618,000	636,500	655,600	675,300	695,600	4,776,200
7	Water Impact Fee Improvements	412,000	424,400	437,100	450,200	463,700	0
8	Utilities Financial Services Improvements	0	11,100	3,300	1,700	8,700	0
9	Water/Sewer Relocations - Bond Projects	174,600	265,200	273,200	281,400	289,800	0
10	Water/Sewer Impact Fee Cost Sharing	0	79,600	82,000	84,400	86,900	0
11	Utilities Technology Improvements	0	228,100	234,900	130,000	10,400	0
12	Water/Sewer Building-Office Improvements	0	26,500	27,300	28,100	29,000	0
13	Water/Sewer Equipment Expansions	0	26,500	27,300	28,100	29,000	0
14	Water & Sewer Rate/Operational Studies	0	10,600	10,900	11,300	11,600	0
15	Phosphorus Standards Management	0	26,500	27,300	28,100	29,000	0
16	Water & Sewer Technology Equipment Replacements	0	0	0	0	0	0
17	Water & Sewer Improvements Defined By Study	0	0	0	0	0	0
18	Huntsville Water Line Replacement (6 -inch upto 8-inch)	776,300	0	0	0	0	0
19	Benson Water Tank	1,030,000	338,200	0	0	0	0
20	East Water Service Improvements - Township	3,290,600	0	0	0	0	0
21	South Garland Ave Waterline Replacement	253,800	0	0	0	0	0
22	East Water Service Improvements CS 3 (Gulley, PS, Goshen Lines)	0	5,304,500	0	0	0	0
23	Ila/Oaks Manor/Persimmon Waterline Replacements	927,000	0	0	0	0	0
24	Western Park Waterline Replacement	309,000	0	0	0	0	0
25	N. College Waterline Replacement - upgrade from 8" to 12"	0	0	2,185,400	0	0	0
26	Total Capital Improvement Program	11,885,600	9,472,900	8,307,900	6,192,500	6,261,800	6,925,500

(a) Capital costs reflect 3% annual inflation starting in 2021.

Table W - 7 - Water Projected O&M Expenses

Line No.	Description	Projected					
		2021	2022	2023	2024	2025	2026
		\$	\$	\$	\$	\$	\$
1	Personal Costs	3,433,300	3,579,400	3,731,900	3,890,900	4,056,700	4,229,700
2	Materials and Supplies	968,000	997,000	1,026,900	1,057,700	1,089,500	1,122,100
3	Services and Charges	9,994,400	10,294,200	10,603,100	10,921,100	11,248,800	11,586,200
4	Motorpool	837,000	862,100	888,000	914,600	942,100	970,300
5	Cost Allocation	631,100	650,000	669,500	689,600	710,300	731,600
6	Maintenance	85,800	88,400	91,100	93,800	96,600	99,500
7	Total	15,949,600	16,471,100	17,010,500	17,567,700	18,144,000	18,739,400
8	% Change	1.91%	3.27%	3.27%	3.28%	3.28%	3.28%

Table W - 8 - Capital Program Financing

Line No.	Description	Year Ending December 31,					
		2021	2022	2023	2024	2025	2026
		\$	\$	\$	\$	\$	\$
Sources of Funds							
1	Funds Available at Beginning of Year	500,200	506,800	501,700	501,700	503,600	508,700
2	Cash Financing of Capital Projects	5,460,000	9,050,000	6,860,000	6,110,000	6,180,000	6,920,000
3	Transfer from Impact Fee Fund	6,432,200	417,800	1,447,900	84,400	86,900	0
4	Subtotal	12,392,400	9,974,600	8,809,600	6,696,100	6,770,500	7,428,700
Application of Funds							
5	Major Capital Improvements	11,885,600	9,472,900	8,307,900	6,192,500	6,261,800	6,925,500
6	Subtotal	11,885,600	9,472,900	8,307,900	6,192,500	6,261,800	6,925,500
7	End of Year Balance	506,800	501,700	501,700	503,600	508,700	503,200
8	Capital Reserve EOY Balance - Cumulative	12,915,000	8,453,000	6,559,000	5,789,000	5,359,000	4,634,000

Table W - 9 - Water Operating Cash Flow

Line No.	Description	Year Ending December 31,					
		2021	2022	2023	2024	2025	2026
		\$	\$	\$	\$	\$	\$
	Revenues						
1	Revenue Under Existing Rates	21,186,600	21,800,700	22,087,800	22,381,200	22,680,800	22,986,900
	Indicated Revenue Increases						
2	0 % Increase Effective January 1, 2022		0	0	0	0	0
3	3 % Increase Effective January 1, 2023		0	607,400	671,400	680,400	689,600
4	3 % Increase Effective January 1, 2024		0	0	633,900	700,800	710,300
5	3 % Increase Effective January 1, 2025		0	0	0	661,700	731,600
6	3 % Increase Effective January 1, 2026		0	0	0	0	690,800
7	Total Revenue from Rates	21,186,600	21,800,700	22,695,200	23,686,500	24,723,700	25,809,200
8	Other Revenues (a)	533,100	641,500	647,100	653,100	659,300	665,900
9	Total Revenue	21,719,700	22,442,200	23,342,300	24,339,600	25,383,000	26,475,100
	Expenses						
10	Operating Expenses	15,949,600	16,471,100	17,010,500	17,567,700	18,144,000	18,739,400
11	Bad Debt	105,900	109,000	113,500	118,400	123,600	129,000
12	PILOT	900,400	926,500	964,500	1,006,700	1,050,800	1,096,900
13	Safe Drinking Water Fee	230,000	233,800	237,800	241,800	245,900	250,200
14	Debt Service	0	0	0	0	0	0
15	Total Expenses	17,185,900	17,740,400	18,326,300	18,934,600	19,564,300	20,215,500
	Transfers						
16	Transfer to Shop Fund	33,000	0	0	0	0	0
17	Transfer to Operating Reserve	128,600	133,000	137,400	142,100	146,800	151,800
18	Cash Financing of Capital	5,460,000	9,050,000	6,860,000	6,110,000	6,180,000	6,920,000
19	Transfer to/from Capital Reserve	-1,093,000	-4,476,000	-1,980,500	-850,000	-510,000	-810,000
20	Total Transfers	4,528,600	4,707,000	5,016,900	5,402,100	5,816,800	6,261,800
	Fund Balance						
21	Beginning Balance	100,900	106,100	100,900	100,000	102,900	104,800
22	Annual Operating Balance	5,200	-5,200	-900	2,900	1,900	-2,200
23	Ending Fund Balance	106,100	100,900	100,000	102,900	104,800	102,600
	Performance Metrics						
24	Debt Service Coverage	NA	NA	NA	NA	NA	NA
25	O&M Reserve Balance (Days) (b)	90	90	90	90	90	90

(a) Includes interest income on operating fund balance.

(b) Minimum requirement is 90 days of following year's Operating Expenses.

Table W - 10 - Water Fund Balances

Line No.	Description	Year Ending December 31,					
		2021	2022	2023	2024	2025	2026
		\$	\$	\$	\$	\$	\$
Operating Funds							
1	O&M Reserve Balance (a)	4,061,400	4,194,400	4,331,800	4,473,900	4,620,700	4,772,500
2	Operating Fund Balance (b)	106,100	100,900	100,000	102,900	104,800	102,600
3	Total (e)	4,167,500	4,295,300	4,431,800	4,576,800	4,725,500	4,875,100
Capital Funds							
4	Capital Fund Balance (c)	506,800	501,700	501,700	503,600	508,700	503,200
5	Capital Reserve Fund Balance (d)	12,915,000	8,439,000	6,458,500	5,608,500	5,098,500	4,288,500
6	Total (e)	13,421,800	8,940,700	6,960,200	6,112,100	5,607,200	4,791,700
7	Impact Fee Fund Balance (e)	22,800	581,300	109,700	1,001,600	1,891,000	2,867,300

(a) Calculated as 90 days of following year's Operating Expenses.

(b)

Target minimum balance is \$100,000 to account for any adjustments that may be needed to the O&M balance at the end of the year.

(c) Target minimum balance is \$500,000.

(d) Does not include expenses associated with facilities master plan to be completed in FY 2022

(e) All balances are cumulative.

Table W - 11 - Water 2022 Cost of Service

Line No.	Description	Operating Expense	Capital Cost	Total Cost
		\$	\$	\$
Statement of Net Revenue Requirements (Cash Basis)				
	Revenue Requirements			
1	O&M Expenses	16,471,100		16,471,100
2	Bad Debt Expense	109,000		109,000
3	PILOT	926,500		926,500
4	Debt Service	0		0
	Other Expenditures & Transfers:			
	Transfer to Shop Fund (Capital Outlay)			
5	Transfer to Operating Reserve	133,000		133,000
6	Cash Funding of Capital Projects		9,050,000	9,050,000
7	Transfer to Capital Reserve		-4,476,000	-4,476,000
8	Subtotal	17,639,600	4,574,000	22,213,600
	Less Revenue Requirements Met from Other Sources			
9	Other Revenues	382,100		382,100
10	Interest Earned	25,600		25,600
11	Net Balance Available		5,200	5,200
12	Full Year Rate Adjustment			
13	Subtotal	407,700	5,200	412,900
14	Net Revenue Requirements to be Recovered by Rates	17,231,900	4,568,800	21,800,700
Restatement of Net Cost of Service (Utility Basis)				
15	O&M Expenses	17,231,900		17,231,900
16	Depreciation		2,672,900	2,672,900
17	Return		1,895,900	1,895,900
18	Net Cost of Service	17,231,900	4,568,800	21,800,700

Table W - 12 - Water 2022 Allocation of Net Plant Investment to Functional Cost Components

Line No.	Description	Total	Common to All			Retail Only			Customers		
			Base	Extra Capacity		Base	Extra Capacity		Meters and Services	Billing &	Fire
		\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Net Plant Investment:											
1	Water Land and Land Rights	2,191,756	1,043,693	1,148,063							
2	Water Supply	6,819,846	3,247,546	3,572,300							
3	Water Storage and Pumping	4,921,351				2,343,501	2,577,851				
4	Water Transmission	23,254,954	11,073,788	12,181,167							
5	Water Distribution	44,985,690				16,478,275	9,063,051	5,190,657	14,253,708		
6	Water Meters	2,811,340							2,811,340		
7	Fire Hydrants	7,535,573									7,535,573
8	Water General System	3,714,721	616,910	678,600		755,699	467,385	208,406	685,166		302,555
9	Total Net Plant Investment	96,235,232	15,981,936	17,580,130	0	19,577,474	12,108,287	5,399,063	17,750,214	0	7,838,128

Table W - 13 - Water 2022 Allocation of Net Annual Depreciation to Functional Cost Components

Line No.	Description	Total	Common to All			Retail Only			Customers		
			Base	Extra Capacity		Base	Extra Capacity		Meters and Services	Billing &	Fire
		\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Net Depreciation Expense:											
1	Water Land and Land Rights										
2	Water Supply	277,295	132,045	145,250							
3	Water Storage and Pumping	186,149				88,642	97,507				
4	Water Transmission	653,961	311,410	342,551							
5	Water Distribution	1,087,773				398,452	219,148	125,512	344,661		
6	Water Meters	154,018							154,018		
7	Fire Hydrants	215,879									215,879
8	Water General System	97,807	16,843	18,528		18,501	12,027	4,767	18,941		8,200
9	Total Net Depreciation Expense	2,672,882	460,299	506,328	0	505,595	328,682	130,280	517,620	0	224,078

Table W - 14 - Water 2022 Allocation of O&M Expenses to Functional Cost Components

Line No.	Description	Allocation Basis	Total	Common to All			Retail Only			Customers		Fire Protection	
				Base	Max. Day	Max. Hour	Base	Max. Day	Max. Hour	Meters and Services	Billing & Collection	Public	Private
			\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
1	Water Purchased	Max Day	9,331,800	4,443,714	4,888,086								
2	Water Storage and Pumping	Max Hour	259,914				95,207	104,727	59,980				
3	Water Distribution (a)	Max Hour	3,000,220				971,472	1,208,880	692,358			97,507	30,002
4	Meter Services (b)	Direct	968,983							968,983			
5	Customer Billing (c)	Direct	1,012,574								1,012,574		
6	All Other Cost	Proportion of All	3,066,109	934,911	1,028,402		224,418	276,369	158,284	203,864	213,035	20,514	6,312
7	Subtotal		17,639,600	5,378,625	5,916,488	0	1,291,097	1,589,976	910,623	1,172,847	1,225,609	118,022	36,314
Less:													
8	Water Connection Fees (d)		164,700							164,700			
9	Other Income Sources		243,000	90,252	81,504		17,786	21,903	12,545		16,884	1,626	500
10	Subtotal		407,700	90,252	81,504		17,786	21,903	12,545	164,700	16,884	1,626	500
11	Net O&M Expenses		17,231,900	5,288,373	5,834,983		1,273,311	1,568,073	898,078	1,008,147	1,208,725	116,396	35,814

(a) 3.25% of 2020 water repair costs was associated with hydrants.

(b) Includes costs for Meter Reading and Meter Maintenance and Backflow prevention

(c) Includes costs under Utilities Financial Services

(d) Includes revenues from Water Connection Fees and Rural Water Connection Fees

Table W - 15 - Water 2022 Estimated Units of Service

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Line No.	Description	Consumption		Maximum Day			Maximum Hour			Customer		Direct Fire protection	
		Annual	Avg. Day	Capacity Factor	Total	Extra	Capacity Factor	Total	Extra	Eq. Meters	Billing/ Collection	Public	Private
		1,000 gal.	1,000 gal. (1)/365		1,000 gal. (2) x (3)	1,000 gal. (4) - (2)		1,000 gal. (2) x (6)	1,000 gal. (7) - (4)	Equiv. Meters	Bills	Equiv. Hydrants	Equiv. Hydrants
Inside City													
1	Residential	1,769,829	4,849	250%	12,122	7,273	370%	17,941	5,819	34,939	429,673		
2	Non-Residential	827,079	2,266	240%	5,438	3,172	355%	8,044	2,606	6,761	41,712		
3	Industrial	401,767	1,101	200%	2,201	1,101	295%	3,247	1,046	261	252		
4	Irrigation	244,282	669	240%	1,606	937	355%	2,376	770	3,141	24,897		
5	Subtotal	3,242,957	8,885		21,368	12,483		31,608	10,240	45,102	496,534		
Fire Protection													
6	Public				4,201	4,201		10,083	5,882			4,035	
7	Private				491	491		1,179	688				472
8	Subtotal	3,242,957	8,885		26,060	17,175		42,870	16,810	45,102	496,534	4,035	472
Outside City													
Farmington													
9	Residential	83,821	230	250%	574	344	370%	850	276	1,762	23,207		
10	Non-Residential	17,003	47	240%	112	65	355%	165	54	245	2,315		
11	Industrial			200%			295%						
12	Irrigation	1,336	4	240%	9	5	355%	13	4	46	472		
13	Subtotal	102,160	280		695	415		1,028	333	2,053	25,995		
Greenland													
14	Residential	19,818	54	250%	136	81	370%	201	65	458	5,676		
15	Non-Residential	4,298	12	240%	28	16	355%	42	14	59	588		
16	Industrial			200%			295%						
17	Irrigation	1,230	3	240%	8	5	355%	12	4	20	96		
18	Subtotal	25,345	69		172	103		255	83	537	6,360		
Washington County/Growth													
19	Residential	194,707	533	250%	1,334	800	370%	1,974	640	2,618	33,792		
20	Non-Residential	24,123	66	240%	159	93	355%	235	76	109	1,368		
21	Industrial			200%			295%						
22	Irrigation	14,323	39	240%	94	55	355%	139	45	188	1,851		
23	Subtotal	233,153	639		1,586	948		2,348	761	2,915	37,012		
Johnson													
24	Residential	6,718	18	250%	46	28	370%	68	22	158	2,064		
28	Non-Residential	8,320	23	240%	55	32	355%	81	26	35	240		
29	Industrial			200%			295%						
30	Irrigation	77	0	240%	1	0	355%	1	0	3	24		
31	Subtotal	15,115	41		101	60		150	49	196	2,328		
Goshen/White River													
32	Residential	80,631	221	250%	552	331	370%	817	265	1,054	14,712		
33	Non-Residential	11,837	32	240%	78	45	355%	115	37	52	768		
34	Industrial			200%			295%						
35	Irrigation	7,411	20	240%	49	28	355%	72	23	86	886		
36	Subtotal	99,879	274		679	405		1,005	326	1,192	16,366		
Fire Protection													
37	Public				696	696		1,669	973			668	
38	Private				12	12		29	17				12
39	Subtotal	475,651	1,303		3,941	2,638		6,483	2,541	6,892	88,060	668	12
40	Total Retail	3,718,609	10,188		30,001	19,813		49,353	19,351	51,994	584,594		
Wholesale													
41	Elkins	75,031	206	240%	493	288	355%	730	236	23	12		
42	Mount Olive	62,062	170	240%	408	238	355%	604	196	38	24		
43	West Fork	65,226	179	240%	429	250	355%	634	206	23	12		
44	RDA/WWA			240%			355%				48		
45	Subtotal	202,319	554		1,330	776		1,968	637	83	96		
46	Subtotal (Inside City)	3,242,957	8,885		26,060	17,175		42,870	16,810	45,102	496,534	4,035	472
47	Subtotal (Outside City)	475,651	1,303		3,941	2,638		6,483	2,541	6,892	88,060	668	12
48	Subtotal (Wholesale)	202,319	554		1,330	776		1,968	637	83	96		
49	Total System	3,920,928	10,742		31,332	20,589		51,320	19,989	52,077	584,690	4,703	483

Table W - 16 - Water 2022 Unit Cost of Service

Line No.	Description	Total	Common to All Customers			Common to Retail Customers			Customer		Direct Fire protection	
			Base	Extra Capacity		Base	Extra Capacity		Eq. Meters	Billing/Collectio	Public	Private
				Max. Day	Max. Hour		Max. Day	Max. Hour				
		\$	1,000 gal.	1,000 gpd.	1,000 gpd.	1,000 gal.	1,000 gpd.	1,000 gpd.	Equiv. Meters	Bills	Hydrants	Hydrants
Units of Service												
1	Inside City		3,242,957	17,175	16,810	3,242,957	17,175	16,810	45,102	496,534	4,035	472
2	Outside City		677,970	3,414	3,179	475,651	2,638	2,541	6,975	88,156	668	12
3	Total System		3,920,928	20,589	19,989	3,718,609	19,813	19,351	52,077	584,690	4,703	483
Costs of Service												
Net Operating Costs												
4	Total - \$	17,231,900	5,288,373	5,834,983	0	1,273,311	1,568,073	898,078	1,008,147	1,208,725	116,396	35,814
5	Unit Cost - \$/unit		1.35	283.40	0.00	0.34	79.14	46.41	19.36	2.07	24.75	74.09
Depreciation Expense												
6	Total - \$	2,672,882	460,299	506,328	0	505,595	328,682	130,280	517,620		224,078	
7	Unit Cost - \$/unit		0.12	24.59	0.00	0.14	16.59	6.73	9.94		47.65	
Net Plant Investment												
8	Total - \$	96,235,232	15,981,936	17,580,130	0	19,577,474	12,108,287	5,399,063	17,750,214		7,838,128	
9	Unit Cost - \$/unit		4.08	853.84	0.00	5.26	611.12	279.00	340.84		1,666.62	
Return on Investment												
10	Inside City, Unit Return - \$/unit		0.05	9.51	0.00	0.06	6.81	3.11	3.80		18.57	
11	Outside City, Unit Return - \$/Unit		0.29	59.77	0.00	0.37	42.78	19.53	23.86		116.66	
Total Return												
12	Inside City - \$	916,284	147,274	163,391	0	190,223	116,943	52,254	171,276		74,925	
13	Outside City - \$	979,634	193,441	204,057	0	175,292	112,852	49,635	166,424		77,931	
14	Total Return - \$	1,895,918	340,715	367,448	0	365,515	229,795	101,889	337,700		152,856	
Total Unit Cost of Service												
15	Inside City Unit Cost - \$/unit		1.51	317.50	0.00	0.54	102.54	56.25	33.10	2.07	90.96	74.09
16	Outside City Unit Cost - \$/unit		1.75	367.76	0.00	0.85	138.51	72.67	53.16	2.07	189.06	74.09
17	Inside City - Cost of Service - \$	17,724,585	4,901,939	5,453,197	0	1,741,586	1,761,152	945,554	1,492,679	1,026,480	367,039	34,959
18	Outside City- Cost of Service - \$	4,076,115	1,187,448	1,255,563	0	402,834	365,399	184,692	370,787	182,245	126,291	855
19	Total Cost of Service - \$	21,800,700	6,089,387	6,708,760	0	2,144,421	2,126,550	1,130,246	1,863,466	1,208,725	493,330	35,814

Table W - 17 - Water 2022 Cost of Service by Customer Class

	(1)	(2)	(3)	(4)	(5)	(6)
Line No.	Description	Allocated Cost of Service	Allocation Public Fire	Adjusted Cost of Service	Existing Revenues	Indicated Revenue Increase
	\$	\$	\$	\$	\$	
Inside City						
1	Residential	9,052,600	1,487,900	10,540,500	11,001,700	-4.2%
2	Non-Residential	3,483,400	572,500	4,056,000	3,476,000	16.7%
3	Industrial	1,353,400	222,400	1,575,800	1,196,700	31.7%
4	Irrigation	1,092,700	179,600	1,272,300	1,431,200	-11.1%
Fire Protection						
5	Public	2,462,500	-2,462,500			
6	Private	279,900		279,900	967,600	-71.1%
7	Subtotal	17,724,500	-100	17,724,500	18,073,200	-1.9%
Outside City						
8	Residential	2,382,600	455,400	2,838,000	2,614,600	8.5%
9	Non-Residential	350,300	66,900	417,200	328,200	27.1%
10	Industrial					0.0%
11	Irrigation	141,400	27,000	168,400	173,400	-2.9%
Fire Protection						
12	Public	549,400	-549,400			
13	Private	8,200		8,200	27,100	-69.7%
14	Subtotal	3,431,900	-100	3,431,800	3,143,300	9.2%
Wholesale						
15	Elkins	238,500		238,500	216,200	10.3%
16	Mount Olive	198,300		198,300	179,800	10.3%
17	West Fork	207,500		207,500	188,100	10.3%
18	RDA/WWA	0		0	0	0.0%
19	Subtotal Wholesale	644,300	0	644,300	584,100	10.3%
20	Total Retail	21,156,400	-200	21,156,300	21,216,500	-0.3%
21	Total Wholesale	644,300	0	644,300	584,100	10.3%
22	Total	21,800,700	-200	21,800,600	21,800,600	0.0%

Table W - 18 - Water Proposed 2022 Rates
Existing Water Rates Effective January 1, 2022

Monthly Base Charge					
Meter Size	Inside City	Outside City	Wholesale	Inside City Private Fire	Outside City Private Fire
Inches	\$/month	\$/month	\$/month	\$/month	\$/month
5/8	6.59	7.54	8.31		
3/4	6.59	7.54	8.31		
1	9.14	10.52	11.49	9.75	11.68
1 1/2	15.93	18.31	20.00	10.17	12.10
2	23.20	26.66	29.07	20.33	23.37
3	54.05	62.18	64.38	30.48	35.06
4	89.50	102.93	112.25	60.97	70.11
6	178.99	205.82	212.76	169.34	197.74
8	268.41	308.67	332.91	355.65	409.00
10				609.68	701.11

Volume Charge			
Monthly Water Usage	Inside City	Outside City	Wholesale
1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.

Residential

0 - 2,000 Gallons	3.51	4.04	
2,000 - 15,000 Gallons	4.65	5.35	
Over 15,000 Gallons	6.59	7.54	

Non-Residential

First 300,000 Gallons	3.79	4.38	
Over 300,000 Gallons	3.39	3.90	

Major Industrial

All Usage	2.96	3.40	
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Irrigation

First 300,000 Gallons	5.04	5.80	
Over 300,000 Gallons	4.53	5.22	

Wholesale

Reduced Peak Demand			2.87
Peak Demand			3.20

Proposed Water Rates Effective August 1, 2022

Monthly Base Charge					
Meter Size	Inside City	Outside City	Wholesale	Inside City Private Fire	Outside City Private Fire
Inches	\$/month	\$/month	\$/month	\$/month	\$/month
5/8	6.59	7.54	8.31		
3/4	6.59	7.54	8.31		
1	9.14	12.26	12.26	9.75	11.68
1 1/2	15.93	24.22	24.22	10.17	12.10
2	23.20	33.52	33.52	20.33	23.37
3	54.05	69.84	69.84	30.48	35.06
4	89.50	102.93	112.25	60.97	70.11
6	178.99	205.82	212.76	169.34	197.74
8	268.41	308.67	332.91	355.65	409.00
10				609.68	701.11

Volume Charge			
Monthly Water Usage	Inside City	Outside City	Wholesale
1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.

Residential

0 - 2,000 Gallons	3.30	4.47	
2,000 - 15,000 Gallons	4.37	5.91	
Over 15,000 Gallons	6.20	8.38	

Non-Residential

First 300,000 Gallons	3.93	5.05	
Over 300,000 Gallons	3.93	5.05	

Major Industrial

All Usage	3.14	3.49	
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Irrigation

First 300,000 Gallons	4.29	5.43	
Over 300,000 Gallons	4.29	5.43	

Wholesale

Reduced Peak Demand			3.16
Peak Demand			3.16

Table W - 19 - Water 2022 Cost of Service Under Proposed Rates

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Line No.	Description	Adjusted Cost of Service	Revenue Under Existing Rates	Indicated Revenue Increase	Revenues Under Proposed Rates	Proposed Revenue as % Cost of Service	Indicated Revenue Increase	Indicated Revenue Increase
		\$	\$		\$			\$
Inside City								
1	Residential	10,540,500	11,001,700	-4.2%	10,541,600	100.0%	-4.2%	-460,100
2	Non-Residential	4,056,000	3,476,000	16.7%	3,687,200	90.9%	6.1%	211,200
3	Industrial	1,575,800	1,196,700	31.7%	1,272,200	80.7%	6.3%	75,500
4	Irrigation	1,272,300	1,431,200	-11.1%	1,272,500	100.0%	-11.1%	-158,700
5	Subtotal	17,444,600	17,105,600	2.0%	16,773,500	96.2%	-1.9%	-332,100
Outside City								
6	Residential	2,838,000	2,614,600	8.5%	2,838,400	100.0%	8.6%	223,800
7	Non-Residential	417,200	328,200	27.1%	381,900	91.5%	16.4%	53,700
8	Irrigation	168,400	173,400	-2.9%	168,500	100.1%	-2.8%	-4,900
9	Subtotal	3,423,600	3,116,200	9.9%	3,388,800	99.0%	8.7%	272,600
Private Fire								
10	Inside City	279,900	967,600	-71.1%	967,600	345.7%	0.0%	0
11	Outside City	8,200	27,100	-69.7%	27,100	330.5%	0.0%	0
12	Subtotal	288,100	994,700	-71.0%	994,700	345.3%	0.0%	0
Wholesale								
13	Elkins	238,500	216,200	10.3%	238,400	100.0%	10.3%	22,200
14	Mount Olive	198,300	179,800	10.3%	198,300	100.0%	10.3%	18,500
15	West Fork	207,500	188,100	10.3%	207,500	100.0%	10.3%	19,400
16	RDA/WWA	0	0		0	0.0%	0.0%	
17	Subtotal	644,300	584,100	10.3%	644,200	100.0%	10.3%	60,100
18	Total	21,800,600	21,800,600	0.0%	21,801,200	100.0%	0.0%	600

Table W - 20 - Water 2022 Bill Impact

Line No.	Meter Size	Monthly Usage	Inside City				Outside City			
			Existing Rates	Proposed Rates	Increase / Decrease	Increase / Decrease	Existing Rates	Proposed Rates	Increase / Decrease	Increase / Decrease
	Inches	1,000 gal.	\$	\$	\$		\$	\$	\$	
Residential										
1	3/4	0.5	9.91	8.24	-1.67	-16.9%	11.36	9.78	-1.59	-14.0%
2	3/4	2	13.42	13.19	-0.23	-1.7%	15.40	16.48	1.08	7.0%
3	3/4	4	22.72	21.93	-0.79	-3.5%	26.10	28.30	2.20	8.4%
4	3/4	8	41.32	39.41	-1.91	-4.6%	47.50	51.94	4.44	9.3%
5	3/4	10	50.62	48.15	-2.47	-4.9%	58.20	63.76	5.56	9.6%
6	3/4	15	73.87	70.00	-3.87	-5.2%	84.95	93.31	8.36	9.8%
Non-Residential										
7	3/4	10	44.30	45.89	1.59	3.6%	51.12	58.04	6.92	13.5%
8	3/4	20	82.20	85.19	2.99	3.6%	94.92	108.54	13.62	14.3%
9	1	50	198.37	205.64	7.27	3.7%	229.21	264.76	35.55	15.5%
10	1	100	387.87	402.14	14.27	3.7%	448.21	517.26	69.05	15.4%
11	1 1/2	50	204.97	212.43	7.46	3.6%	236.78	276.72	39.94	16.9%
12	1 1/2	100	394.47	408.93	14.46	3.7%	455.78	529.22	73.44	16.1%
13	2	100	401.52	416.20	14.68	3.7%	463.88	538.52	74.64	16.1%
14	2	500	1,837.52	1,988.20	150.68	8.2%	2,119.88	2,558.52	438.64	20.7%
Industrial										
15	2	100	318.52	337.20	18.68	5.9%	362.52	382.52	20.00	5.5%
16	2	1,000	2,982.52	3,163.20	180.68	6.1%	3,422.52	3,523.52	101.00	3.0%
17	4	500	1,566.89	1,659.50	92.61	5.9%	1,786.89	1,847.93	61.04	3.4%
18	4	1,500	4,526.89	4,799.50	272.61	6.0%	5,186.89	5,337.93	151.04	2.9%
19	6	2,500	7,573.78	8,028.99	455.21	6.0%	8,673.78	8,930.82	257.04	3.0%
20	6	5,000	14,973.78	15,878.99	905.21	6.0%	17,173.78	17,655.82	482.04	2.8%
21	6	10,000	29,773.78	31,578.99	1,805.21	6.1%	34,173.78	35,105.82	932.04	2.7%

11.0 Appendix 2: Wastewater Tables

Table S - 1 - Wastewater Projected Accounts

Line No.	Customer Class	Projected						Change
		2021	2022	2023	2024	2025	2026	5-Year
Inside City								
1	Residential	34,600	35,200	35,800	36,400	37,000	37,700	3,100
2	Non-Residential	2,900	2,900	2,900	2,900	2,900	2,900	0
3	Industrial	21	21	21	21	21	21	0
4	Subtotal	37,521	38,121	38,721	39,321	39,921	40,621	3,100
Outside City								
5	Residential	2,400	2,400	2,500	2,500	2,500	2,500	100
6	Non-Residential	184	184	184	184	184	184	0
7	Industrial	0	0	0	0	0	0	0
8	Subtotal	2,584	2,584	2,684	2,684	2,684	2,684	100
Wholesale								
9	Elkins	2	2	2	2	2	2	0
10	West Fork	1	1	1	1	1	1	0
11	Subtotal	2	2	2	2	2	2	0
11	Total	40,107	40,707	41,407	42,007	42,607	43,307	3,200
12	% Change	1.52%	1.50%	1.72%	1.45%	1.43%	1.64%	7.98%

Table S - 2 - Wastewater Projected Billed Volume (1,000 Gallons)

Line No.	Customer Class	Projected						Change
		2021	2022	2023	2024	2025	2026	5-Year
		1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.	
Inside City								
1	Residential	1,861,300	1,741,200	1,771,800	1,802,800	1,834,400	1,866,500	5,200
2	Non-Residential	626,900	698,700	698,600	698,600	698,600	698,600	71,700
3	Industrial	318,500	396,700	396,700	396,700	396,700	396,700	78,200
4	Subtotal	2,806,700	2,836,600	2,867,100	2,898,100	2,929,700	2,961,800	155,100
Outside City								
5	Residential	94,500	97,400	98,700	100,100	101,400	102,800	8,300
6	Non-Residential	15,300	15,000	15,000	15,000	15,000	15,000	-300
7	Industrial	0	0	0	0	0	0	0
8	Subtotal	109,800	112,400	113,700	115,100	116,400	117,800	8,000
Wholesale								
8	Elkins	81,000	81,000	81,000	81,000	81,000	81,000	0
9	West Fork	45,600	45,600	45,600	45,600	45,600	45,600	0
10	Subtotal	126,600	126,600	126,600	126,600	126,600	126,600	0
10	Total	3,043,100	3,075,600	3,107,400	3,139,800	3,172,700	3,206,200	163,100
11	% Change	2.30%	1.07%	1.03%	1.04%	1.05%	1.06%	5.36%

Table S - 3 - Wastewater Existing Charges

Existing Wastewater Rates Effective January 1, 2022

Monthly Base Charge			
Meter Size	Inside City	Outside City	Farmington
Inches	\$/month	\$/month	\$/month
5/8	18.28	18.28	16.74
3/4	18.28	18.28	16.74
1	23.74	33.92	31.28
1 1/2	38.77	60.37	55.50
2	55.43	79.73	73.45
3	128.73	184.24	169.29
4	212.13	303.44	278.93
6	420.39	601.46	553.70
8	628.73	899.76	826.81

Volume Charge			
Monthly Water Usage	Inside City	Outside City	Farmington
1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.

Residential

First 2,000 Gallons	4.35		
> 2,000 Gallons	5.80		
All Usage		8.18	7.52

Non-Residential

All Usage	4.40	8.18	7.52
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Major Industrial

All Usage	4.71	8.18	7.52
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Wholesale

85% of metered water usage		5.19	
Above 85% of metered water		2.71	

Surcharge

BOD - \$/lb for strength in excess of 300 ppm		0.4352	
TSS - \$/lb for strength in excess of 300 ppm		0.3056	

Table S - 4 - Wastewater Projected Revenues at Existing Rates

Line No.	Customer Class	Projected						Change
		2021	2022 (a)	2023	2024	2025	2026	5-Year
		\$	\$	\$	\$	\$	\$	
Inside City								
1	Residential	16,696,700	16,719,800	17,013,000	17,310,700	17,613,700	17,921,900	1,225,200
2	Non-Residential	3,505,200	3,926,200	3,926,100	3,926,100	3,926,100	3,926,100	420,900
3	Industrial	1,477,500	1,890,100	1,890,100	1,890,100	1,890,100	1,890,100	412,600
4	Subtotal	21,679,400	22,536,100	22,829,200	23,126,900	23,429,900	23,738,100	2,058,700
Outside City								
5	Residential	1,177,400	1,242,000	1,258,300	1,274,800	1,291,700	1,308,800	131,400
6	Non-Residential	158,100	160,400	160,400	160,400	160,400	160,400	2,300
7	Industrial	0	0	0	0	0	0	0
8	Subtotal	1,335,500	1,402,400	1,418,700	1,435,200	1,452,100	1,469,200	133,700
Wholesale								
9	Elkins	407,300	419,500	419,500	419,500	419,500	419,500	12,200
10	West Fork	229,400	236,200	236,200	236,200	236,200	236,200	6,800
11	Subtotal	636,700	655,700	655,700	655,700	655,700	655,700	19,000
12	Surcharge	810,300	834,600	834,600	834,600	834,600	834,600	24,300
13	Total	24,461,900	25,428,800	25,738,200	26,052,400	26,372,300	26,697,600	2,235,700
14	% Change	4.90%	3.95%	1.22%	1.22%	1.23%	1.23%	9.14%

(a) Reflects 3.0% revenue increase effective January 1, 2022.

Table S - 5 - Wastewater Projected Other Revenues

Line No.	Description	Projected						Change
		2021	2022	2023	2024	2025	2026	5-Year
		\$	\$	\$	\$	\$	\$	
1	Sewer Impact Fee Rev	743,900	743,900	743,900	743,900	743,900	743,900	0
2	Sewer Sales Not on Cc	11,800	11,800	11,800	11,800	11,800	11,800	0
3	Sewer Connection Fee	47,900	47,900	47,900	47,900	47,900	47,900	0
4	WWTP Hay Sales	134,800	134,800	134,800	134,800	134,800	134,800	0
5	WWTP Biosolids/Fertil	54,900	54,900	54,900	54,900	54,900	54,900	0
6	WWTP Water Treatme	180,800	180,800	180,800	180,800	180,800	180,800	0
7	Penalties	123,000	246,100	246,100	246,100	246,100	246,100	123,100
8	Total	1,297,100	1,420,200	1,420,200	1,420,200	1,420,200	1,420,200	123,100
9	% Change	-1.52%	9.49%	0.00%	0.00%	0.00%	0.00%	9.49%

Table S - 6 - Wastewater Capital Improvement Program

Line No.	Description	Projected (a)					
		2021	2022	2023	2024	2025	2026
		\$	\$	\$	\$	\$	\$
1	Sanitary Sewer Rehabilitation	2,956,100	3,044,800	3,136,100	3,230,200	3,327,100	0
2	Plant Pumps and Equipment - W.W.T.P.	515,000	530,500	546,400	562,800	579,600	0
3	W.W.T.P. Building Improvements	1,699,500	1,750,500	163,900	168,800	173,900	0
4	Upgrade/Replace Lift Stations - W.W.T.P.	309,000	318,300	327,800	337,700	347,800	0
5	Lake Sequoyah Sediment Removal/Dredging	515,000	530,500	546,400	562,800	579,600	0
6	Wastewater Treatment/Water Quality Improvements	103,000	106,100	109,300	112,600	115,900	0
7	Wastewater Impact Fee Improvements	309,000	318,300	327,800	337,700	347,800	0
8	Utilities Financial Services Improvements	0	11,100	3,300	1,700	8,700	0
9	Water/Sewer Relocations - Bond Projects	174,600	265,200	273,200	281,400	289,800	0
10	Water/Sewer Impact Fee Cost Sharing	0	79,600	82,000	84,400	86,900	0
11	Utilities Technology Improvements	0	228,100	234,900	130,000	10,400	0
12	Water/Sewer Building-Office Improvements	0	26,500	27,300	28,100	29,000	0
13	Water/Sewer Equipment Expansions	0	26,500	27,300	28,100	29,000	0
14	Water & Sewer Rate/Operational Studies	0	10,600	10,900	11,300	11,600	0
15	Phosphorus Standards Management	0	26,500	27,300	28,100	29,000	0
16	Water & Sewer Technology Equipment Replacements	0	0	0	0	0	0
17	Water & Sewer Improvements Defined By Study	0	0	0	0	0	0
18	Biosolids Dryer Replacement	0	0	3,278,200	9,004,100	9,274,200	9,552,400
19	Filter Cell Upgrade/Replacement at Noland WWTP	0	0	0	0	0	1,432,900
20	Upgrade Automation at both WWTPs	0	0	0	0	0	1,671,700
21	CIPP of 36" Sewer Line from Armstrong Ave to Nolan	0	0	0	0	0	1,194,100
22	Bypass Sewer Fulbright & North Gregg	1,442,000	0	0	0	0	0
23	Hamestring Lift Station Bottle Neck Resolution	0	848,700	0	0	0	0
24	Total Capital Improvement Program	8,023,200	8,121,800	9,122,100	14,909,800	15,240,300	13,851,100

(a) Capital costs reflect 3% annual inflation starting in 2021.

Table S - 7 - Wastewater Projected O&M Expenses

Line No.	Description	Projected					
		2021	2022	2023	2024	2025	2026
		\$	\$	\$	\$	\$	\$
1	Personal Costs	3,075,500	3,206,500	3,343,100	3,485,600	3,634,300	3,789,400
2	Materials and Supplies	724,700	746,500	768,900	791,900	815,700	840,200
3	Services and Charges	6,081,000	6,263,500	6,451,400	6,644,900	6,844,300	7,049,600
4	WWTP Contract	3,995,600	4,115,500	4,238,900	4,366,100	4,497,100	4,632,000
5	Motorpool	1,032,500	1,063,500	1,095,400	1,128,300	1,162,100	1,197,000
6	Cost Allocation	680,700	701,200	722,200	743,900	766,200	789,200
7	Maintenance	84,800	87,400	90,000	92,700	95,500	98,300
8	Total	15,674,800	16,184,100	16,709,900	17,253,400	17,815,200	18,395,700
9	% Change	0.81%	3.25%	3.25%	3.25%	3.26%	3.26%

Table S - 8 - Wastewater Cash Financed Capital

Line No.	Description	Year Ending December 31,					
		2021	2022	2023	2024	2025	2026
		\$	\$	\$	\$	\$	\$
Sources of Funds							
1	Funds Available at Beginning of Year	504,100	501,900	506,700	504,400	506,700	501,100
2	Cash Financing of Capital Projects	6,270,000	6,880,000	8,710,000	14,490,000	14,800,000	13,850,000
3	Transfer from Impact Fee Fund	1,751,000	1,246,600	409,800	422,100	434,700	0
4	Subtotal	8,525,100	8,628,500	9,626,500	15,416,500	15,741,400	14,351,100
Application of Funds							
5	Major Capital Improvements	8,023,200	8,121,800	9,122,100	14,909,800	15,240,300	13,851,100
6	Subtotal	8,023,200	8,121,800	9,122,100	14,909,800	15,240,300	13,851,100
7	End of Year Balance	501,900	506,700	504,400	506,700	501,100	500,000
8	Capital Reserve EOY Balance - Cumulative	19,995,000	21,737,000	22,105,000	17,205,000	12,555,000	9,445,000

Table S - 9 - Wastewater Operating Cash Flow

Line No.	Description	Year Ending December 31,					
		2021	2022	2023	2024	2025	2026
		\$	\$	\$	\$	\$	\$
Revenues							
1	Revenues Under Existing Rates	24,461,900	25,428,800	25,738,200	26,052,500	26,372,200	26,697,600
Revenue Increases							
2	0 % Increase Effective January 1, 2022		0	0	0	0	0
3	3 % Increase Effective January 1, 2023		0	707,800	781,600	791,200	800,900
4	3 % Increase Effective January 1, 2024		0	0	737,900	814,900	825,000
5	3 % Increase Effective January 1, 2025		0	0	0	769,400	849,700
6	3 % Increase Effective January 1, 2026		0	0	0	0	802,300
7	Total Revenue from Rates	24,461,900	25,428,800	26,446,000	27,572,000	28,747,700	29,975,500
8	Other Revenues (a)	594,700	720,500	722,700	725,400	728,200	731,200
9	Total Revenues	25,056,600	26,149,300	27,168,700	28,297,400	29,475,900	30,706,700
Expenses							
10	Operating Expenses	15,674,800	16,184,100	16,709,900	17,253,400	17,815,200	18,395,700
11	Bad Debt	122,300	127,100	132,200	137,900	143,700	149,900
12	PILOT	1,039,600	1,080,700	1,124,000	1,171,800	1,221,800	1,274,000
13	Debt Service	0	0	0	0	0	0
14	Total Expenses	16,836,700	17,391,900	17,966,100	18,563,100	19,180,700	19,819,600
Transfers							
15	Transfer to Shop Fund	33,000	0	0	0	0	0
16	Transfer to Operating Reserve	125,600	129,600	134,100	138,500	143,100	147,900
17	Cash Financing of Capital	6,270,000	6,880,000	8,710,000	14,490,000	14,800,000	13,850,000
18	Transfer to/from Capital Reserve	1,793,000	1,742,000	368,000	-4,900,000	-4,650,000	-3,110,000
19	Total Transfers	8,221,600	8,751,600	9,212,100	9,728,500	10,293,100	10,887,900
Fund Balance							
20	Beginning Balance	105,500	103,800	109,600	100,100	105,900	108,000
21	Annual Operating Balance	-1,700	5,800	-9,500	5,800	2,100	-800
22	Ending Fund Balance	103,800	109,600	100,100	105,900	108,000	107,200
Performance Metrics							
23	Debt Service Coverage	NA	NA	NA	NA	NA	NA
24	O&M Reserve Balance (Days)	90.00	90.00	90.00	90.00	90.00	90.00

(a) Includes interest income on operating fund balance.

(b) Minimum requirement is 90 days of following year's Operating Expenses.

Table S - 10 - Wastewater Projected Fund Balances

Line No.	Description	Year Ending December 31,					
		2021	2022	2023	2024	2025	2026
		\$	\$	\$	\$	\$	\$
Operating Funds							
1	O&M Reserve Balance (a)	3,990,600	4,120,200	4,254,300	4,392,800	4,535,900	4,683,800
2	Operating Fund Balance (b)	103,800	109,600	100,100	105,900	108,000	107,200
3	Total (e)	4,094,400	4,229,800	4,354,400	4,498,700	4,643,900	4,791,000
Capital Funds							
4	Capital Fund Balance (c)	501,900	506,700	504,400	506,700	501,100	500,000
5	Capital Reserve Fund Balance (d)	19,995,000	21,737,000	22,105,000	17,205,000	12,555,000	9,445,000
6	Total (e)	20,496,900	22,243,700	22,609,400	17,711,700	13,056,100	9,945,000
7	Impact Fee Fund Balance (e)	4,437,800	3,935,100	4,269,200	4,591,000	4,900,200	5,644,100

(a) Calculated as 90 days of following year's Operating Expenses.

(b) Target minimum balance is \$100,000 to account for any adjustments that may be needed to the O&M balance at the end of the year.

(c) Target minimum balance is \$500,000.

(d) Does not include expenses associated with facilities master plan to be completed in FY 2022

(e) All balances are cumulative.

Table S - 11 - Wastewater 2022 Cost of Service

Line No.	Description	Operating Expense	Capital Cost	Total Cost
		\$	\$	\$

Statement of Net Revenue Requirements (Cash Basis)

Revenue Requirements				
1	O&M Expenses	16,184,100		16,184,100
2	Bad Debt	127,100		127,100
3	PILOT	1,080,700		1,080,700
4	Debt Service		0	0
Other Expenditures & Transfers:				
	Transfer to Shop Fund (Capital Outlay)		0	0
5	Transfer to Operating Reserve	129,600		129,600
6	Cash Funding of Capital Projects		6,880,000	6,880,000
7	Transfer to Capital Reserve		1,742,000	1,742,000
8	Subtotal	17,521,500	8,622,000	26,143,500
Less Revenue Requirements Met from Other Sources				
9	Other Revenues and Adjustments	676,300		676,300
10	Interest Earned	44,200		44,200
11	Net Balance Available		(5,800)	(5,800)
12	Full Year Rate Adjustment			
13	Subtotal	720,500	(5,800)	714,700
14	Net Revenue Requirements to be Recovered by Rates	16,801,000	8,627,800	25,428,800

Restatement of Net Cost of Service (Utility Basis)

15	O&M Expenses	16,801,000		16,801,000
16	Depreciation		8,060,600	8,060,600
17	Return		567,200	567,200
18	Net Cost of Service	16,801,000	8,627,800	25,428,800

Table S - 12 - Wastewater 2022 Allocation of Net Plant Investment

Line No.	Description	Total	Volume					Wastewater Strength				Customer Billing	Customer Connections	Fayetteville Direct
			Common to All		Retail Only		Farmington Direct	BOD		TSS				
			All	Farmington	Volume	w/o Farmington		All	w/o Farmington	All	w/o Farmington			
		\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Net Plant Investment:														
1	Sewer Collection	103,289,355	42,124,931		61,164,424									
2	Sewer Connections	319,887												319,887
3	Water Meters	2,345,265											2,345,265	
4	Owl Creek Lift Station and Force Main	14,103												14,103
5	Lift Stations	4,392,243	4,392,243											
Sewer Treatment Plant- Noland														
6	Sewage Pumping	229,919		229,919										
7	Mechanical Bar Screens	172,282							51,685		120,597			
8	Grit Removal													
9	Primary Sedimentation													
10	Disinfection	1,672,556		1,672,556										
11	Aeration Equipment	1,120,704							560,352		560,352			
12	Sludge Handling	400,690							220,380		180,311			
13	Other Plant and Misc Equipment	837,703		443,170					193,907		200,626			
14	General Treatment	12,725,018		6,731,924					2,945,516		3,047,578			
Sewer Treatment Plant- West														
15	Sewage Pumping	921,333		845,784			75,549							
16	Mechanical Bar Screens	169,727					13,918		46,743		109,066			
17	Grit Removal	1,380,570					113,207				1,267,363			
18	Primary Sedimentation	6,927,776					568,078		1,907,909		4,451,789			
19	Disinfection	653,801		600,189			53,612							
20	Aeration Equipment	1,490,202					122,197		684,003		684,003			
21	Sludge Handling	34,604,278					2,837,551		17,471,700		14,295,027			
22	Other Plant and Misc Equipment	3,298,489		103,353			270,476		1,437,424		1,487,236			
23	General Treatment	5,571,549		174,576			456,867		2,427,984		2,512,122			
24	Sewer Land and Land Rights	6,358,594	1,878,712	135,236	2,470,280		152,831		845,827		875,138			570
25	General Plant	1,768,202	450,601	104,632	592,487		43,702		270,723		280,104		22,718	3,235
26	Total Net Plant Investment	190,664,246	48,846,487	11,041,339	64,227,191	0	4,707,988	0	29,064,153	0	30,071,312	0	2,367,983	337,795

Table S - 13 - Wastewater 2022 Allocation of Depreciation

Line No.	Description	Total	Volume				Farmington Direct	Wastewater Strength				Customer Billing	Customer Connections	Fayetteville Direct
			Common to All		Retail Only			BOD		TSS				
			All	w/o Farmington	Volume	w/o Farmington		All	w/o Farmington	All	w/o Farmington			
		\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Net Depreciation Expense:														
1	Sewer Collection	2,823,622	1,151,570		1,672,052									
2	Sewer Connections	22,463												22,463
3	Water Meters	128,485										128,485		
4	Owl Creek Lift Station and Force Main	6,509												6,509
5	Lift Stations	105,383	105,383											
Sewer Treatment Plant- Noland														
6	Sewage Pumping	42,418		42,418										
7	Mechanical Bar Screens	33,421							10,026		23,395			
8	Grit Removal													
9	Primary Sedimentation													
10	Disinfection	281,379		281,379										
11	Aeration Equipment	124,523	(1)						62,262		62,262			
12	Sludge Handling	83,361	(1)						45,849		37,513			
13	Other Plant and Misc Equipment	61,102	(1)	32,325					14,144		14,634			
14	General Treatment	847,144		448,165					196,092		202,887			
Sewer Treatment Plant- West														
15	Sewage Pumping	117,218		107,606			9,612							
16	Mechanical Bar Screens	55,071					4,516		15,167		35,388			
17	Grit Removal	135,374					11,101				124,273			
18	Primary Sedimentation	397,767					32,617		109,545		255,605			
19	Disinfection	41,046		37,680			3,366							
20	Aeration Equipment	140,345	1				11,508		64,418		64,418			
21	Sludge Handling	2,080,224					170,578		1,050,305		859,341			
22	Other Plant and Misc Equipment	316,959		9,931			25,991		138,125		142,912			
23	General Treatment	45,160		1,415			3,703		19,680		20,362			
24	Sewer Land and Land Rights	4,692	1,386	100	1,823		113		624		646			
25	General Plant	166,945	42,544	9,879	55,940		4,126		25,560		26,446		2,145	305
26	Total Net Depreciation Expense	8,060,611	1,300,881	970,898	1,729,815	0	277,231	0	1,751,797	0	1,870,082	0	130,630	29,277

Table S - 14 - Wastewater 2022 Allocation of O&M Expenses

Line No.	Description	Total	Volume					Wastewater Strength				Customer Billing	Customer Connections	Fayetteville Direct
			Common to All		Retail Only		Farmington Direct	BOD		TSS				
			All	w/o Farmington	Volume	w/o Farmington		All	w/o Farmington	All	w/o Farmington			
		\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
1	Sewer Mains Maintenance	2,438,014	994,305		1,443,708									
2	Wastewater Treatment Plant	1,874,226		356,704		40,930		725,722		750,870				
3	Wastewater Treatment Plant-Noland	5,416,220		1,149,101				2,097,222		2,169,897				
4	Wastewater Treatment Plant-West	1,966,065		255,901		161,217		761,283		787,664				
5	Lift Stations	961,584	961,584											
6	Meter Operations (a)	1,653,047										1,653,047		
7	Water & Sewer Connections	198,731												198,731
8	Operations and Administration	1,396,102	188,216	169,530	138,929	19,453		344,912		356,864		159,074		19,124
9	All Other O&M Cost	1,617,511	218,065	196,416	160,962	22,538		399,612		413,460		184,301		22,157
10	Subtotal	17,521,500	2,362,170	2,127,652	1,743,599	0	244,138	0	4,328,751	0	4,478,755	1,996,422	0	240,012
	Less: Other Income Sources													
11	Sewer Connection Fees	47,900												47,900
12	Other Income Sources	672,600	49,235	87,491	71,698	10,039		178,002		184,170		82,095		9,870
13	Subtotal	720,500	49,235	87,491	71,698	0	10,039	0	178,002	0	184,170	82,095	0	57,770
14	Net O&M Expenses	16,801,000	2,312,936	2,040,161	1,671,901	0	234,099	0	4,150,749	0	4,294,584	1,914,327	0	182,243

Table S - 15 - Wastewater 2022 Units of Service

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Line	Customer Classes	Contributed	Infiltration	Total Treated	Strength		Customer	
		Volume	& Inflow	Volume	BOD	TSS	Bills	Meter
		1,000 gal.	1,000 gal.	1,000 gal. (2) + (3)	Pounds	Pounds	Bills	Equiv. Meters
Inside City								
1	Residential	1,741,203	1,569,234	3,310,437	5,627,580	4,793,035	421,883	34,346
2	Non-Residential	698,651	251,356	950,007	2,179,172	1,765,439	34,296	5,157
3	Industrial	396,716	88,856	485,572	1,226,170	980,007	252	249
4	Subtotal	2,836,570	1,909,446	4,746,016	9,032,922	7,538,481	456,431	39,752
Outside City								
Farmington								
5	Residential	75,950	76,937	152,887	247,241	212,609	21,431	1,603
6	Non-Residential	12,743	7,473	20,216	40,350	33,405	1,656	157
7	Industrial							
8	Subtotal	88,694	84,409	173,103	287,591	246,014	23,087	
Greenland								
9	Residential	10,349	17,400	27,749	35,133	31,856	5,388	435
10	Non-Residential	2,153	1,824	3,976	6,933	5,877	480	22
11	Industrial							
12	Subtotal	12,502	19,223	31,725	42,066	37,733	5,868	
Washington County/ Growth Area								
13	Residential	4,304	1,898	6,202	13,498	11,021	336	74
14	Non-Residential		67	67	14	28	24	
15	Industrial							
16	Subtotal	4,304	1,965	6,269	13,512	11,049	360	
Johnson								
17	Residential	6,479	6,720	13,199	21,124	18,202	1,884	151
18	Non-Residential	28	141	169	114	126	48	18
19	Industrial							
20	Subtotal	6,507	6,860	13,367	21,238	18,328	1,932	
21	Total Retail	2,942,069	2,015,044	4,957,113	9,376,091	7,833,277	485,746	39,752
Wholesale								
22	Elkins	81,017	18,069	99,086	250,391	200,104	24	23
23	West Fork	45,625	10,171	55,796	141,008	112,688	12	23
24	Subtotal	126,642	28,241	154,883	391,399	312,792	36	45
25	Subtotal (Inside City)	2,836,570	1,909,446	4,746,016	9,032,922	7,538,481	456,431	39,752
26	Subtotal (Outside City)	112,007	112,458	224,465	364,407	313,124	31,247	-
27	Subtotal (Wholesale)	126,642	28,241	154,883	391,399	312,792	36	45
28	Surcharge Customers				1,282,742	910,900		
29	Total System	3,075,218	2,050,145	5,125,363	11,071,470	9,075,297	487,714	42,258

Table S - 16 - Wastewater 2022 Unit Cost of Service

Line No.	Description	Total	Volume					Wastewater Strength				Customer Billing	Customer Connections	Fayetteville Direct
			Common to All		Retail Only		Farmingington Direct	BOD		TSS				
			All	w/o Farmington	Volume	w/o Farmington		All	w/o Farmington	All	w/o Farmington			
		\$	1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.	Pounds	Pounds	Pounds	Pounds	Bills	Equiv. Meters	Bills
Units of Service														
1	Inside City		4,746,159	4,746,159	4,746,159	4,746,159		9,032,952	9,032,952	7,538,541	7,538,541	456,431	39,752	456,431
2	Outside City-w/o Farmington		206,667	206,667	51,784	51,784		469,275	469,275	380,751	380,751	8,196	746	
3	Surcharge		173,110		173,110		173,110	287,593		246,016		23,087	1,761	
4	Total System		5,125,935	4,952,825	4,971,052	4,797,943	173,110	9,789,820	9,502,227	8,165,308	7,919,292	487,714	42,258	456,431
Costs of Service														
Net Operating Expense														
5	Total - \$	16,801,000	2,312,936	2,040,161	1,671,901		234,099		4,150,749		4,294,584	1,914,327		182,243
6	Unit Cost - \$/unit		0.45	0.41	0.34		1.35		0.38		0.49	3.93		0.40
Depreciation Expense:														
7	Total - \$	8,060,608	1,300,881	970,898	1,729,815		277,231		1,751,797		1,870,082		\$ 130,630	29,277
8	Unit Cost - \$/unit		0.25	0.20	0.35		1.60		0.16		0.21		\$ 3.0913	0.06
Net Plant Investment:														
9	Total - \$	190,664,246	48,846,487	11,041,339	64,227,191		4,707,988		29,064,153		30,071,312		2,367,983	337,795
10	Unit Cost - \$/unit		9.53	2.23	12.92		27.20		2.69		3.41		56.04	0.74
Return on Investment														
11	Inside City, Unit Return - \$/unit		(0.02)	(0.00)	(0.02)				(0.00)		(0.01)		(0.10)	(0.00)
12	Outside City - Except Farmington - Unit Return - \$/Unit		0.67	0.16	0.90				0.19		0.24		3.92	
13	Outside City - Farmington - Unit Return - \$/Unit		0.52		0.71		\$1.4958						3.08	
Total Return														
14	Inside City - \$	(310,073)	(79,559)	(18,612)	(107,870)				(48,902)		(50,617)		(3,918)	(594)
15	Outside City - Except Farmington - \$	399,157	137,857	32,251	46,834				88,525		90,766		2,925	
16	Outside City - Farmington - \$	478,108	90,729	123,014			258,939						5,426	
17	Total Return - \$	567,192	149,026	13,638	61,978		258,939		39,623		40,148		4,432	(594)
Total Unit Cost of Service														
18	Inside City - \$/unit		0.69	0.60	0.66				0.54		0.69	3.93	2.99	0.46
19	Outside City (Exc Farmington)- \$/unit		1.37	0.76	1.59				0.74		0.94	3.93	7.01	
20	Outside City - Farmington - \$/unit		1.23		1.39		\$ 4.4496					3.93	6.17	
Total Cost of Service														
21	Inside City - Retail - \$	21,513,312	3,266,513	2,866,804	3,139,950				4,900,857		5,217,759	1,791,539	118,964	210,926
22	Inside City-Surcharge - \$	1,326,430							695,956		630,474			
23	Outside City - Except Farmington - \$	1,263,056	283,555	157,893	82,270				345,356		356,581	32,170	5,230	
24	Outside City - Farmington - \$	1,326,002	212,772		241,474		770,270					90,618	10,868	
25	Total Cost of Service - \$	25,428,800	3,762,841	3,024,697	3,463,694	0	770,270	0	5,942,169	0	6,204,815	1,914,327	135,062	210,926

Table S - 17 - Wastewater 2022 Cost of Service by Customer Class

		(1)	(2)	(3)	(4)
Line	Description	Allocated Cost of Service	Existing Revenues	Indicated Revenue Increase	
		\$	\$		
Inside City					
1	Residential	14,792,813	16,719,785	-11.5%	
2	Non-Residential	4,426,345	3,926,165	12.7%	
3	Industrial	2,294,154	1,890,075	21.4%	
4	Subtotal	21,513,312	22,536,025	-4.5%	
Outside City					
5	Residential	1,496,787	1,242,033	20.5%	
6	Non-Residential	179,997	160,411	12.2%	
7	Industrial			100.0%	
8	Subtotal	1,676,784	1,402,445	19.6%	
9	Total Retail	23,190,096	23,938,469	-3.1%	
10	Wholesale	912,277	655,689	39.1%	
11	Surcharge	1,326,430	834,607	58.9%	
12	Total	25,428,803	25,428,765	0.0%	

Table S - 18 - Wastewater Proposed 2022 Charges

Existing Wastewater Rates Effective January 1, 2022

Monthly Base Charge			
Meter Size	Inside City	Outside City	Farmington
Inches	\$/month	\$/month	\$/month
5/8	18.28	18.28	16.74
3/4	18.28	18.28	16.74
1	23.74	33.92	31.28
1 1/2	38.77	60.37	55.50
2	55.43	79.73	73.45
3	128.73	184.24	169.29
4	212.13	303.44	278.93
6	420.39	601.46	553.70
8	628.73	899.76	826.81

Volume Charge			
Monthly Water Usage	Inside City	Outside City	Farmington
1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.

Residential

First 2,000 Gallons	4.35		
> 2,000 Gallons	5.80		
All Usage		8.18	7.52

Non-Residential

All Usage	4.40	8.18	7.52
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Major Industrial

All Usage	4.71	8.18	7.52
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Wholesale

85% of metered water usage	5.19		
Above 85% of metered water	2.71		

Surcharge

BOD - \$/lb for strength in excess of 300 pp	0.4352		
TSS - \$/lb for strength in excess of 300 pp	0.3056		

Proposed Wastewater Rates Effective August 1, 2022

Monthly Base Charge			
Meter Size	Inside City	Outside City	Farmington
Inches	\$/month	\$/month	\$/month
5/8	18.28	18.28	25.10
3/4	18.28	18.28	25.10
1	23.74	33.92	52.62
1 1/2	38.77	66.73	109.78
2	55.43	93.11	154.24
3	128.73	196.10	327.83
4	212.13	303.44	482.37
6	420.39	601.46	897.30
8	628.73	899.76	998.92

Volume Charge			
Monthly Water Usage	Inside City	Outside City	Farmington
1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.

Residential

First 2,000 Gallons	3.39		
> 2,000 Gallons	4.52		
All Usage		8.55	8.27

Non-Residential

All Usage	5.10	8.55	8.27
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Major Industrial

All Usage	5.71	8.55	8.27
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Wholesale

85% of metered water usage	7.20		
Above 85% of metered water	7.20		

Surcharge

BOD - \$/lb for strength in excess of 300	0.5426		
TSS - \$/lb for strength in excess of 300	0.6921		

Table S - 19 - Wastewater 2022 Cost of Service Under Proposed Rates

(1) Line No.	(2) Description	(3) Adjusted Cost of Service \$	(4) Revenue Under Existing Rates \$	(5) Indicated Revenue Increase	(6) Revenues Under Proposed Rates \$	(7) Proposed Revenue as % Cost of Service	(8) Indicated Revenue Increase	(9) Indicated Revenue Increase \$
Inside City								
1	Residential	14,792,800	16,719,800	-11.5%	14,790,200	100.0%	-11.5%	-1,929,600
2	Non-Residential	4,426,300	3,926,200	12.7%	4,424,900	100.0%	12.7%	498,700
3	Industrial	2,294,200	1,890,100	21.4%	2,291,500	99.9%	21.2%	401,400
4	Subtotal	21,513,300	22,536,100	-4.5%	21,506,600	100.0%	-4.6%	-1,029,500
Outside City								
5	Residential	1,496,800	1,242,000	20.5%	1,489,900	99.5%	20.0%	247,900
6	Non-Residential	180,000	160,400	12.2%	193,500	107.5%	20.6%	33,100
7	Industrial					0.0%	0.0%	
8	Subtotal	1,676,800	1,402,400	19.6%	1,683,400	100.4%	20.0%	281,000
Wholesale								
9	Elkins	583,600	419,500	39.1%	583,300	99.9%	39.0%	163,800
10	West Fork	328,700	236,200	39.2%	328,500	99.9%	39.1%	92,300
11	Subtotal	912,300	655,700	39.1%	911,800	99.9%	39.1%	256,100
12	Surcharge	1,326,400	834,600	58.9%	1,326,400	100.0%	58.9%	491,800
13	Total	25,428,800	25,428,800	0.0%	25,428,200	100.0%	0.0%	-600

Table S - 20 - Wastewater 2022 Bill Impact

Line No.	Meter Size	Monthly Usage	Inside City			Outside City			
			Existing Rates	Proposed Rates	Increase / Decrease	Existing Rates	Proposed Rates	Increase / Decrease	Increase / Decrease
	Inches	1,000 gal.	\$	\$	\$	\$	\$	\$	
Residential									
1	3/4	0.5	22.10	19.98	-2.13	26.46	22.56	-3.91	-14.8%
2	3/4	2	26.45	25.06	-1.39	34.64	35.38	0.74	2.1%
3	3/4	4	38.05	31.84	-6.21	51.00	52.48	1.48	2.9%
4	3/4	8	61.25	45.40	-15.85	83.72	86.68	2.96	3.5%
5	3/4	10	72.85	52.18	-20.67	100.08	103.78	3.70	3.7%
6	3/4	15	101.85	69.13	-32.72	140.98	146.53	5.55	3.9%
Non-Residential									
7	3/4	10	61.75	69.28	7.53	100.08	103.78	3.70	3.7%
8	3/4	20	105.75	120.28	14.53	181.88	189.28	7.40	4.1%
9	1	50	243.05	278.74	35.69	442.92	461.42	18.50	4.2%
10	1	100	463.05	533.74	70.69	851.92	888.92	37.00	4.3%
11	1 1/2	50	257.64	293.77	36.13	469.37	494.23	24.86	5.3%
12	1 1/2	100	477.64	548.77	71.13	878.37	921.73	43.36	4.9%
13	2	100	493.82	565.43	71.61	897.73	948.11	50.38	5.6%
14	2	500	2,253.82	2,605.43	351.61	4,169.73	4,368.11	198.38	4.8%
Industrial									
15	2	100	493.52	626.43	132.91	897.73	948.11	50.38	5.6%
16	2	1,000	4,732.52	5,765.43	1,032.91	8,259.73	8,643.11	383.38	4.6%
17	4	500	2,441.89	3,067.13	625.24	4,393.44	4,578.44	185.00	4.2%
18	4	1,500	7,151.89	8,777.13	1,625.24	12,573.44	13,128.44	555.00	4.4%
19	6	2,500	11,948.78	14,695.39	2,746.61	21,051.46	21,976.46	925.00	4.4%
20	6	5,000	23,723.78	28,970.39	5,246.61	41,501.46	43,351.46	1,850.00	4.5%
21	6	10,000	47,273.78	57,520.39	10,246.61	82,401.46	86,101.46	3,700.00	4.5%

12.0 Appendix 3: Combined Tables

Table C - 1 - Combined Projected Fund Balances

Line No.	Description	Year Ending December 31,						
		2021	2022	2023	2024	2025	2026	2027
		\$	\$	\$	\$	\$	\$	\$
	Operating Funds							
1	O&M Reserve Balance (a)	8,052,000	8,314,600	8,586,100	8,866,700	9,156,600	9,456,300	9,766,200
2	Operating Fund Balance (b)	209,900	210,500	200,100	208,800	212,800	209,800	209,700
3	Subtotal Operating Funds Balance (e)	8,261,900	8,525,100	8,786,200	9,075,500	9,369,400	9,666,100	9,975,900
	Capital Funds							
4	Capital Fund Balance (c)	1,008,700	1,008,400	1,006,100	1,010,300	1,009,800	1,003,200	1,003,600
5	Capital Reserve Fund Balance (d)	32,910,000	30,176,000	28,563,500	22,813,500	17,653,500	13,733,500	9,033,500
6	Subtotal Capital Funds Balance (e)	33,918,700	31,184,400	29,569,600	23,823,800	18,663,300	14,736,700	10,037,100
7	Impact Fee Fund Balance (e)	4,460,597	4,516,397	4,378,897	5,592,597	6,791,197	8,511,397	10,231,597

(a) Calculated as 90 days of following year's Operating Expenses.

(b) Target minimum combined balance is \$200,000 to account for any adjustments that may be needed to the O&M balance at the end of the year.

(c) Target minimum combined balance is \$1,000,000.

(d) Does not include expenses associated with facilities master plan to be completed in FY 2022

(e) All balances are cumulative.

Table C - 2 - Combined Operating Cash Flow

Line No.	Description	Year Ending December 31,						
		2021	2022	2023	2024	2025	2026	2027
		\$	\$	\$	\$	\$	\$	\$
	Revenues							
1	Revenues Under Existing Rates	45,648,500	47,229,500	47,826,000	48,433,700	49,053,000	49,684,500	50,328,300
	Revenue Increases							
2	0.0 % Increase Effective January 1, 2022		0	0	0	0	0	0
3	3.0 % Increase Effective January 1, 2023		0	1,315,200	1,453,000	1,471,600	1,490,500	1,509,900
4	3.0 % Increase Effective January 1, 2024		0	0	1,371,800	1,515,700	1,535,300	1,555,200
5	3.0 % Increase Effective January 1, 2025		0	0	0	1,431,100	1,581,300	1,601,800
6	3.0 % Increase Effective January 1, 2026		0	0	0	0	1,493,100	1,649,800
7	Total Revenue from Rates	45,648,500	47,229,500	49,141,200	51,258,500	53,471,400	55,784,700	58,202,800
8	Other Revenues (a)	1,127,800	1,362,000	1,369,800	1,378,500	1,387,500	1,397,100	1,406,700
9	Subtotal Revenues	46,776,300	48,591,500	50,511,000	52,637,000	54,858,900	57,181,800	59,609,500
	Expenses							
10	Operating Expenses	31,624,400	32,655,200	33,720,400	34,821,100	35,959,200	37,135,100	38,350,700
11	Bad Debt	228,200	236,100	245,700	256,300	267,300	278,900	291,000
12	PILOT	1,940,000	2,007,200	2,088,500	2,178,500	2,272,600	2,370,900	2,473,600
13	SDWF-Reimbursement to ADPH	230,000	233,800	237,800	241,800	245,900	250,200	254,400
14	Debt Service	0	0	0	0	0	0	0
15	Total Expenses	34,022,600	35,132,300	36,292,400	37,497,700	38,745,000	40,035,100	41,369,700
	Transfers							
16	Transfer to Shop Fund	66,000	0	0	0	0	0	0
17	Transfer to Operating Reserve	254,200	262,600	271,500	280,600	289,900	299,700	309,900
18	Cash Financing of Capital	11,730,000	15,930,000	15,570,000	20,600,000	20,980,000	20,770,000	22,630,000
19	Transfer to/from Capital Reserve	700,000	-2,734,000	-1,612,500	-5,750,000	-5,160,000	-3,920,000	-4,700,000
20	Total Transfers	12,750,200	13,458,600	14,229,000	15,130,600	16,109,900	17,149,700	18,239,900
	Fund Balance							
21	Beginning Balance	206,400	209,900	210,500	200,100	208,800	212,800	209,800
22	Annual Operating Balance	3,500	600	-10,400	8,700	4,000	-3,000	-100
23	Ending Fund Balance	209,900	210,500	200,100	208,800	212,800	209,800	209,700
	Performance Metrics							
24	Debt Service Coverage	NA	NA	NA	NA	NA	NA	NA
25	O&M Reserve Balance (Days)(b)	✓ 90.00	✓ 90.00	✓ 90.00	✓ 90.00	✓ 90.00	✓ 90.00	✓ 90.00

(a) Includes interest income on operating fund balance.

(b) Minimum requirement is 90 days of following year's Operating Expenses.

Table C - 3 - Combined 2022 Bill Impact

Line No.	Meter Size	Monthly Usage	Inside City				Outside City			
			Existing Rates	Proposed Rates	Increase / Decrease	Increase / Decrease	Existing Rates	Proposed Rates	Increase / Decrease	Increase / Decrease
	Inches	1,000 gal.	\$	\$	\$		\$	\$	\$	
Residential										
1	3/4	0.5	32.01	28.22	-3.80	-11.9%	37.82	32.33	-5.49	-14.5%
2	3/4	2	39.87	38.25	-1.62	-4.1%	50.04	51.86	1.82	3.6%
3	3/4	4	60.77	53.77	-7.00	-11.5%	77.10	80.78	3.68	4.8%
4	3/4	8	102.57	84.81	-17.76	-17.3%	131.22	138.62	7.40	5.6%
5	3/4	10	123.47	100.33	-23.14	-18.7%	158.28	167.54	9.26	5.9%
6	3/4	15	175.72	139.13	-36.59	-20.8%	225.93	239.84	13.91	6.2%
Non-Residential										
7	3/4	10	106.05	115.17	9.12	8.6%	151.20	161.82	10.62	7.0%
8	3/4	20	187.95	205.47	17.52	9.3%	276.80	297.82	21.02	7.6%
9	1	50	441.42	484.38	42.96	9.7%	672.13	726.18	54.05	8.0%
10	1.5	100	872.11	957.70	85.59	9.8%	1,334.15	1,450.95	116.80	8.8%
11	2	500	4,091.34	4,593.63	502.29	12.3%	6,289.61	6,926.63	637.02	10.1%
Industrial										
12	2	100	812.04	963.63	151.59	18.7%	1,260.25	1,330.63	70.38	5.6%
13	2	1,000	7,715.04	8,928.63	1,213.59	15.7%	11,682.25	12,166.63	484.38	4.1%
14	4	1,500	11,678.78	13,576.63	1,897.85	16.3%	17,760.33	18,466.37	706.04	4.0%
15	6	5,000	38,697.56	44,849.38	6,151.82	15.9%	58,675.24	61,007.28	2,332.04	4.0%
16	6	10,000	77,047.56	89,099.38	12,051.82	15.6%	116,575.24	121,207.28	4,632.04	4.0%

EXHIBIT A

51.136 Monthly Water Rates

Effective as of the first billing statements issued after December 31, 2022, the following monthly rates shall be fixed as rates to be charged for water furnished by the waterworks system of the city, which rates the City Council finds and declares to be reasonable and necessary minimum rates to be charged. All non-emergency water uses shall be billed to the user, to include but not limited to water used for: use within structures; business; manufacturing; irrigation; retail by another water utility; city uses; educational purposes; medical purposes; water system routine non-emergency uses; wastewater system routine non-emergency uses; non-profit uses; fire department non-emergency uses to include training and equipment calibration; construction of new water mains; street cleaning; and wet down of construction sites and materials. Emergency water use that does not pass through a water system meter shall not be billed, including firefighting, water leaks, water leak repair, and emergency water line flushing. The volumes used for these emergency purposes should be estimated and submitted monthly to the Business Office Manager and the Water/Sewer Operations Manager.

(A) *Monthly Water Rates.*

- (1) The water usage of each customer shall be determined each month by meter measurement and the amount per 1,000 gallons to be paid for water usage by each customer shall be computed on the basis of the following schedule of rates.

Table A-1 Monthly Water Rates Prior to January 1, 2023 Cost per 1,000 gallons			
Class	Usage Rate (In Gallons)	Inside City	Outside City
Residential	First 2,000	\$3.51	\$4.04
	Next 13,000	\$4.65	\$5.35
	Over 15,000	\$6.59	\$7.54
Non-Residential	First 300,000	\$3.79	\$4.38
	Over 300,000	\$3.39	\$3.90
Major Industrial	All Usage	\$2.96	\$3.40
Irrigation	First 300,000	\$5.04	\$5.80
	Over 300,000	\$4.53	\$5.22
Wholesale	Reduced Peak Demand	\$2.87	\$2.87
	Peak Demand	\$3.20	\$3.20

Table A-2 Monthly Water Rates After December 31, 2022 Cost per 1,000 gallons			
Class	Usage Rate (In Gallons)	Inside City	Outside City
Residential	First 2,000	\$3.30	\$4.47
	Next 13,000	\$4.37	\$5.91
	Over 15,000	\$6.20	\$8.38
Non-Residential	First 300,000	\$3.93	\$5.05
	Over 300,000	\$3.93	\$5.05

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Major Industrial	All Usage	\$3.14	\$3.49
Irrigation	First 300,000	\$4.29	\$5.43
	Over 300,000	\$4.29	\$5.43
Wholesale	Reduced Peak Demand	\$3.16	\$3.16
	Peak Demand	\$3.16	\$3.16

Table A-3 Monthly Water Rates After December 31, 2023 Cost per 1,000 gallons			
Class	Usage Rate (In Gallons)	Inside City	Outside City
Residential	First 2,000	\$3.40	\$4.60
	Next 13,000	\$4.50	\$6.09
	Over 15,000	\$6.39	\$8.63
Non-Residential	First 300,000	\$4.05	\$5.20
	Over 300,000	\$4.05	\$5.20
Major Industrial	All Usage	\$3.23	\$3.59
Irrigation	First 300,000	\$4.42	\$5.59
	Over 300,000	\$4.42	\$5.59
Wholesale	Reduced Peak Demand	\$3.25	\$3.25
	Peak Demand	\$3.25	\$3.25

Table A-4 Monthly Water Rates After December 31, 2024 Cost per 1,000 gallons			
Class	Usage Rate (In Gallons)	Inside City	Outside City
Residential	First 2,000	\$3.50	\$4.74
	Next 13,000	\$4.64	\$6.27
	Over 15,000	\$6.58	\$8.89
Non-Residential	First 300,000	\$4.17	\$5.36
	Over 300,000	\$4.17	\$5.36
Major Industrial	All Usage	\$3.33	\$3.70
Irrigation	First 300,000	\$4.55	\$5.76
	Over 300,000	\$4.55	\$5.76
Wholesale	Reduced Peak Demand	\$3.35	\$3.35
	Peak Demand	\$3.35	\$3.35

EXHIBIT A

- (2) Beginning January 1, 2026, all monthly water rates shall be increased by 3% per year.
 - (3) All bills under such schedules shall be computed by adding the applicable meter service charge prescribed by subsection (B) to the amount determined to be due for water usage under this schedule. Applicable sales tax and franchise fees shall be added to the bill so computed.
 - (4) When a common facility/building is served by multiple water meters and the water usage is for the same purpose, customers may petition the Water & Wastewater Director and/or the Finance & Internal Services Director to have the water consumption aggregated and have the tiered rates apply to the aggregated quantity.
 - (5) Water used for flushing and sampling of newly constructed water lines, Fire Department training and equipment calibration, and other similar uses requiring a large volume and/or high velocity of water movement shall employ a fire hydrant meter of the appropriate size for the use. If a fire hydrant meter cannot be used due to high flow or volume requirements, then the volume of water used shall be measured by using a pitot gauge to determine the gallons per minute and by timing the flow of water to be able to calculate total volume. In the cases of fire department training and equipment calibration, sewer line washing, street sweeping, and other uses where the equipment employed has a built-in water meter, these built in water meters may be used. All such meters other than those on fire trucks must be evaluated by the Meter Superintendent. These water uses shall be billed at the same rates as non-residential customers.
 - (6) Monthly wholesale treated water rates outside city limits are based on Cost of Service Methodology.
- (B) *Monthly Water Service Charge.*
- (1) In addition to the above, each customer shall pay a monthly water service charge in accordance with the following schedule:

Table B-1 Monthly Water Service Charge Prior to January 1, 2023			
Meter Size	Inside City	Outside City	Wholesale
¾ x ¾ inch	\$6.59	\$7.54	\$7.54
1 inch	\$9.14	\$10.52	\$10.52
1 ½ inch	\$15.93	\$18.31	\$18.31
2 inch	\$23.20	\$26.66	\$28.56
3 inch	\$54.05	\$62.18	\$64.38
4 inch	\$89.50	\$102.93	\$112.25
6 inch	\$178.99	\$205.82	\$213.02
8 inch	\$268.41	\$308.67	\$319.47

Table B-2 Monthly Water Service Charge After December 31, 2022			
Meter Size	Inside City	Outside City	Wholesale
¾ x ¾ inch	\$6.59	\$7.54	\$7.54
1 inch	\$9.14	\$12.26	\$12.26

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1 ½ inch	\$15.93	\$24.22	\$24.22
2 inch	\$23.20	\$33.52	\$33.52
3 inch	\$54.05	\$69.84	\$69.84
4 inch	\$89.50	\$102.93	\$102.93
6 inch	\$178.99	\$205.82	\$205.82
8 inch	\$268.41	\$308.67	\$308.67

Table B-3
Monthly Water Service Charge After
December 31, 2023

Meter Size	Inside City	Outside City	Wholesale
¾ x ¾ inch	\$6.79	\$7.77	\$7.77
1 inch	\$9.41	\$12.63	\$12.63
1 ½ inch	\$16.41	\$24.95	\$24.95
2 inch	\$23.90	\$34.53	\$34.53
3 inch	\$55.67	\$71.94	\$71.94
4 inch	\$92.19	\$106.02	\$106.02
6 inch	\$184.36	\$211.99	\$211.99
8 inch	\$276.46	\$317.93	\$317.93

Table B-4
Monthly Water Service Charge After
December 31, 2024

Meter Size	Inside City	Outside City	Wholesale
¾ x ¾ inch	\$6.99	\$8.00	\$8.00
1 inch	\$9.70	\$13.01	\$13.01
1 ½ inch	\$16.90	\$25.69	\$25.69
2 inch	\$24.61	\$35.56	\$35.56
3 inch	\$57.34	\$74.09	\$74.09
4 inch	\$94.95	\$109.20	\$109.20
6 inch	\$189.89	\$218.35	\$218.35
8 inch	\$284.76	\$327.47	\$327.47

- (2) Beginning January 1, 2026, all monthly water service charges shall be increased by 3% per year.
- (3) The monthly treated water rates and the monthly meter service charge rates prescribed by subsections (A) and (B) of this section shall commence as of the first billing statements issued after December 31, 2022.

EXHIBIT A

- (4) The State of Arkansas mandated Safe Drinking Water Act fee shall be added to the monthly water utility bill.

(C) *Monthly Standby Fire Protection Service Charge.*

- (1) Charges for unmetered service connections for standby fire protection and fire hydrants shall be based on the incoming line size or the backflow preventer size, whichever is smaller, as set forth in the following table:

Monthly Standby Fire Protection Service Charge		
Line Size or Backflow Preventer Size	Inside City	Outside City
1 inch	\$9.75	\$11.68
2 inch	10.17	12.10
2.5 inch	20.33	23.37
3 inch	30.48	35.06
4 inch	60.97	70.11
6 inch	169.34	194.74
8 inch	355.65	409.00
10 inch	609.68	701.11

- (2) The Utilities Department shall review the monthly standby fire protection service charges every two (2) years and shall make recommendations to the City Council following such review. Fire protection lines shall not be connected to the water system downstream from a meter.

(Code 1965, §21-25; Ord. No. 1165, 4-18-58; Ord. No. 2144, 9-2-75; Ord. No. 2594, 2-5-80; Ord. No. 3197, 7-1-86; Ord. No. 3409, 2-21-89; Ord. No. 3431, 6-6-89; Ord. No. 3491, 7-17-90; Ord. No. 3513, 9-18-90; Ord. No. 3519, 11-20-90; Ord. No. 4059, §1, 10-7-97; Ord. No. 4223, 2-15-00; Code 1991, §51.136; Ord. No. 4530 12-02-02; Ord. No. 4540, 02-03-04; Ord. No. 5123, 4-1-08; Ord. No. 6169, §1, 4-2-2019)

EXHIBIT B

51.137 Monthly Sewer Rates

(A) *Monthly Sewer Rates.*

- (1) All monthly sewer charges shall be calculated from the customer's monthly water usage. The following monthly rates are hereby fixed as rates to be charged for sewer services:

Table D-1 Monthly Sewer Rates Per 1,000 Gallons Before January 1, 2023		
Class	Usage Rate (In Gallons)	Cost per 1,000 gallons
Residential	First 2,000 gallons	\$4.35
	Greater than 2,000 gallons	\$5.80
Non-Residential	All Usage	\$4.40
Major Industrial	All Usage	\$4.71
Farmington	All Usage	\$7.52
Outside city	All Usage	\$8.18
Elkins	85% of metered water usage	\$5.19
	Usage above 85% of metered water usage	\$2.71

Table D-2 Monthly Sewer Rates Per 1,000 Gallons After December 31, 2022		
Class	Usage Rate (In Gallons)	Cost per 1,000 gallons
Residential	First 2,000 gallons	\$3.39
	Greater than 2,000 gallons	\$4.52
Non-Residential	All Usage	\$5.10
Major Industrial	All Usage	\$5.71
Farmington	All Usage	\$8.27
Outside city	All Usage	\$8.55
Elkins	85% of metered water usage	\$7.20
	Usage above 85% of metered water usage	\$7.20

EXHIBIT B

Table D-3 Monthly Sewer Rates Per 1,000 Gallons After December 31, 2023		
Class	Usage Rate (In Gallons)	Cost per 1,000 gallons
Residential	First 2,000 gallons	\$3.49
	Greater than 2,000 gallons	\$4.66
Non-Residential	All Usage	\$5.25
Major Industrial	All Usage	\$5.88
Farmington	All Usage	\$8.52
Outside city	All Usage	\$8.81
Elkins	85% of metered water usage	\$7.42
	Usage above 85% of metered water usage	\$7.42

Table D-4 Monthly Sewer Rates Per 1,000 Gallons After December 31, 2024		
Class	Usage Rate (In Gallons)	Cost per 1,000 gallons
Residential	First 2,000 gallons	\$3.60
	Greater than 2,000 gallons	\$4.80
Non-Residential	All Usage	\$5.41
Major Industrial	All Usage	\$6.06
Farmington	All Usage	\$8.77
Outside city	All Usage	\$9.07
Elkins	85% of metered water usage	\$7.64
	Usage above 85% of metered water usage	\$7.64

- (2) Beginning January 1, 2026, all monthly sewer quantity charge- usage rates per 1,000 gallons shall be increased by 3% per year.
- (3) Sewer related fees levied by the Cities of Farmington or Greenland shall be added to the wastewater utility bill at the request of Farmington or Greenland. These fees may be calculated on a per-thousand volumetric usage or a per month basis.

(B) *Monthly Sewer Service Charge.*

EXHIBIT B

- (1) In addition to the above, each customer shall pay a monthly sewer service charge in accordance with the following schedule:

Table E-1 Monthly Sewer Service Charge Prior to January 1, 2023			
Meter Size	Inside City	Outside City†	Farmington†
¾ x ¾ inch	\$18.28	\$18.28	\$16.74
1 inch	\$23.74	\$33.92	\$31.28
1½ inch	\$38.77	\$60.37	\$55.50
2 inch	\$55.43	\$79.73	\$73.45
3 inch	\$128.73	\$184.24	\$169.29
4 inch	\$212.13	\$303.44	\$278.93
6 inch	\$420.39	\$601.46	\$553.70
8 inch	\$628.73	\$899.76	\$826.81

Table E-2 Monthly Sewer Service Charge After December 31, 2022			
Meter Size	Inside City	Outside City†	Farmington†
¾ x ¾ inch	\$18.28	\$18.28	\$25.10
1 inch	\$23.74	\$33.92	\$52.62
1½ inch	\$38.77	\$66.73	\$109.78
2 inch	\$55.43	\$93.11	\$154.24
3 inch	\$128.73	\$196.10	\$327.83
4 inch	\$212.13	\$303.44	\$482.37
6 inch	\$420.39	\$601.46	\$897.30
8 inch	\$628.73	\$899.76	\$998.92

Table E-3 Monthly Sewer Service Charge After December 31, 2023			
Meter Size	Inside City	Outside City†	Farmington†
¾ x ¾ inch	\$18.83	\$18.83	\$25.85
1 inch	\$24.45	\$34.94	\$54.20
1½ inch	\$39.93	\$68.73	\$113.07
2 inch	\$57.09	\$95.90	\$158.87
3 inch	\$132.59	\$201.98	\$337.66
4 inch	\$218.49	\$312.54	\$496.84
6 inch	\$433.00	\$619.50	\$924.22
8 inch	\$647.59	\$926.75	\$1,028.89

EXHIBIT B

Table E-4 Monthly Sewer Service Charge After December 31, 2024			
Meter Size	Inside City	Outside City†	Farmington†
¾ x ¾ inch	\$19.39	\$19.39	\$26.63
1 inch	\$25.19	\$35.99	\$55.82
1½ inch	\$41.13	\$70.79	\$116.47
2 inch	\$58.81	\$98.78	\$163.63
3 inch	\$136.57	\$208.04	\$347.79
4 inch	\$225.05	\$321.92	\$511.75
6 inch	\$445.99	\$638.09	\$951.95
8 inch	\$667.02	\$954.56	\$1,059.75

†Cost of Service Methodology required by contract.

- (2) Beginning January 1, 2026, all monthly sewer service charges shall be increased by 3% per year.
- (C) *Determination of Sewer Quantity Charge for Residential Customers.*
- (1) In the case of residential customers residing in a single family home, duplex, triplex, and/or fourplex, the average monthly water consumption for the preceding months of December, January, and February shall be computed separately for each customer, and a uniform monthly charge for each customer shall be determined by applying the schedule of rates set out in subsection (A) of this section to such average monthly water consumption. In the case of a residential user for whom a uniform monthly charge has been established and who moves to a new location the same uniform monthly charge shall apply at the new location. In the case of new residential customers, sewer averages shall be established based on the number of individuals residing within the dwelling unit, at a rate of 2,100 gallons per customer per month. This methodology of sewer averaging shall not apply to multi-family structures containing five (5) or more units in a contiguous building.
- (2) In the case of sewer customers who do not have a water meter provided by a public water utility, the sewer usage volume billed shall be the average volume of all users in the sewer system in like dwellings from the most recent system-wide sewer average calculation.
- (D) *Determination of Charge for Non-residential and Major Industrial Customers.* In the case of non-residential and/or major industrial customers, the monthly sewer charge shall be determined by applying the schedule of rates prescribed in subsection (A) of this section to the monthly water usage of such customers. In the event that a non-residential or major industrial customer discharging waste into the city's sanitary sewer system produces evidence to the Water and Wastewater Director demonstrating that a substantial portion of the total amount of water from all sources used for all purposes does not reach the sanitary sewer which is in excess of the factors used in establishing the rates in subsection (A) of this section, an estimated percentage of total water consumption to be used in computing charges may be established by the Water and Wastewater Director. The factors used in establishing said rates are on file in the office of the Water and Wastewater Director and are incorporated herein by reference thereto. Any rate so adjusted by the Water and Wastewater Director shall be effective for a twelve (12) month period beginning with the billing for the month when rates adjudged hereby go into effect.
- (E) *Extra Strength Surcharge.*

EXHIBIT B

- (1) For all significant industrial users as defined in §51.074, whose wastewater discharge is greater than 300 mg/l of BOD₅ and/or TSS, the city shall levy an Extra Strength Surcharge for each parameter in accordance with the following unit charges:

Table F3 Extra Strength Surcharges	
	After 12/31/2022
Extra Strength BOD ₅	\$0.5426 per pound
Extra Strength TSS	\$0.6921 per pound

- (2) Starting after December 31, 2023, Extra Strength Surcharges shall be increased by 3% per year.
- (3) Extra Strength Surcharges shall be billed monthly and shall be computed on the basis of water meter reading (wastewater discharge volume).
- (4) All sampling and analyses of the wastewater characteristics shall be performed in accordance with U.S. Environmental Protection Agency 40 Code of Federal Regulations Part 136 approved methods.
- (5) The volume of flow used in computing surcharge shall be based upon metered water consumption as shown in the records of meter readings maintained by the city's business office. In the event that a user discharging waste into the city sanitary sewer system produces evidence to the city demonstrating that a portion of the total amount of water used for all purposes is not discharged into the sanitary sewer, a separate meter or meters or other approved flow measuring device may be installed at the user's expense, upon its request, to measure only that portion of the total flow being discharged into the city sewer system. If a surcharge is assessed by the city, it shall be shown separately on the monthly billing.
- (6) Any person discharging industrial waste into the sanitary sewers of the city who procures any part or all of the user's water supply from sources other than the city, all or part of which is discharged into the sanitary sewer, shall install and maintain at the user's expense water meters of the type approved by the city for the purpose of determining the proper volume of flow to be used in computing sewer service charges. Such meter will be read monthly and tested for accuracy when deemed necessary by the city. Where it can be shown that a portion of the water measured by the aforesaid meter or meters does not enter the sanitary sewer system of the city, a separate meter or meters or other approved flow measuring device may be installed at the user's expense, upon its request, to measure only that portion of the total flow being discharged into the city sewer system. If a surcharge is assessed by the city, it shall be shown separately on the monthly billing.
- (7) Computation of extra strength surcharges shall be based on the following formula:

- (a) Extra strength surcharge:

S	= $V \times 8.34 \times [\text{BOD Unit Charge (BOD - 300)} + \text{SS Unit Charge (TSS - 300)}]$
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- (b) Where:

S	= Surcharge in dollars
V	= Sewer volume in million gallons
8.34	= Pounds per gallon of water
BOD Unit Charge	= Unit charge for BOD in dollars per pound

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EXHIBIT B

BOD	= BOD strength in parts per million
300	= Allowed BOD strength in parts per million
TSS Unit Charge	= Unit charge for suspended solids in dollars per pound
TSS	= Suspended solids strength in parts per million
300	= Allowed TSS Strength in parts per million

(F) *Elkins Sewer Charges.*

- (1) Elkins' payment for wastewater treatment shall be based on 85% of the metered water purchased. The volume of wastewater received by Fayetteville at the "Point of Connection" shall be measured by the installed wastewater meter. Volumes of wastewater below or above the agreed upon percentage (85%) of metered water, as measured by the wastewater meter, shall be recorded on a monthly basis, with a reconciliation of the net difference to occur semiannually in June and December. If the reconciliation volume is over the agreed upon percentage, this amount shall be billed to Elkins in June and December at the actual computed cost of wastewater collection to and treatment at the Noland Wastewater Treatment Plant, not including the calculated rate of return and not including depreciation charges, but including any capacity surcharge, based on the most recent rate as determined in paragraph B of this contract. If the reconciliation volume is below the agreed upon percentage, the actual amount billed for the difference shall be refunded to Elkins in June and December
- (2) Elkins Impact Fee Charges. The City of Elkins shall pay an additional \$0.25 per 1,000 gallons of wastewater, for all wastewater volume charges including both the 85% of metered water volume and for wastewater in excess of the 85% of the metered water purchased billed volume.

(G) *Hauled Wastewater Fees.*

- (1) Application fee. An application to discharge hauled domestic waste must be accompanied by a fee of \$100.00.
- (2) Discharge fee. A fee of \$50.00 must be paid for each hauled domestic waste load discharged.

(H) *Industrial Wastewater Discharge Permit Fee.*

- (1) Application Fee. An application for an industrial wastewater discharge permit must be accompanied by a fee of \$500.00.

(Code 1965, §21-26; Ord. No. 1165, 4-18-58; Ord. No. 3197, 7-1-86; Ord. No. 3285, 8-4-87; Ord. No. 3398, 1-3-89; Ord. No. 3491, 7-17-90; Ord. No. 3637, §§1, 2, 8-18-92; Ord. No. 4059, §2, 10-7-97; Code 1991, §51.137; Ord. No. 4530, 12-02-03; Ord. No. 4803, 12-20-05; Ord. No. 4998, 4-3-07; Ord. No. 5129, 4-15-08; Ord. No. 5438, 9-20-11; Ord. No. 5739, 2-17-15)

CITY OF FAYETTEVILLE, ARKANSAS

Notice of Public Hearing on Proposed Water and Sewer Rate Changes

City Council Agenda Session: Tuesday, June 14, 2022 at 4:30 PM

City Council Meeting: Tuesday, June 21, 2022 at 5:30 PM

City of Fayetteville Administration Building, City Hall

113 W. Mountain – Room 219 or via Zoom link at www.fayetteville-ar.gov

The City of Fayetteville AR, on the dates and times mentioned above, will hold a public hearing as part of the City Council Agenda Session and City Council Meeting with Fayetteville City Council prior to the adoption of the 2023 water and sewer rate increases. The public can attend in person or remotely via the link on the City's website, www.fayetteville-ar.gov.

If adopted, the proposed new rates would take effect on or after January 01, 2023, with 3% increases annually thereafter. All property owners/tenants and other interested parties are invited to attend the public hearing and be heard on the matter.

A water and sewer cost of service study was conducted by Black & Veatch pursuant to Fayetteville City Council Resolution 212-20 to perform a cost analysis to determine if costs allocations are fair and equitable among customer classes, to review the existing rate structure and design proposed rates that provide adequate revenues.

The proposed water and sewer rate changes below are necessary for the City of Fayetteville to continue to provide safe and reliable water and sewer services to its citizens because extensive new capital needs are required at this point in time and operating costs have increased above the revenue increases generated by the current annual 3% proportional adjustment.

PROPOSED WATER RATE CHANGES – ON OR AFTER 1/1/2023

FIXED BASE CHARGE \$/MONTH		WATER INSIDE CITY			WATER OUTSIDE CITY		
Meter Size		EXISTING	PROPOSED	CHANGE	EXISTING	PROPOSED	CHANGE
5/8"		6.59	6.59	0.0%	7.54	7.54	0.0%
3/4"		6.59	6.59	0.0%	7.54	7.54	0.0%
1"		9.14	9.14	0.0%	10.52	12.26	16.5%
1.5"		15.93	15.93	0.0%	18.31	24.22	32.3%
2"		23.20	23.20	0.0%	26.66	33.52	25.7%
3"		54.05	54.05	0.0%	62.18	69.84	12.3%
4"		89.50	89.50	0.0%	102.93	102.93	0.0%
6"		178.99	178.99	0.0%	205.82	205.82	0.0%
8"		268.41	268.41	0.0%	308.67	308.67	0.0%
			AVG	0.0%		AVG	9.7%
QUANTITY CHARGE \$/1,000 GALLONS							
Residential							
First 2,000 gallons		3.51	3.30	-6.0%	4.04	4.47	10.6%
Next 13,000 gallons		4.64	4.37	-5.8%	5.34	5.91	10.7%
All over 15,000 gallons		6.59	6.20	-5.9%	7.54	8.38	11.1%
			AVG	-5.9%		AVG	10.8%
Non-Residential							
First 300,000 gallons		3.79	3.93	3.7%	4.38	5.05	15.3%
All over 300,000 gallons		3.38	3.93	16.3%	3.90	5.05	29.5%
			AVG	10.0%		AVG	22.4%
Major Industrial							
All Usage		2.96	3.14	6.1%	3.20	3.49	9.1%
Irrigation							
First 300,000 gallons		5.04	4.29	-14.9%	5.80	5.43	-6.4%
All over 300,000 gallons		4.53	4.29	-5.3%	5.22	5.43	4.0%
			AVG	-10.1%		AVG	-1.2%
Wholesale							
Reduced Peak Demand					2.87	3.16	10.1%
Peak Demand					3.20	3.16	-1.3%
						AVG	4.4%

*Beginning January 1, 2024, all monthly water rates shall be increased by 3% per year

PROPOSED SEWER RATE CHANGES – ON OR AFTER 1/1/2023

FIXED BASE CHARGE \$/MONTH Meter Size	SEWER INSIDE CITY			SEWER OUTSIDE CITY			SEWER FARMINGTON		
	EXISTING	PROPOSED	CHANGE	EXISTING	PROPOSED	CHANGE	EXISTING	PROPOSED	CHANGE
5/8"	18.28	18.28	0.0%	18.28	18.28	0.0%	16.74	25.10	49.9%
3/4"	18.28	18.28	0.0%	18.28	18.28	0.0%	16.74	25.10	49.9%
1"	23.74	23.74	0.0%	33.92	33.92	0.0%	31.28	52.62	68.2%
1.5"	38.77	38.77	0.0%	60.37	66.73	10.5%	55.50	109.78	97.8%
2"	55.43	55.43	0.0%	79.73	93.11	16.8%	73.45	154.24	110.0%
3"	128.73	128.73	0.0%	184.24	196.10	6.4%	169.29	327.83	93.6%
4"	212.13	212.13	0.0%	303.44	303.44	0.0%	278.93	482.37	72.9%
6"	420.39	420.39	0.0%	601.46	601.46	0.0%	553.70	897.30	62.1%
8"	628.73	628.73	0.0%	899.76	899.76	0.0%	826.81	998.92	20.8%
		AVG	0.0%		AVG	3.8%		AVG	69.5%
QUANTITY CHARGE \$/1,000 GALLONS									
Residential									
First 2,000 Gallons	4.35	3.39	-22.1%	8.18	8.55	4.5%	7.52	8.27	10.0%
All over 2,000 Gallons	5.80	4.52	-22.1%	8.18	8.55	4.5%	7.52	8.27	10.0%
		AVG	-22.1%		AVG	4.5%		AVG	10.0%
Non-Residential									
All Usage	4.40	5.10	15.9%	8.18	8.55	4.5%	7.52	8.27	10.0%
Major Industrial									
All Usage	4.71	5.71	21.2%	8.18	8.55	4.5%	7.52	8.27	10.0%
Wholesale									
Reduced Peak Demand				5.19	7.20	38.7%			
Peak Demand				2.71	7.20	165.7%			
					AVG	102.2%			

*Beginning January 1, 2024, all monthly sewer rates shall be increased by 3% per year

For more information or questions about the proposed water and sewer rate changes, contact the City of Fayetteville, Utilities Financial Services Division at (479) 575-8224 or visit the City's website for at www.fayetteville-ar.gov.

Final Draft

WATER AND WASTEWATER COMPREHENSIVE RATE STUDY

B&V PROJECT NO. 406577

PREPARED FOR

City of Fayetteville, Arkansas

8 JUNE 2022



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1.0 Executive Summary

The City of Fayetteville (City) provides water and wastewater services to retail and wholesale customers. The Water and Wastewater fund is an Enterprise Fund, which is funded by the operating and capital revenues from the users of the system. Due to multiple factors including increasing operating costs, significant capital investments to meet regulatory requirements, and the need for infrastructure rehabilitation and replacement, revenues under existing rates are not adequate to meet the annual revenue requirements. Therefore, to maintain financial sufficiency and to assure equitable cost recovery, the City engaged Black & Veatch Management Consulting, LLC (Black & Veatch) to perform a Water and Wastewater Comprehensive Rate Study (Study).

The primary objectives of the Study are to develop a balanced financial plan, determine cost of service allocations for each customer class and design rates to recover costs from customer classes in reasonable accord with the allocated costs of service. The financial plan was developed for the six-year period of 2021 through 2026, also referred to as the study period or the forecast period. The city's fiscal year is a calendar year, starting on January 1 and ending on December 31.

As a result of our evaluations and analyses, the following summary of findings and recommendations are offered for the City's consideration.

1.1 Summary of Findings

1.1.1 Revenue Under Existing Rates

1. The City provides retail water services to approximately 40,800 customers inside the City and about 7,000 customers outside the City. The number of retail water service customers inside the City is projected to increase to about 44,800 by 2026 and the number of outside City water customers is projected to increase to about 8,000. The City also provides treated water to four wholesale customers. Retail wastewater collection and treatment service is provided to approximately 36,900 customers inside the City and about 2,600 customers outside the City. The number of inside City wastewater service customers is projected to increase to about 40,600 by 2026 and the number of outside City wastewater service customers is projected to increase to about 2,700.
2. Treated water sales to inside City retail customers are projected to increase from approximately 3,146,800 1,000 gallons (kgals) in 2021 to approximately 3,388,000 kgals by 2026. Treated water sales to outside City retail customers are projected to increase from approximately 507,600 kgals in 2021 to approximately 519,400 kgals by 2026. Treated water sales to wholesale customers is projected to be approximately 219,100 kgals in 2021 and decrease to 202,300 kgals in 2022 and remain at that level through 2026. Billed wastewater volume from inside City retail customers is projected to increase from approximately 2,806,700 kgals in 2021 to approximately 2,961,800 kgals by 2026. Billed wastewater volume from outside City retail customers is projected to increase from 109,800 kgals in 2021 to about 117,400 kgals by 2026. Billed wastewater volume from wholesale customers is projected to increase from 81,000 kgals in 2021 to 126,600 kgals in 2026 due to the addition of West Fork as a wholesale wastewater customer starting December 2020. The annual wholesale wastewater volume is projected to remain at the 2021 level through 2026.

3. The City's current water rates became effective January 1, 2022. For both retail and wholesale customers, the water rates include a monthly base charge, which varies by meter size and a volume charge that varies by customer class. The existing schedule of rates for wastewater service became effective on January 1, 2022. For retail customers, the wastewater rates include a monthly base charge, which varies by meter size. The volume charge varies by customer class. Surcharge rates are based on excess strength of Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS). The existing wastewater rate structure is described in Section 3.3.2.
4. Revenue is currently derived principally from charges for treated water and wastewater service, with some revenue also obtained from fire protection charges and other miscellaneous sources. Revenue from treated water sales, under existing rates, is projected to increase from \$21,186,400 in 2021 to about \$22,986,800 in 2026, reflecting a 5-year cumulative increase of 8%. Miscellaneous water revenues are estimated to increase from \$1,484,700 in 2021 to approximately \$1,608,600 in 2026, reflecting a 5-year cumulative increase of 8%. Revenue for wastewater collection and treatment services is projected to increase from \$24,461,900 in 2021 to about \$26,697,600 in 2026, under existing rates, reflecting a 5-year cumulative increase of 9%. Miscellaneous wastewater revenue is estimated at \$1,297,100 in 2021 and \$1,420,200 per year through 2022 to 2026, reflecting a 5-year cumulative increase of 9%.

1.1.2 Revenue Requirements

1. Costs of service to be recovered from water and wastewater service charges include (1) operation and maintenance (O&M) expenses; (2) bad debt; (3) Payment In Lieu of Taxes; (4) Safe Drinking Water Fee Reimbursement; (5) debt service (consisting of principal and interest payments); (6) transfer to shop fund; (7) transfer to operating reserve; (8) cash financed capital; and (9) transfer to capital reserve. The water and wastewater utilities do not have any outstanding debt service. There are no future debt issuances planned over the study period and no transfers to the shop fund over the study period.
2. The annual O&M expense includes the cost of labor, materials, power, chemicals, purchased water, contract services and other expenses associated with each utility's operation. In this study, FY 2021 is defined as the base budget year, based on which the O&M costs are projected for the forecast period. O&M expense for the water utility is projected to increase from \$15,949,600 in 2021 to \$18,739,400 by 2026 due to the combined effects of inflation and system growth. O&M expense for the wastewater utility is projected to increase from \$15,674,800 in 2021 to \$18,395,700 by 2026 due to the combined effects of inflation and system growth.
3. Bad debt expenses refer to outstanding balances from customers that are deemed uncollectible. The water and wastewater bad debt in 2019 was 0.5% of revenue. Bad debt projections for the study period assume 0.5% of annual revenues. Annual bad debt expenses for water utility is projected to increase from \$105,900 in 2021 to \$129,000 by 2026. Annual bad debt expenses for wastewater utility is projected to increase from \$122,300 in 2021 to \$149,900 by 2026.
4. The Payment In Lieu of Taxes (PILOT) are paid by public utilities to municipal entity as a compensation for utilization of streets, easements, right of ways or other public places. The PILOT amount is determined per City Ordinance 4449 that requires the water and wastewater funds to pay 4.25% of annual total gross sales revenues to the City. Annual PILOT amount for the water utility is anticipated to increase from \$900,400 in 2021 to \$1,096,900 in 2026. Annual

PILOT amount for the wastewater utility is projected to increase from \$1,039,600 in 2021 to \$1,274,000 in 2026.

5. The Safe Drinking Water Fee (SDWF) revenue collected for each metered customer is reimbursed to the state of Arkansas Department of Public Health. The SDWF reimbursement is projected to increase from \$230,000 in 2021 to \$250,200 in 2026. The SDWF is a pass-through fee and is treated as a “revenue reduction” by the City.
6. The City maintains an operating reserve balance equivalent of ninety (90) days of following years’ O&M budget. The transfer to operating reserve for the water utility is projected to increase from \$133,000 in 2022 to \$151,800 in 2026. The transfer to operating reserve for wastewater is projected to increase from \$129,600 in 2022 to \$147,900 in 2026.
7. The City currently utilizes the following two sources of funding for the water and wastewater utility capital projects (1): transfer from operating revenues and (2) transfer from the impact fee fund. A capital project meets the requirements of using impact fees if the existing water or wastewater capacity is expanded due to growth. The wastewater capital improvement program for the study period is \$69 million, of which \$67 million is projected to be funded from operating revenues and \$2 million is from the impact fee fund.

1.1.3 Summary of Cash Flow Results

1. The cash flow analysis performed based on the projected annual revenues under existing rates and the projected annual revenue requirements indicates a funding gap for both utilities beginning in 2021.
2. Therefore, a series of 3% annual revenue adjustment is needed in both the water and wastewater utilities to achieve the goal of the operating fund revenues being self-sufficient and adequate to cover all of the O&M expenses, cash financing of the capital program, required transfers, and to maintain the minimum reserve requirements. Table W - 9, in Appendix 1 presents the cash flow analysis and the proposed series of revenue increases for the water utility, and Table S - 9, in Appendix 2 presents the same for the wastewater utility.

1.1.4 Cost of Service Analysis

1. The revenue requirements less any revenues from other sources provides the “net” annual operating fund revenue requirements (also referred to as “cost of service”) that needs to be recovered through user rates and charges. A summary of the projected annual cost of service for 2023 is shown for water and wastewater in tables ES-1 and ES-2, respectively.

Table ES - 1 –Water 2023 Cost of Service

Line No.	Description	Operating Expense	Capital Cost	Total Cost
		\$	\$	\$
1	O&M Expenses	17,791,700		17,791,700
2	Depreciation		2,820,100	2,820,100
3	Return		1,476,000	1,476,000
4	Net Cost of Service	17,791,700	4,296,100	22,087,800

Table ES - 2 –Wastewater 2023 Cost of Service

Line No.	Description	Operating Expense	Capital Cost	Total Cost
		\$	\$	\$
1	O&M Expenses	17,346,000		17,346,000
2	Depreciation		8,259,600	8,259,600
3	Return		132,600	132,600
4	Net Cost of Service	17,346,000	8,392,200	25,738,200

2. As a basis for design of a schedule of water and wastewater rates, the costs of service are allocated to the classes of customers in accordance with respective service requirements of each customer class. The resulting costs of service allocated to customer classes are summarized in Table W - 17 for water and Table S - 17 for wastewater.

1.2 Proposed Recommendations

Based on the financial planning and cost of service analysis performed for the study period, the Black & Veatch team proffers the following series of recommendations:

1. Implement a series of 3% annual revenue increase from 2024 to 2026 for both water and wastewater utilities.
2. Implement cost of service-based rates for water and wastewater utilities in 2023.
3. Transition the existing monthly Base charge to the proposed Base Charge, derived based on cost of service, if cost of service based proposed Base Charge is greater than the existing Base charge.
4. Eliminate the minimum volume charge billing of 1,000 gallons from the volumetric portion of the rate structure.
5. Continue with the existing tier block structure for customer classes that have an inclining block (residential) or a uniform block (industrial) for the volumetric rate structure.
6. Change to uniform block for customers that currently have a declining block (non-residential and irrigation) volumetric rate structure.

The aforementioned recommendations enable the water and wastewater utilities to meet all its financial obligations, so that the City can continue to provide reliable service to serve the needs of existing and future customers.

1.3 Disclaimer

This report was prepared for the City of Fayetteville (Client) by Black & Veatch Management Consulting, LLC (Black & Veatch) and is based on information provided by the Client not within the control of Black & Veatch. While it is believed that the information, data and opinions contained herein will be reliable under the conditions and subject to the limitations set forth in this report, Black & Veatch does not guarantee the accuracy thereof. Black & Veatch has assumed that the information provided by others, both verbal and written, is complete and correct. The projections set forth in this report are intended as "forward-looking statements." In formulating these projections, Black & Veatch has made certain assumptions with respect to conditions, events, and circumstances that may occur in the future. While Black & Veatch believes the assumptions are reasonable actual results may differ materially from those projected, as influenced by the conditions, events, and circumstances that occur. As such, Black & Veatch does not take responsibility for the accuracy of data or projections provided by or prepared on behalf of the Client, nor does Black & Veatch have any responsibility for updating this report for events occurring after the date of this report.

Use of this report or any information contained therein by any party other than the Client, shall constitute a waiver and release by such third party of Black & Veatch from and against all claims and liability, including but not limited to liability for special, incidental, indirect or consequential damages in connection with such use. Such use of this report by a third party shall constitute agreement by the third party user that its rights, if any, arising from this report shall be subject to the terms of this Report Limitations, and in no event shall the third party's rights, if any, exceed those of the Client under its contract with B&V. The benefit of such releases, waivers, or limitations of liability shall extend to the related companies and subcontractors of any tier of B&V, and the shareholders, directors, officers, partners, employees, and agents of all released or indemnified parties.

2.0 Introduction

The City of Fayetteville water utility provides treated water and water distribution services to approximately 40,800 customers within the corporate limits of Fayetteville, and to approximately 7,000 customers in areas contiguous to, but outside of the City's corporate limits. The wastewater utility provides retail wastewater collection and treatment service to approximately 37,000 customers within the corporate city limits and to approximately 2,600 customers outside of the City's corporate limits. The City also provides treated water to four wholesale customers and wastewater treatment to two wholesale customers.

In providing water and wastewater service, the City incurs considerable expense related to the ongoing operating and capital needs of the utilities. These operating and capital expenditures tend to increase annually due to the combined effects of inflation and the need to repair, replace, or extend existing service facilities to meet customer service requirements, as well as to meet more stringent state and federal water quality requirements and EPA requirements.

The City of Fayetteville, recognizing the importance of financial planning and cost of service analysis to equitably recover the increasing costs to replace, renew, expand, improve, and operate its water and wastewater service facilities, retained Black & Veatch to perform this comprehensive study of revenue requirements, cost of service, and rates for potable water service and wastewater service.

2.1 Purpose

This report examines the respective projected revenue and rate requirements of the water and wastewater systems of the City. The purpose of this report is (1) to project the future revenues of the water and wastewater utilities under existing rates and charges, as well as the operating expenses and capital financing revenue requirements of the two utilities, and to examine the adequacy of projected revenues to meet these revenue requirements through calendar year 2026; (2) to allocate these revenue requirements, or costs of service, for a representative test year to the various customer classes in accordance with the respective service requirements that each class places on the systems; and (3) to develop a suitable schedule of water and wastewater rates that will produce revenues adequate to meet the financial needs of the utility on a basis that recognizes customer costs of service, existing wholesale service agreements and practical bill impact considerations.

2.2 Scope

This report presents the results of a comprehensive study of the projected revenue and revenue requirements, costs of service allocations, and proposed rates for treated water and wastewater service. Revenue and revenue requirements are projected for the five calendar years from 2022 through 2026, recognizing anticipated growth in number of customers, water use, and wastewater flows throughout the service area. The study of revenue requirements recognizes projected operation and maintenance expense, capital improvement requirements met from revenues, principal and interest payments on outstanding and proposed bond issues, and reserve fund requirements. Requirements of existing revenue bond indentures are also recognized.

Costs of treated water and wastewater service are developed for each group of customers and type of service based on consideration of utility revenue needs and projected customer service requirements. Rate adjustments are designed for retail and wholesale customers in accordance with allocated costs of service, wholesale service agreement terms, and customer bill impact considerations.

2.3 Study Methodology

The development of user rates and charges requires the integration of three critical components: (i) financial plan; (ii) cost of service allocations; and (iii) rate design.

2.3.1 Financial Plan

The development and update of a financial plan is necessary to continue to focus on financial discipline, build financial stability, and maintain sustainable financial planning practices. The financial planning process helps to establish a financial roadmap to meet all of the water and wastewater utility's obligations.

As illustrated in Figure 2 - 1, the key components of a financial plan are: (i) projection of revenues from user rates and other sources; (ii) development of a capital financing plan to decide the mix of debt and cash funding of capital program; (iii) projection of revenue requirements (O&M and capital costs, and target reserves); and (iv) determination of the level and timing of revenue adjustments needed to maintain financial viability.

The annual revenue requirements are typically developed on a *cash-needs basis* for public utility rate setting. The revenue requirements, under the cash-needs basis approach, include the following:

- O&M expenditures;
- Debt service expenses;
- Cash financing of capital program;
- Contributions to operating reserves; and
- Other obligations such as payments and transfers for specific purposes.

To establish financial stability, a financial plan is typically prepared for a multi-year period. A six-year financial plan was developed for the water and wastewater utility to achieve the financial objectives and target metrics defined to build and sustain financial integrity. 2022 through 2026 is the forecast period for both revenues and revenue requirement projections.

The revenue adjustments represent the level of annual revenue increases necessary to meet the annual net revenue requirements.

2.3.2 Cost of Service

Cost of service can be described as the revenue that the water and wastewater utility need to generate, *net of funding from other miscellaneous sources of revenues*. Therefore, Cost of Service is essentially the "net revenue requirement" that is to be recovered through user rates and charges. As illustrated in Figure 2 - 2, Cost of service analysis enables an equitable apportioning of the net annual revenue requirements (also referred to as cost of service) to the various cost components and customer

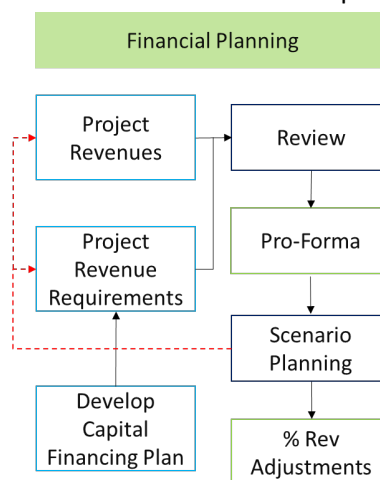


Figure 2 - 1: Financial Plan

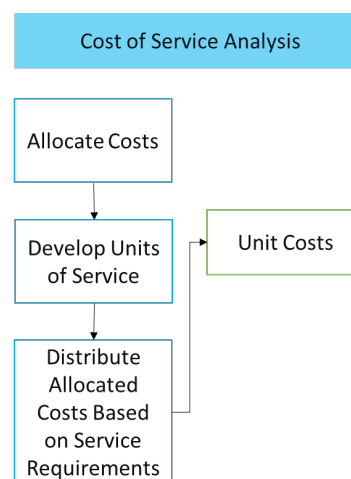


Figure 2 - 2: Cost of Service

classes. The level and types of allocation performed depend on the existing and anticipated rate structure.

As municipal utilities are *public utilities that cannot make a profit*, the equitable allocation of costs is a critical step that is necessary to establish a reasonable nexus between costs incurred in providing service and the fees charged from customers, and to establish defensible user rates and charges.

2.3.3 Rate Design

The third and final component is an evaluation of the existing rate structure components and the development of proposed user rates and charges. The user rates and charge schedules typically include fixed charge, volumetric charge, and other special charge rate components. As illustrated in Figure 2 - 3, the rates and charges are designed to recover the annual cost of service allocated to these different rate components and based on local policy and practical considerations.

The study methodology described above and used in the financial planning, cost of service and rate design analysis reflect the application of industry accepted rate setting approaches that are provided in the following two guidance manuals:

- American Water Works Association (AWWA) *Manual M-1: Principles of Water Rates, Fees, and Charges* for water rate setting; and
- Water Environment Foundation (WEF) *Financing and Charges for Wastewater Systems* for wastewater.

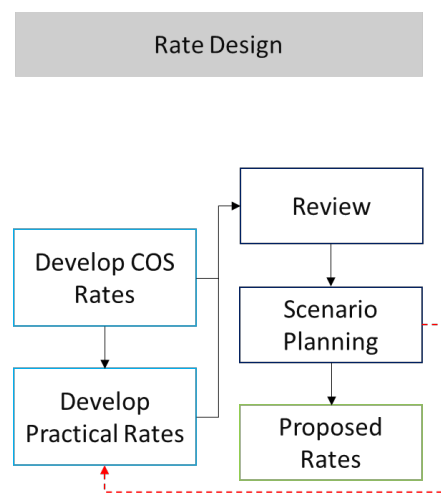


Figure 2 - 3: Rate Design

3.0 Rate Structure Overview

The revenue requirements of a water and wastewater utility, net of any miscellaneous sources of revenues, are recovered from user rates and charges. A water rate structure usually consists of two primary components, namely, a fixed charge and a volumetric charge. Similarly, a wastewater rate structure more commonly consists of a fixed charge, a volumetric charge, and pollutant charge (for wastewater pollutants such as Bio-chemical Oxygen Demand (BOD) and Total Suspended Solids (TSS)). Occasionally, a utility's water and wastewater rate structures may include special surcharges and/or special assessments to recover costs associated with certain service situations such as purchased water, pumping to elevations, drought conditions, readiness-to-serve, environmental conditions, and extra-strength wastewater discharges.

3.1 Fixed Charge

A utility's annual revenue requirements comprise mostly of fixed costs such as salaries and benefits, pension obligations, debt service, cash financing for infrastructure renewal, and costs related to the provision of adequate capacity for service. These types of fixed costs occur on a recurring basis regardless of the amount of water used by the customer.

Therefore, rate structures need to afford the ability to recover at least some of the fixed costs based on billing parameters that are not related to water usage or wastewater flow. The fixed charge, which is assessed regardless of the volume of water used, provides a mechanism to reliably recover some of the fixed annual operating costs of the utility, and provide for some level of revenue stability.

In the utility industry, fixed charges are designed to recover one or more of the following types of costs, namely, (i) metering; (ii) billing; (iii) readiness-to-serve cost; (iv) specific capital investment; and (v) other specific costs. The costs of providing these functions vary among types of customers and/or by factors such as size and capacity of the meters. Therefore, to provide for equitable cost recovery, water and wastewater fixed charges are usually assessed based on meter size and also by customer class.

3.2 Volumetric (Usage) Charge

In the utility industry, usage charges are designed to recover all other costs (except those that are recovered through fixed charge) associated with the treatment and delivery of water service and the collection, treatment, and disposal of wastewater.

The three common types of volumetric charge are: (i) inclining block rate, where the usage in the next higher usage block is priced at a higher rate per unit; (ii) uniform block rate, where all units of usage are priced at the same unit rate; and (iii) declining block rate, where the usage in the next higher usage block is priced at a lower rate per unit. As usage patterns vary among customer classes and consequently different classes place different levels of service demands, different volumetric rates can be established for the various customer classes. In designing the volumetric rate structure, practical considerations including conservation, equity, affordability, and ease of administration are addressed.

3.3 Existing Rate Structure

3.3.1 Water Rate Structure

Consistent with industry rate structures, the City's water rate structure comprises of both Fixed Charge and Volumetric Charge components. The water rate structure includes the following two components:

- Base Charge (Fixed Charge); and
- Volume Charge (Volumetric Charge).

Some of these components are applicable to only specific customer classes. The revenues derived from the above charges are collectively referred to as **“Water Service Revenues.”**

- **Base Charge:** The existing Base Charge for all customer classes is based on meter size.
- **Volume Charge:** The existing Volume Charge is based on the quantity of water used by the customers.
- **Safe Drinking Water Fee:** This is a regulatory charge per bill that is collected by the City on behalf of the state of Arkansas Department of Public Health.

The customer classes to which the specific charge components apply is illustrated in Figure 3 - 1. The existing water rate schedule for 2022, for these rate components, is presented in Table W - 3 in Appendix 1. All customers are billed monthly.

Figure 3 - 1: Existing Water Rate Structure

Rate Component	Applicable Customer Classes
● Base Charge by Meter Size	● Retail Inside City (Residential, Non-Residential, Major Industrial, Irrigation, Fire Protection); ● Retail Outside City (Residential, Non-Residential, Major Industrial, Irrigation, Fire Protection); ● Wholesale
● Volume Rate (3-Tier Inclining Block) ● Minimum Usage (1,000 Gallons)	● Retail Inside City Residential; and ● Retail Outside City Residential
● Volume Rate (2-Tier Declining Block) ● Minimum Usage (1,000 Gallons)	● Retail Inside City Non-Residential, Irrigation; and ● Retail Outside City Non-Residential, Irrigation
● Volume Rate (Uniform) ● Minimum Usage (1,000 Gallons)	● Retail Inside City Major Industrial ● Retail Outside City Major Industrial
● Volume Rate (Uniform) ● 2 rates (Reduced Peak Demand and Peak Demand)	● Wholesale
● Safe Drinking Water Fee (per month)	● All customer classes

3.3.2 Wastewater Rate Structure

The City’s Operating Fund wastewater rate structure also comprises of both Fixed Charge and Volumetric Charge components. The wastewater rate structure includes the following three components:

- Base Charge (Fixed Charge);

- Volume Charge (Volumetric Charge); and
- BOD and TSS Charge (Surcharge).

The revenues derived from all these three sources are collectively referred to as **“Wastewater Service Revenues.”** Some of these user rate components are applicable to only specific customer classes.

- **Base Charge:** The existing Base Charge for all retail customers is based on meter size.
- **Volume Charge:** The existing volume wastewater charge is based on the quantity of water used by the customer classes.

Surcharge: The existing wastewater surcharge is based on the excess strengths of BOD and TSS, of certain customers.

The customer classes to which the specific rate components are applicable is illustrated in Figure 3 - 2. The existing wastewater rate schedule for 2022 is presented in [Table S - 3](#) in Appendix 2.

Figure 3 - 2: Existing Wastewater Rate Structure

Rate Component	Applicable Customer Classes
Base Charge by Meter Size	- Retail Inside City (Residential, Non-Residential and Major Industrial); - Retail Outside City (Residential, Non-Residential and Major Industrial);
- Volume Rate (2-Tier Inclining Block) - Based on winter water usage of December, January and February	Retail Inside City Residential
Volume Rate (Uniform)	- Retail Inside City (Non-Residential and Major Industrial) - Retail Outside City (Residential, Non-Residential and Major Industrial)
- Volume Rate (Uniform) 2 tiered rates (85% of metered water usage and Above 85% of metered water usage)	Wholesale

4.0 Water Utility

The financial plan and rate design were developed to meet all the funding obligations of the water utility, and to achieve the financial adequacy and equitable cost recovery discussed in Section 2.3.

The water utility financial plan was developed for the six-year forecast period of 2021 through 2026, and includes the following key components:

- Revenue projections (user rate revenues and non-rate revenues);
- Capital improvement program financing;
- Annual revenue requirement projections; and
- Annual proposed revenue increases

4.1 Water Revenue Projections Under Existing Rates

The water utility revenues are derived from the following sources:

- Water Service Revenues (Base and Volume Charge)
- Other Revenues

As a first step in the development of the financial plan, Water Service Revenues under the 2022 existing rates are projected for the forecast period.

4.1.1 Water Revenue Under Existing Rates

As described in Section 3.3.1, the Water Service Revenue consists of two charge components. For each of the two components, revenues are projected based on billing units and applicable existing rate schedules. The billing units necessary to compute the Base Charge revenues are the *number of accounts* based on meter size and customer class. The billing units necessary to compute the Volume Charge are the *annual water usage* by customer class and by applicable blocks of usage.

4.1.1.1 Projection of Customer Accounts

Typically, historical billing units are reviewed and used to project billing units for the forecast period. The project team reviewed historical accounts and average usage trends for each customer class referenced in Section 3.3.1.

Based on the review of historical trends, two annual adjustment factors were applied to project billing units for the forecast period. The two adjustment factors applied at the customer class level are *accounts growth rate* and *usage factor*. The number of accounts is projected to grow in all customer classes except for Fire protection and wholesale where the number of accounts is anticipated to remain at the 2020 level.

The total number of water accounts (not including private fire connections) is anticipated to increase from about 48,620 in 2021 to about 52,850 in 2026, at an overall annual system growth rate of 1.7%. The number of private fire connections is anticipated to remain at 727 throughout the study period. Table W - 1 in Appendix 1 presents the projected annual number of water accounts and private fire connections for the period of 2021 through 2026.

Figure 4-1 presents both the historical and projected number of accounts for the water utility.

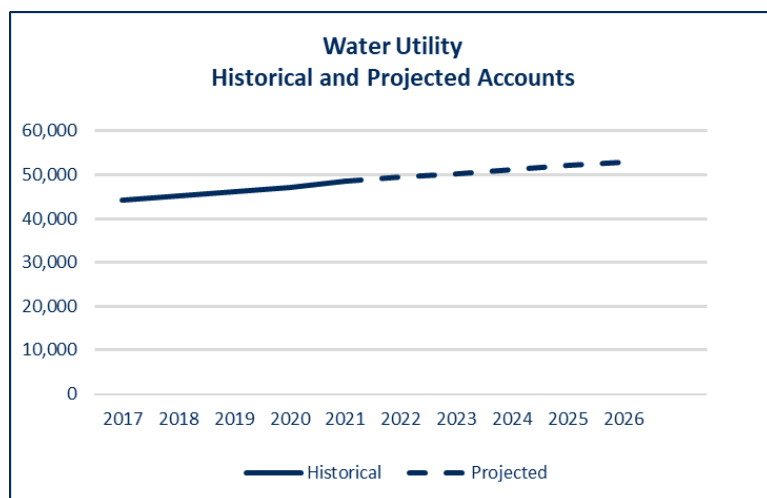


Figure 4-1 - Historical and Projected Water Accounts

4.1.1.2 Projection of Water Usage

Billed water volumes are projected based on estimates of the number of water accounts and the average billed usage per account. Average water use per account is determined based on historical usage. The historical usage per account for all customer classes varies each year between 2016 and 2020. In 2020, the COVID pandemic led to stay-at-home measures and shut down of non-essential businesses across the country. Consequently, the residential customers used more water in 2020, whereas the non-residential customers used less water as compared to previous years. The average use per account for 2021 was projected to remain at the 2020 levels assuming a lingering effect of the pandemic. The average usage per account for 2022 and beyond was projected to return to the 2019 level for all customer classes assuming a return to pre-pandemic levels.

Total system water usage is projected to increase from 3,873,500 kgals in 2021 to 4,109,400 kgals in 2026. Table W - 2 in Appendix 1 presents the projected annual volume for the period of 2021 through 2026.

Figure 4-2 presents both the historical and projected annual billed volume for the water utility.

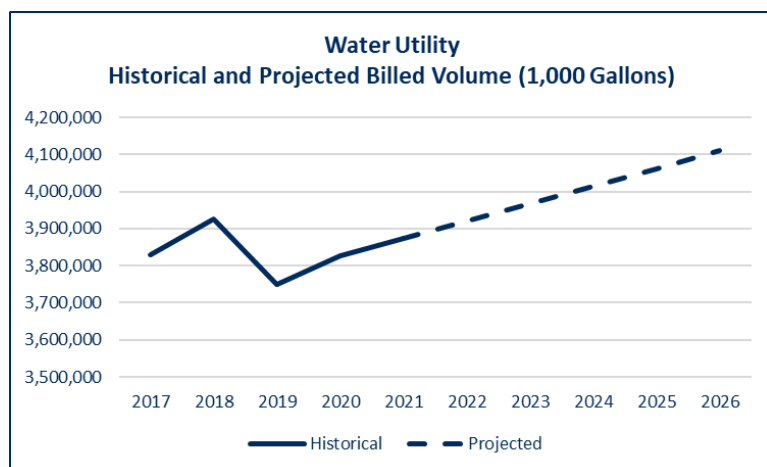
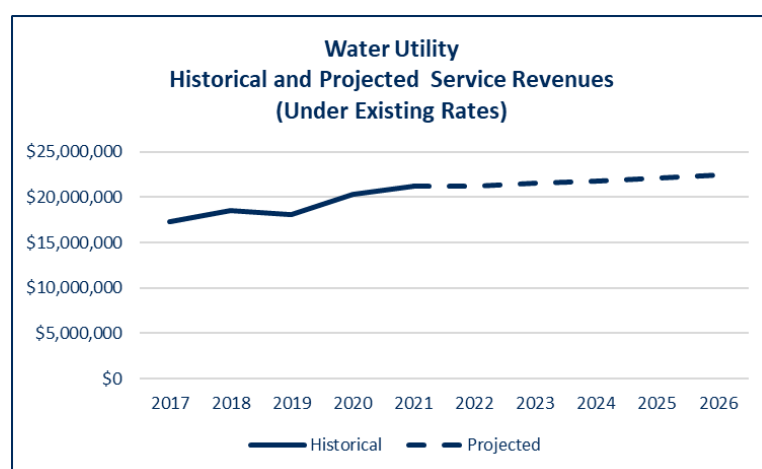


Figure 4-2 - Historical and Projected Water Billed Volume**4.1.2 Projection of Service Revenue Under Existing Rates**

Water service revenues for the period 2021 through 2026 are projected for each charge component (base and volume) based on the projections of accounts by meter size, projected water usage for each customer class, and the application of the 2021 rate schedule for 2021 revenues and 2022 rate schedule for 2022 through 2026 revenues. Water service revenue under existing rates is projected to increase slightly from \$21.2 million in 2021 to \$23.0 million in 2026. This growth is due to increase in water sales due to the growth in the number of accounts over the study period. Table W - 4 in Appendix 1 presents the projected annual service revenues for the period of 2021 through 2026.

Figure 4-3 presents both the historical and projected annual service revenues under existing rates for the water utility.

**Figure 4-3 - Historical and Projected Water Service Revenue****4.1.3 Other Water Revenues**

The other revenues include the following major components:

- Impact Fee Revenue;
- Water/Rural Water Connection Fees;
- Miscellaneous Fees (Water Sales Not on Computer, Trip Fees, Tampering-Billed Service)
- Penalties; and
- Safe Drinking Water Fee (pass-through)

The annual revenues from water impact fees, water connection fees and miscellaneous fees for 2021 to 2026 are projected based on historical three-year (2018 to 2020) average revenues for each of the fees. The penalties revenue in 2020 reflects only the first two and half months of revenues, as the City stopped assessing penalties for non-payment due to the pandemic. The revenue for penalties in 2021 is projected to be half of the historical three -year (2017 to 2019) average revenues due to continued waiver of the penalties as a result of the COVID pandemic during the first half for 2021. The revenue

from penalties in 2022 and beyond is projected as the historical three-year average (2017 to 2019) average revenues. Table W - 5 in Appendix 1 presents the historical and projected annual service revenues for the period of 2021 through 2026.

The Safe Drinking Water Fee (SDWF) is assessed for all water users in the state of Arkansas. The current rate is \$0.40 per bill per month and is collected by all water utilities in the state. The SDWF revenue is projected by applying the current rate to the number of meters for the period 2021 to 2026. The revenue collected as part of this fee is reimbursed to the state.

4.2 Water Capital Improvements Program

The capital project costs provided by the City were based on 2020 dollars. Based on discussions with the City, the project costs are inflated at an annual rate of 3.0% to accurately reflect the costs of projects for 2021 and beyond. The water utility Capital Improvement Plan (CIP) provides for a total of \$49.0 million of investments during the study period of 2021 through 2026. Table W - 6 in Appendix 1 presents the CIP list of projects and schedule for 2021 through 2026. The CIP is expected to be financed from a funding mix of cash financing from service revenue and impact fees.

4.3 Water Revenue Requirements

Projection of reliable revenue requirements includes: (1) operation and maintenance expenses; (2) bad debt; (3) Payment In Lieu of Taxes; (4) SDWF Reimbursement; (5) debt service (consisting of principal and interest payments); (6) transfer to shop fund; (7) transfer to operating reserve; (8) cash financed capital; and (9) transfer to capital reserve. The projections of annual revenue requirements for the study period is discussed in this section.

4.3.1 Water Operation and Maintenance Expenses

The O&M expenses for the water utility include the annual expenses associated with the water purchases from Beaver Water District; storage and distribution; meters and services; billing and collection, and general administrative services. These expenses include personnel costs (salaries and benefits), costs for materials and supplies, costs of utilities, and contracted services.

The 2021 O&M budget provided by the City was used as the baseline for projection of O&M expenses for the study period. In addition, costs associated with a water inspector (not included in the 2021 budget) recurring salary and benefits costs, recurring vehicle maintenance costs and one-time cost of the vehicle purchase was added per City's direction. Based on historical O&M costs, industry experience, and discussions with the City management, appropriate escalation factors were applied to various categories of costs to project future annual O&M expenses. Annual escalation factors used for major cost categories include the following:

- Salaries: 4.00%
- Benefits: 5.00%
- Energy: 3.00%
- Chemicals: 3.00%
- Purchased Water: 3.00%

The annual O&M expenses for water utility are budgeted at \$15.9 million in 2021 and are projected to grow to \$18.7 million by 2026. Table W - 7 in Appendix 1 presents a summary of total projected operation and maintenance expense for the period 2021 through 2026.

Figure 4-4 presents the historical and projected O&M expenses for the water utility.

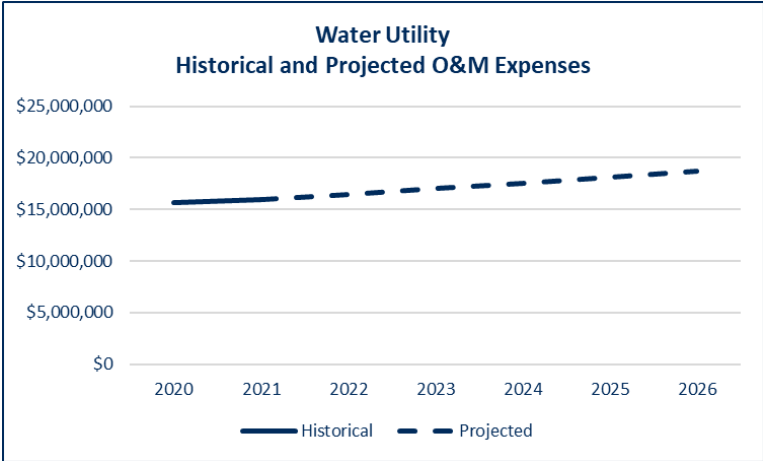


Figure 4-4 - Projected Annual Water O&M Expenses

4.3.2 Water Bad Debt

Bad debt expenses refer to outstanding balances owed that are deemed uncollectible. The water bad debt in 2019 was 0.5% of revenue. Hence, bad debt projections for the study period assume 0.5% of annual revenues. Annual bad debt expenses for water utility is projected to increase from \$105,900 in 2021 to \$125,300 by 2026 reflecting the increase in projected revenues. Line 12 in Table W - 9 in Appendix 1 presents the projected bad debt for the period 2021 through 2026.

4.3.3 Water Payment In Lieu of Taxes

The PILOT costs are paid by public utilities to municipal entity as a compensation for utilization of streets, easements, right of ways or other public places. The PILOT amount is determined per City Ordinance 4449 that requires that the water and wastewater funds to pay 4.25% of annual total gross sale revenues to the City. Annual PILOT amount for the water utility is calculated by multiplying actual water revenues from prior year (Water sales on Computer and Water sales not on Computer/ Bulk Water Sales, and Fire Hydrant and Protection). Annual PILOT amount for the water utility is anticipated to increase from \$900,400 in 2021 to \$1,064,900 in 2026. Line 13 in Table W - 9 in Appendix 1 presents the projected PILOT expenses for the period 2021 through 2026.

4.3.4 Safe Drinking Water Fee Reimbursement

The SDWF revenue collected for each metered customer is reimbursed to the state of Arkansas department of Public Health. The SDWF reimbursement is projected to increase from \$230,000 in 2021 to \$250,200 in 2026. Line 14 in Table W - 9 in Appendix 1 presents the projected SDWF reimbursement for the period 2021 through 2026.

4.3.5 Water Debt Service Requirements

The water utility does not have any outstanding debt service obligations. The City does not anticipate any debt issuances during the study period, therefore there is no projected debt service for future debt as shown in Line 15 in Table W - 9 in Appendix 1.

4.3.6 Transfer to Shop Fund

The transfer to the shop fund is made by the utility whenever a new vehicle (associated with new personnel) is purchased, thereby expanding the existing fleet. There are no projected transfers to the shop fund over the study period as shown in Line 17 in Table W - 9 in Appendix 1.

4.3.7 Transfer to Operating Reserve

The City maintains an operating reserve balance equivalent of ninety (90) days of following years' O&M budget. The transfer to operating reserve is projected to increase from \$133,000 in 2022 to \$151,800 in 2026 reflecting the growth in the O&M budget. Line 18 in Table W - 9 in Appendix 1 presents the projected transfers to the operating reserve for the period 2021 through 2026.

4.3.8 Water Cash Financed Capital

The City currently utilizes the following two sources of funding for the water utility capital projects (1): transfer from operating revenues and (2) transfer from the impact fee fund. As stated in Section 4.2, the water capital improvement program for the study period is \$52 million, of which \$50 million is projected to be funded from operating revenues and \$2 million is from the impact fee fund. A capital project meets the requirements of using impact fees if the existing water capacity is expanded due to growth. The construction contract and the budget amendment to change the source of funding to impact fee must be approved by the City Council. Table W - 8 in Appendix 1 presents the sources of funding for the water capital improvement program. Line 19 in Table W - 9 in Appendix 1 presents the projected transfers for cash financed capital for the period 2021 through 2026.

4.3.9 Transfer to Capital Reserve

The water utility, after meeting all the obligations stated in sections above, transfers the excess funds to the capital reserve fund. The capital reserve fund is used as a source for funding the capital program in the years that the revenues are not sufficient to meet the capital funding requirements. Line 20 in Table W - 9 in Appendix 1 presents the projected transfers to and from the capital reserve for the period 2021 through 2026.

4.4 Water Proposed Revenue Adjustments

The annual revenue adjustments that are needed to achieve the defined financial performance objectives are determined by evaluating the funding gap between the projected annual revenue requirements and the projected revenues under existing rates. Table W - 9 in Appendix 1, provides a summary of the revenue and revenue requirements (financial plan) for the study period.

Projected Revenue Under Existing Rates: Line 1 indicates that under existing rates (2022 rates) water utility revenues will increase from \$21.8 million in 2022 to \$23.0 million in 2026.

Projected Other Revenues: Line 8 indicates that the other revenues are anticipated to increase from \$641,500 in 2022 to \$662,300 in 2026. This increase is due to the growth in SDWF, which is a pass-through. It is anticipated that all other categories of other revenues will remain flat throughout the study period.

Projected Expenses: Line 15 indicates the total annual expenses for the water utility are anticipated to increase from \$17.7 million in 2022 to \$20.2 million in 2026.

Projected Transfers: Line 20 indicates the total annual transfers for the water utility are anticipated to increase from \$4.7 million in 2022 to \$5.6 million in 2026.

Funding Gap: The cash flow analysis indicates that the sum of revenues under existing rates and the other revenues is not adequate to fund the projected annual revenue requirements, thereby causing an operating deficit.

Proposed Revenue Adjustments: To address the funding gap in the water utility, a series of revenue adjustments are proposed as follows:

- 2024: 3% effective (January 1, 2024)
- 2025: 3% effective (January 1, 2025)
- 2026: 3% effective (January 1, 2026)

Lines 2 through 7 present the amount of additional revenues generated each year with the proposed magnitude and timing of revenue adjustments. Figure 4-5 presents the projected revenue and revenue requirements through 2026 for the wastewater utility.

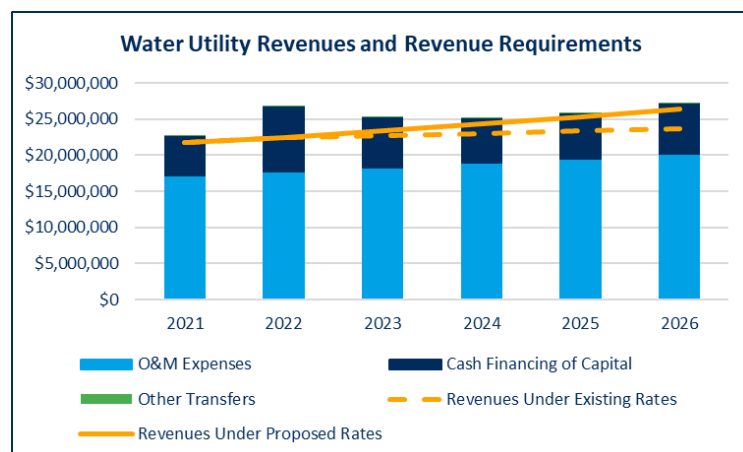


Figure 4-5 - Water Revenues and Revenue Requirements

Table W - 10 in Appendix 1 presents the water utility's operating reserve, capital reserve and impact fee fund balances. The City has identified the minimum balance requirements for each of the following funds:

- **O&M Reserve Balance:** A cash balance of at least 90 days of the follow's year operating expenses.
- **Operating Fund Balance:** A minimum target of \$100,000.

- **Capital Fund Balance:** A minimum target of \$500,000.
- **Capital Reserve Fund Balance:** An amount necessary to fully fund anticipated capital projects.

As shown in Table W - 10, the proposed annual revenue adjustments will allow the water utility to meeting the minimum fund balance requirements for all funds through 2026.

4.5 Water Cost of Service

A key step to developing an equitable rate structure involves the cost of service analysis. The financial plan discussed in sub sections 4.1 through 4.4 provides an estimate of the total annual revenue requirements for a given fiscal year. The cost of service analysis provides a mechanism to defensibly allocate the total annual revenue requirements to the various customer classes.

The cost of service is typically performed for a single year, referred to as the “Test Year” for which the rates are to be designed. The test year for which the cost of service study was performed is 2023.

The key components of the cost of service analysis are:

- Determination of Cost of Service (net revenue requirements);
- Determination of Functional Costs;
- Allocation of Functional Costs to Cost Components; and
- Distribution of Water Utility Costs to Customer Classes

4.5.1 Determination of Cost of Service

The first step is to determine the cost of service that is to be recovered from user rates and charges. As briefly discussed in Section 2.3, cost of service is defined as, and synonymous with, the “net revenue requirement” that is to be recovered for the test year through user rates and charges. Table W - 11 in Appendix 1 presents the derivation of the cost of service to be recovered through water charges. As Line 18 in Table W - 11 indicates, the water cost of service for 2023 is projected to be \$22.1 million. This cost of service consists of \$17.8 million of net O&M expense and \$4.3 million of net capital costs.

Costs of service is apportioned among customer classes in this study on a “Utility Basis”, that is, in terms of operating expense, depreciation expense, and return. For a municipal utility, the total of depreciation expense and return is equal to the capital cost related portion of the total cost of service.

Depreciation is the loss in value of the original plant investment, not restored by current maintenance, due to wear, decay, inadequacy, and obsolescence. Annual depreciation is determined as a percentage of original investment based on expected service lives of the various facilities. Unless funds are provided for normal annual replacement of original plant items, operating reliability of the system, as well as the value, will decrease. Depreciation funds are used to finance principal payments on bond issues and provide normal annual capital expenditures.

The depreciation expense associated with the water utility is estimated in this study recognizing depreciation rates presently in use by the water utility. This results in a projected test year depreciation expense of \$2.8 million exclusive of depreciation on contributed plant, which is not recognized for cost

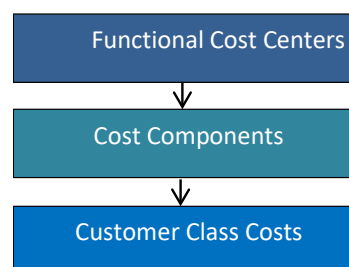
allocation or rate design purposes. The contributed plant adjustment is consistent with generally accepted regulatory practices.

Total return on the system investment provides funds for bond interest payments and any other costs that may be incurred. In developing the level of return on net plant serving the requirements of outside City customers, provisions for a reasonable margin should be made to meet interest on borrowed funds, and to recognize the business risk assumed by the City in providing reliable facilities to serve nonresident customers. Total return for the test year is projected to be \$1,476,030 as shown on Line 17 of Table W - 11 in Appendix 1.

4.5.2 Determination of Functional Costs

As a basis for developing an equitable rate structure, the test year cost of service should be allocated to the various customer classes according to respective service requirements.

The basic underlying principle in developing cost of service rates is the determination of what elements in a water system are responsible for causing the level of revenue requirements that is needed. To allocate the costs to customer classes, first the operating and capital costs of service are aggregated into “Functional Cost Centers.” The functional costs are then further allocated to cost components. Each component cost is then apportioned to customer classes



Functional Cost Centers

Functional cost centers of a water utility represent the activities that contribute to the incurrence of O&M and capital costs. For a water utility, they often include source of *water supply, pumping, treatment, storage, distribution, meters, billing, and other administration* costs. Both the O&M and capital costs defined for the Test Year, discussed in 4.5.1, need to be allocated to functional cost centers.

Functional Costs

The **capital costs** associated with the functional cost centers are determined using detailed fixed assets data, provided by the City, for each class of asset that is currently in service, construction work in progress and projected capital improvement program for the test year. The total value of the fixed assets (referred to as “Net Plant Investment”) in the system is usually presented as Original Cost Less Depreciation (“OCLD”). The total estimated OCLD of the water system is \$104 , as presented in Line 9 in Table W - 12 in Appendix 1. This plant investment data is subsequently used as a basis for the allocation to cost components, discussed in the following subsection 4.5.3.2.

The **O&M costs** for the Test Year are allocated to the various functional cost centers based on the specific nature of costs. The allocation of the projected O&M cost of service (net operating revenue requirement) of \$17.8 million, to the various functional cost centers, is presented in Table W - 14 in Appendix 1.

The various cost elements of water service are assigned to functional cost components as the first step in the subsequent distribution of the costs of service to customer classes.

4.5.3 Allocation of Costs to the Functional Cost Components

The principal functional cost components consist of *Base Costs*, *Extra-Capacity Costs*, and *Customer Costs*.

Base costs are those which vary directly with the quantity of water used, as well as those costs associated with serving customers under average load conditions without the elements necessary to meet water use variations or peak demands. Base costs include purchased power and treatment chemicals, and other operating and capital costs of the water system associated with serving customers to the extent required for a constant, or average annual rate of use.

Extra-Capacity costs represent those operating costs incurred due to demands in excess of average, and capital related costs for additional plant and system capacity beyond that required for the average rate of use. Total extra capacity costs are subdivided into costs associated with maximum day and maximum hour demand.

Customer Costs are defined as costs which tend to vary in proportion to the number of customers connected to the system. These include meter reading, billing, collection and accounting costs, and maintenance and capital charges associated with meters and services.

The delineation of costs of service into these principal categories provides the means of further allocating such costs to the various customer classes based on the respective base, extra capacity, and customer service requirements of each customer class.

Wholesale customers generally do not use smaller water distribution mains as do retail users. Therefore, separate functional cost of service categories are designated for costs which are common to all customer classes and those which are common to retail service classes only.

4.5.3.1 Water Utility Allocation to Cost Components

The water utility is comprised of a variety of service facilities, each designed and operated to fulfill a given function. In order to provide adequate service to its customers at all times, the utility must be capable of not only providing the total amount of water used, but also supplying water at maximum rates of demand.

Since all customers do not exert their maximum demand for water at the same time, capacities of water facilities are designed to meet the peak coincidental demands that all classes of customers, as a whole, place on the system. For every water service facility on the system, there is an underlying average demand, or uniform rate of usage exerted by the customers for which the base cost component applies. For those facilities designed solely to meet average day demand, costs are allocated 100% to the base cost component. Extra capacity requirements associated with coincidental demands in excess of average use are further related to maximum daily and maximum hourly demands.

Analysis of historical system maximum day and maximum hour demands to average day demands results in appropriate ratios for the allocation of capital costs and operating expenses to base and extra capacity cost components. A maximum day to average day ratio of 2.10 is used based on experienced demands in the water system. This indicates that approximately 47.6% of the capacity of facilities designed and operated to meet maximum day demand is required for average or base use. According, the remaining 52.4% is required for maximum day extra capacity requirements.

The costs associated with facilities required to meet maximum hour demand are allocable to base, maximum day extra capacity, and maximum hour extra capacity. A ratio of maximum hour to annual average day water use of 2.73 is used, based on demands experienced by the system. This ratio indicates that 36.6% of the capacity of facilities designed and operated for maximum hour demand is needed for average or base use, while 40.3% is utilized for maximum day extra capacity uses, and the remaining 23.1% is required to meet maximum hour extra capacity demand in excess of maximum day needs.

4.5.3.2 Allocation of Net Water Plant Investment

The estimated test year net plant investment in water facilities consists of net plant in service as of December 31, 2019, the 2020 construction work in progress, and the estimated cost of proposed capital improvements expected to be in service by the end of calendar year 2022. As the wholesale customers have their own storage tanks, the plant investment associated with tanks was allocated to the retail customers only. The total estimated OCLD of the water system is \$104 million, as presented in Line 9 in Table W - 12 in Appendix 1.

Plant investment is allocated to cost components on a design basis recognizing the principal function governing the design of the facility. The allocation of net plant investment provides the basis for allocation of depreciation expense.

4.5.3.3 Allocation of Water Facilities Depreciation Expense

Depreciation is a real part of the cost of operating a utility. In utility accounting, it is generally accepted practice to use depreciation funds to finance system replacements, improvements, and extensions. While such action does not restore the value lost in each property unit every year, the total value lost through depreciation is restored to the system as a whole. Depreciation funds can be reinvested in the system either by direct payment of routine capital additions and replacements or by principal payments on bonded debt.

The total estimated depreciation cost (excluding depreciation on contributed facilities) for the water system is \$2.8 million, as presented on Line 9 in Table W - 13 in Appendix 1. As the wholesale customer have their own storage tanks, the depreciation costs associated with tanks was allocated to the retail customers only.

4.5.3.4 Allocation of Water Utility Operating Expenses

Table W - 14 in Appendix 1 presents the allocation of O&M expense to functional cost components. Total test year O&M expense, as shown on Line 7 of this table, amounts to \$18.2 million. Operating expenses are allocated to functional cost components in generally the same manner as plant investment.

4.5.4 Distribution of Water Utility Costs to Customer Classes

As a basis for determining the cost of water service to each customer class, the elements of cost of service previously allocated to functional cost components are distributed among the classes in proportion to their respective service requirements. Estimates of these requirements, or units of service, reflect the average number of accounts with recognition to relative meter sizes serving each account, annual water sales, and estimated peak water demands placed on the system by each customer class. Analysis of resulting costs of service to each class and comparison of allocated costs with revenues under existing rates provide a basis for future water rate adjustments.

4.5.4.1 Water Customer Classification

Customer classes consist of residential, non-residential, industrial, irrigation, wholesale, and public and private fire protection. The residential class includes single family residential, duplex, fourplex, apartment, multi-unit residential, and rooming house customers. The non-residential class includes commercial, combination, construction, government, and non-profit classes. Industrial includes major and minor industrial. Outside City includes Farmington, Greenland, Washington/Growth Area, Johnson, and Goshen/ White River. Wholesale includes the communities of Elkins, West Fork, Mt. Olive, and RDA/WWA. These classes group together customers with similar service requirement characteristics and provide a means for allocating costs to customers.

4.5.4.2 Water Units of Service

The cost of service responsibility for base costs varies with the annual volume of water usage and is distributed to customer classes on that basis. Extra capacity costs are those costs associated with meeting peak rates of water use and are distributed to customer classes on the basis of their respective system capacity requirements in excess of average requirement rates. Customer costs, which consist of meter related costs, billing, collection and accounting costs, are allocated on the basis of the number of equivalent meters and monthly bills.

The estimated units of service for the various customer classifications are presented in Table W - 15 in Appendix 1. Estimates of test year annual water volumes, shown in Column 1, are based on the projections of total water sales for the test year 2023. Average daily water use is presented in Column 2. Columns 3 through 8 present the estimated maximum day and maximum hour capacity factors for each customer class, the resulting demands, and extra capacity requirements, respectively.

Customer related meter and service costs are allocated on the basis of the number of equivalent 3/4 inch meters serving each customer class. The number of equivalent meters in each customer class (Column 10) is estimated by relating typical costs for meters and services larger than 5/8 inch in size to the typical cost of a 3/4 inch meter and its related service line. Customer billing and accounting costs are distributed to classes on the basis of the number of bills for each customer class in Column 11.

Extra capacity requirements for fire protection service recognize, in part, peak fire flow requirements, and system capabilities established by the Insurance Service Office. One fire is estimated with peak fire flow requirements of 9,000 gallons per minute for 10 hours (maximum day) and 24 hours (maximum hour). Direct fire protection costs have been allocated between inside City and outside City customers in proportion to the number of equivalent 6-inch fire hydrants, as shown in Columns 12 and 13.

4.5.4.3 Water Utility Customer Class Costs of Service

Unit costs of service are developed by dividing the total cost allocated to each functional cost component by the total applicable units of service. The customer class responsibility for service is obtained by applying unit costs of service to the number of units for which the customer class is responsible.

The water utility has been built with provision for service to customers outside the City, yet the inside City customers must bear the responsibility for providing system facilities by undertaking the necessary investment. Revenues derived from outside City service should provide a margin of return on capital adequate to induce the citizens of Fayetteville to bear the risks of providing outside City service. To recognize the proprietary interest and responsibility of inside City customers in the system, it is proper to charge outside City customers, in addition to their share of operating expense and depreciation, a

reasonable return on their allocated portion of value. A 7.0% (4.0% for future debt service plus 3.0% risk component) annual rate of return on the value of water facilities serving outside City customers is recognized for purposes of this study.

Table W - 16 in Appendix 1 shows the development of the unit costs of service applicable to each cost function. Lines 1 through 3 summarize the units of service developed in Table W - 15. Total allocated costs or investment shown on Lines 4, 6, and 8 were previously developed in Table W - 12, Table W - 13 and Table W - 14 respectively. Unit costs of service for each component are determined by dividing the allocated cost or investment by the total units of service.

Total allocated unit costs of service for inside and outside City customers (Lines 15 and 16) are determined by adding the unit costs for net operating expense (Line 5) and depreciation expense (Line 7) to the respective inside and outside City unit costs for return on investment (Lines 10 and 11). These unit costs applied to the respective units of service shown on Lines 1 and 2 determine the allocated total costs of service for inside and outside City customers shown on Lines 17 and 18. In order to determine the allocated costs for each customer class, the costs are allocated to the various customer classes by applying the appropriate unit cost of service to the respective service requirements of each customer class.

Table W - 17 in Appendix 1 shows the resulting allocated and adjusted cost of service by customer class, revenue under existing rates, and the additional revenue required from each class. Costs associated with public fire protection are not recovered through direct charges, therefore, the cost of service for this class is reallocated to all other retail customers in proportion to their allocated cost of service as shown in Column 3. The test year adjusted cost of service, reflecting the reallocation of these costs, is shown in Column 4. The indicated increase or decrease in revenue required to meet adjusted cost of service is shown in Column 6.

5.0 Water Rate Design

The principal consideration in establishing water rate schedules is to establish rates to customers to recover costs that reasonably commensurate with the cost of providing water service. Theoretically, the only method of assessing entirely equitable rates for water service would be the determination of each customer's bill based upon each customer's particular service requirements. Since this is impractical, schedules of rates are normally designed to meet average conditions for groups of customers having similar service requirements. Rates should provide for equitable cost recovery, ease of customer understanding and be simple to administer.

The revenue requirements and cost of service allocations described in the preceding sections provide the basis for adjusting water rates. The revenue requirements reflect the need for adjustment and the level of revenue required. The cost of service analysis provides the unit costs of service used in the rate design process and gives a basis for determining whether resultant rates will develop revenues which recover costs of service from customer classes in proportion to service required and provide the total level of revenue required.

5.1 Existing Water Rates

The existing schedule of rates for water service became effective on January 1, 2022. For both retail and wholesale customers, these rates include a monthly base charge bill, which varies by meter size. The volume charge varies by customer class. The existing water rate structure is described in Section 3.3.1. The existing schedule of base and volumetric water rates is shown in Table W - 3.

5.2 Proposed Water Rates

The cost of service analysis described in the preceding sections of this report provides a basis for the design of a schedule of water rates to meet those costs. Proposed water base charge and volume rates have been designed to meet the test year allocated costs of service and are presented in Table W - 18. The proposed rate structure eliminates the minimum volume charge associated with 1,000 gallons. Additionally, volumetric rate structure for non-residential and irrigation customers classes both inside and outside city were changed from declining block rates to uniform block rates Figure 5 - 1 below presents the proposed water rate structure.

Figure 5 - 1 Proposed Water Rate Structure

Rate Component	Applicable Customer Classes
Base Charge by Meter Size	- Retail Inside City (Residential, Non-Residential, Major Industrial, Irrigation, Fire Protection); - Retail Outside City (Residential, Non-Residential, Major Industrial, Irrigation, Fire Protection); - Wholesale
Volume Rate (3-Tier Inclining Block)	- Retail Inside City Residential; and - Retail Outside City Residential
Volume Rate (Uniform)	Retail Inside City Non-Residential, Major Industrial, Irrigation; and

Rate Component	Applicable Customer Classes
	Retail Outside City Non-Residential, Irrigation
Volume Rate (Uniform)	Wholesale
Safe Drinking Water Fee (per month)	All customer classes

In developing proposed schedules of water rates, it must be recognized that the cost of service studies are the result of engineering estimates, based to some extent upon judgment and experience, and detailed results should not be used as literal and exact answers but as guides for potential rate adjustments. Practical considerations such as previous rate levels, bill impact on customers, and magnitude of cost of service shifts among customer classes, and past local practices are commonly recognized in making rate adjustments.

A comparison of estimated test year revenue under the proposed rates with allocated costs of service for each of the customer classes is presented in Table W - 19 in Appendix 1. This comparison indicates the proposed rates will recover revenues from inside and outside City customer groups reasonably commensurate with the cost of service and practical considerations previously noted.

To better reflect the total effect the proposed rates have on customer bills, a comparison of typical inside city and outside city customer water charges under existing rates and the rates proposed to become effective January 1, 2023, is presented in Table W - 20.

6.0 Wastewater Utility

The financial plan and rate design were developed to meet all the funding obligations of the wastewater utility, and to achieve the financial adequacy and equitable cost recovery discussed in Section 2.3.

The wastewater utility financial plan was developed for the forecast period of 2021 through 2026, and includes the following key components:

- Revenue projections (user rate revenues and non-rate revenues);
- Capital improvement program;
- Annual revenue requirement projections; and
- Annual proposed revenue increases

6.1 Wastewater Revenue Projections Under Existing Rates

The wastewater utility revenues are derived from the following sources:

- Wastewater Service Revenues (Base and Volume Charge)
- Other Revenues

As a first step in the development of the financial plan, Wastewater Service Revenues under the 2021 existing rates are projected for the forecast period.

6.1.1 Wastewater Revenue Under Existing Rates

As described in Section 3.3.2, the Wastewater Service Revenue consists of two charge components. For each of the two components, revenues are projected based on billing units and applicable existing rate schedules. The billing units necessary to compute the Base Charge revenues are the *number of accounts* based on meter size and customer class. The billing units necessary to compute the Volume Charge are the *annual wastewater billed volumes* by customer class and by applicable blocks of billable wastewater volume.

6.1.1.1 Projection of Customer Accounts

Typically, historical billing units are reviewed and used to project billing units for the forecast period. The project team reviewed historical accounts and billed volume trends for each customer class referenced in Section 3.3.1.

Based on the review of historical trends, two annual adjustment factors were applied to project billing units for the forecast period. The two adjustment factors applied at the customer class level are *accounts growth rate* and *volume factor*. The number of accounts is projected to grow for residential customer classes Fayetteville (Inside City) and Farmington (Outside City), whereas all other customer classes are anticipated to remain at the 2020 level.

The total number of wastewater accounts is anticipated to increase from about 40,100 in 2021 to about 43,300 in 2026, at an overall annual system growth rate of 1.6%. Table S - 1 in Appendix 2 presents the projected annual number of accounts for the period of 2021 through 2026.

Figure 6-1 presents both the historical and projected number of accounts for the wastewater utility.

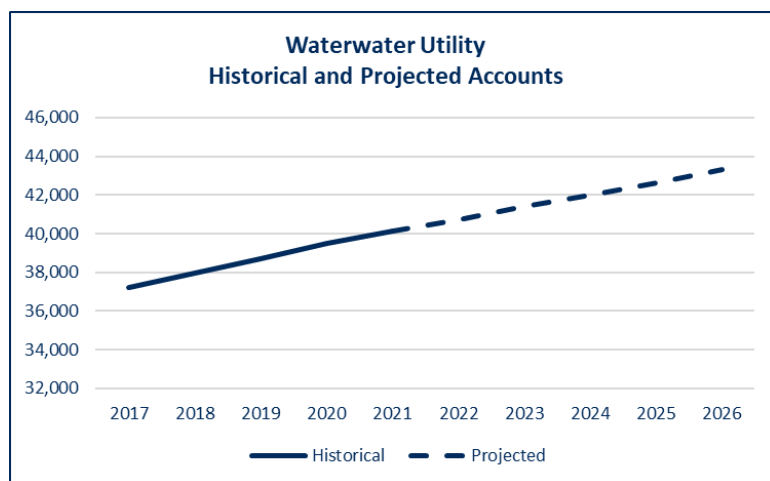


Figure 6-1 - Historical and Projected Wastewater Accounts

6.1.1.2 Projection of Wastewater Volume

Billed wastewater volumes are projected based on estimates of the number of wastewater accounts and the average billed volume per account. Average billed volume per account is determined based on historical billed volume. The historical billed volume per account for all customer classes varies each year between 2016 and 2020. In 2020, the COVID pandemic led to stay-at-home measures and shut down of non-essential businesses across the country. Consequently, the residential customers used more water in 2020, whereas the non-residential customers used less water as compared to previous years. The average billed volume per account for 2021 was projected to remain at the 2020 levels assuming a lingering effect of the pandemic. The average billed volume per account for 2022 and beyond was projected to return to the 2019 level for all customer classes assuming a return to pre-pandemic levels.

Total system wastewater billed volume is projected to increase from 3,043,100 kgals in 2021 to 3,205,800 kgals in 2026. Table S - 2 in Appendix 2 presents the historical and projected annual volume for the period of 2020 through 2026.

Figure 6-2 presents both the historical and projected annual billed volume for the wastewater utility.

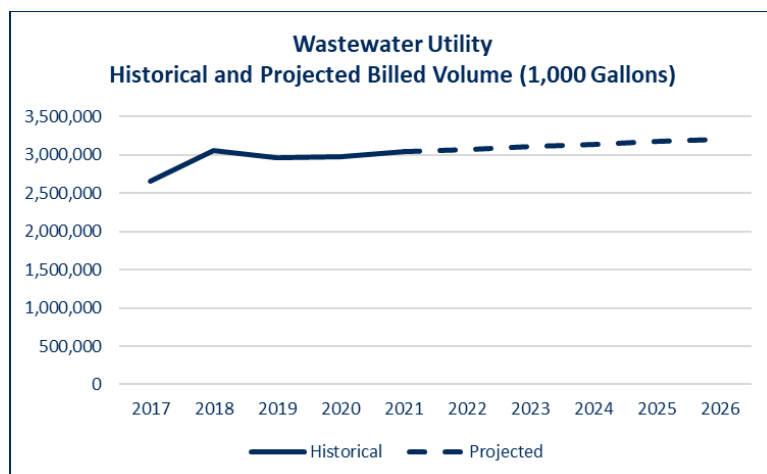


Figure 6-2 - Historical and Projected Wastewater Billed Volume

6.1.2 Projection of Service Revenue Under Existing Rates

Wastewater service revenues for the period 2021 through 2026 are projected for each charge component (base and volume) based on the projections of accounts by meter size, projected billed volume for each customer class, and the application of the 2021 rate schedule for 2021 revenues and 2022 rate schedule for 2022 through 2026. Wastewater service revenue under existing rates is projected to increase slightly from \$24.5 million in 2021 to \$26.7 million in 2026. This growth is due to increase in wastewater sales due to the growth in the number of accounts over the study period. Table S - 4 in Appendix 2 presents the historical and projected annual service revenues for the period of 2021 through 2026.

Figure 6-3 presents both the historical and projected annual service requirements under existing rates for the wastewater utility.

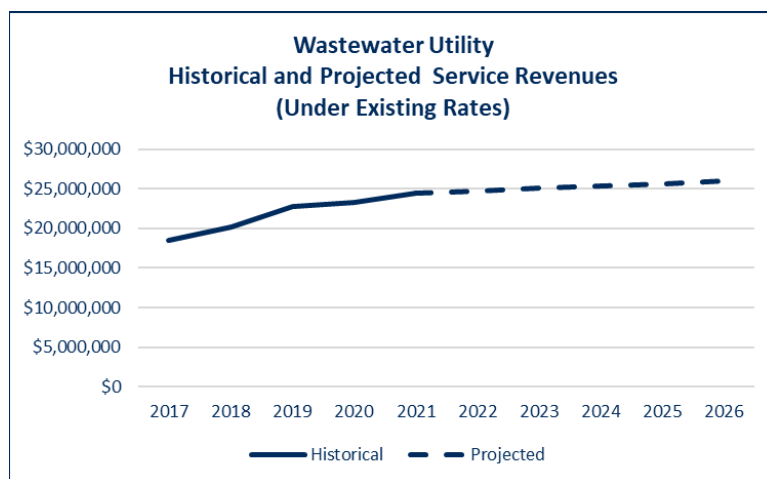


Figure 6-3 - Historical and Projected Wastewater Service Revenue

6.1.3 Other Wastewater Revenue

The other revenues include the following major components:

- Impact Fee Revenue;
- Wastewater Connection Fees;
- Wastewater Sales Not on Computer
- Penalties; and
- WWTP Fees (Hay Sales, Biosolids/ Fertilizer Sales & Water Treatment Residual)

The annual revenues from wastewater impact fees, wastewater connection fees, wastewater sales not on computer, and WWTP Fees for 2021 to 2026 are projected based on historical three-year (2018 to 2020) average revenues for each of the fees. The penalties revenue in 2020 reflects only the first two and half months of revenues, as the City stopped assessing penalties for non-payment due to the pandemic. The revenue for penalties in 2021 is projected to be half of the historical three-year (2017 to 2019) average revenues due to continued waiver of the penalties as a result of the COVID pandemic during the first half for 2021. The revenue from penalties in 2022 and beyond is projected as the historical three-year average (2017 to 2019) average revenues. Table S - 5 in Appendix 2 presents the historical and projected annual other revenues for the period of 2020 through 2026.

6.2 Wastewater Capital Improvements Program

The capital project costs provided by the City were based on 2020 dollars. Based on discussions with the City, the project costs are inflated at an annual rate of 3.0% to accurately reflect the costs of projects for 2021 and beyond. The City's wastewater utility Capital Improvement Plan (CIP) provides for a total of \$69.3 million of investments during the study period of 2021 through 2026. Major wastewater projects include sanitary wastewater rehabilitation totaling \$15.7 million and Biosolids Dryer Replacement totaling \$31.1 million. Table S - 6 in Appendix 2 presents the CIP list of projects for 2021 through 2026. The CIP is expected to be financed from a funding mix of cash financing from service revenue and impact fees.

6.3 Wastewater Utility Revenue Requirements

Projection of reliable revenue requirements includes: (1) O&M expenses; (2) bad debt; (3) Payment In Lieu of Taxes; (4) debt service (consisting of principal and interest payments); (5) transfer to shop fund; (6) transfer to operating reserve; (7) cash financed capital; and (8) transfer to capital reserve. The projections of annual revenue requirements for the study period is discussed in this section.

6.3.1 Wastewater Operation and Maintenance Expenses

The O&M expenses for the wastewater utility include the annual expenses associated with the wastewater conveyance, pumping, treatment and disposal; meters and services; billing and collection, and general administrative services. These expenses include personnel costs (salaries and benefits), costs for materials and supplies, costs of utilities, and contracted services.

The 2021 O&M budget provided by the City was used as the baseline for projection of O&M expenses for the study period. In addition, costs associated with a wastewater inspector (not included in the 2021 budget) recurring salary and benefits costs, recurring vehicle maintenance costs and one-time cost of the vehicle purchase was added per City's direction. Based on historical O&M costs, industry experience, and discussions with the City management, appropriate escalation factors were applied to various

categories of costs to project future annual O&M expenses. Annual escalation factors used for major cost categories include the following:

- Salaries: 4.00%
- Benefits: 5.00%
- Energy: 3.00%
- Chemicals: 3.00%
- Wastewater Treatment Plant Contract: 3.00%

The annual O&M expenses for wastewater utility are budgeted at \$15.7 million in 2021 and are projected to grow to \$18.4 million by 2026. Table S - 7 in Appendix 2 presents a summary of projected operation and maintenance expense for the period 2021 through 2026.

Figure 6-4 presents the historical and projected O&M expenses for the wastewater utility.

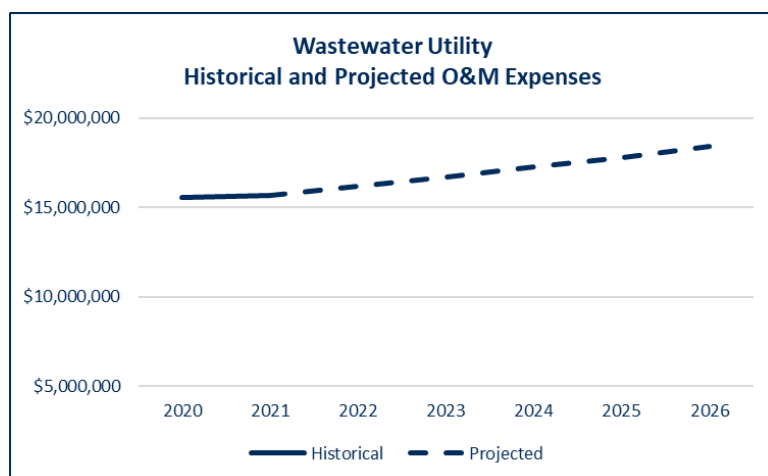


Figure 6-4 - Projected Annual Wastewater O&M Expense

6.3.2 Wastewater Bad Debt

Bad debt expenses refer to outstanding balances owed that are deemed uncollectible. The wastewater bad debt in 2019 was 0.5% of revenue. Hence, the bad debt projections for the study period assume 0.5% of annual revenues. Annual bad debt expenses for wastewater utility is projected to increase from \$122,300 in 2021 to \$145,500 by 2026 reflecting the increase in projected revenues. Line 16 in Table S - 9 in Appendix 2 presents bad debt expense for the period 2021 through 2026.

6.3.3 Wastewater Payment In Lieu of Taxes

The PILOT costs are paid by public utilities to municipal entity as a compensation for utilization of streets, easements, right of ways or other public places. The PILOT amount is determined per City Ordinance 4449 that requires that the water and wastewater funds to pay 4.25% of annual total gross sale revenues to the City. Annual PILOT amount for the wastewater utility is calculated by multiplying actual wastewater revenues from prior year (Wastewater sales on Computer and Wastewater sales not

on Computer/ Dump Fees) and is projected to increase from \$1,039,600 in 2021 to \$1,236,900 in 2026. Line 17 in Appendix 2 presents PILOT expense for the period 2021 through 2026.

6.3.4 Wastewater Debt Service Requirements

The wastewater utility does not have any outstanding debt service obligations. The City does not anticipate any debt issuances during the study period, therefore no projected debt service for future debt as shown in Line 18 in Table S - 9 in Appendix 2.

6.3.5 Transfer to Shop Fund

The transfer to the shop fund is made by the utility whenever a new vehicle (associated with new personnel) is purchased, thereby expanding the existing fleet. There are no projected transfers to the shop fund over the study period as shown in Line 20 in Table S - 9 in Appendix 2

6.3.6 Transfer to Operating Reserve

The City maintains an operating reserve balance equivalent of ninety (90) days of following years' O&M budget. The transfer to operating reserve is projected to increase from \$12,7100 in 2022 to \$145,500 in 2026 reflecting the growth in the O&M budget. Line 21 in Table S - 9 in Appendix 2 presents transfer to the operating reserve for the period 2021 through 2026.

6.3.7 Wastewater Cash Financed Capital

The City currently utilizes the following two sources of funding for the wastewater utility capital projects (1): transfer from operating revenues and (2) transfer from the impact fee fund. As stated in Section 6.2, the wastewater capital improvement program for the study period is \$69 million, of which \$67 million is projected to be funded from operating revenues and \$2 million is from the impact fee fund. A capital project meets the requirements of using impact fees if the existing wastewater capacity is expanded due to growth. The construction contract and the budget amendment to change the source of funding to impact fee must be approved by the City Council. Table S - 8 in Appendix 2 presents the sources of funding for the wastewater capital improvement program. Line 22 in Table S - 9 in Appendix 2 presents transfer for cash financing of capital program for the period 2021 through 2026.

6.3.8 Transfer to Capital Reserve

The wastewater utility, after meeting all the obligations stated in sections above, transfers the excess funds to the capital reserve fund. The capital reserve fund is used as a source for funding the capital program in the years that the revenues are not sufficient to meet the capital funding requirements. Line 23 in Table S - 9 in Appendix 2 presents transfer to and from the capital reserve for the period 2021 through 2026.

6.4 Wastewater Proposed Revenue Adjustments

The annual revenue adjustments that are needed to achieve the defined financial performance objectives are determined by evaluating the funding gap between the projected annual revenue requirements and the projected revenues under existing rates. Table S - 9 in Appendix 2 provides a summary of the revenue and revenue requirements (financial plan) for the study period.

Projected Revenue Under Existing Rates: Line 1 indicates that under existing rates (2022 rates) wastewater utility revenues will increase from \$25.4 million in 2022 to \$26.7 million in 2026.

Projected Other Revenues: Line 8 indicates that the other revenues and interest income are anticipated to increase from \$720,500 in 2022 to \$727,000 in 2026. It is anticipated that all categories of other revenues will remain flat throughout the study period. The slight growth is due to the increase in interest income on the operating reserve.

Projected Expenses: Line 14 indicates the total annual expenses for the wastewater utility are anticipated to increase from \$17.4 million in 2022 to \$19.8 million in 2026.

Projected Transfers: Line 19 indicates the total annual transfers for the wastewater utility are anticipated to increase from \$8.8 million in 2022 to \$10.1 million in 2026.

Funding Gap: The cash flow analysis indicates that the sum of revenues under existing rates and the other revenues is not adequate to fund the projected annual revenue requirements, thereby causing an operating deficit.

Proposed Revenue Adjustments: To address the funding gap in the wastewater utility, a series of revenue adjustments are proposed as follows:

- 2024: 3% effective (January 1, 2024)
- 2025: 3% effective (January 1, 2025)
- 2026: 3% effective (January 1, 2026)

Lines 2 through 7 in Table S - 9 present the amount of additional revenues generated each year with the proposed magnitude and timing of revenue adjustments. Figure 6-5 presents the projected revenue and revenue requirements through 2026 for the wastewater utility.

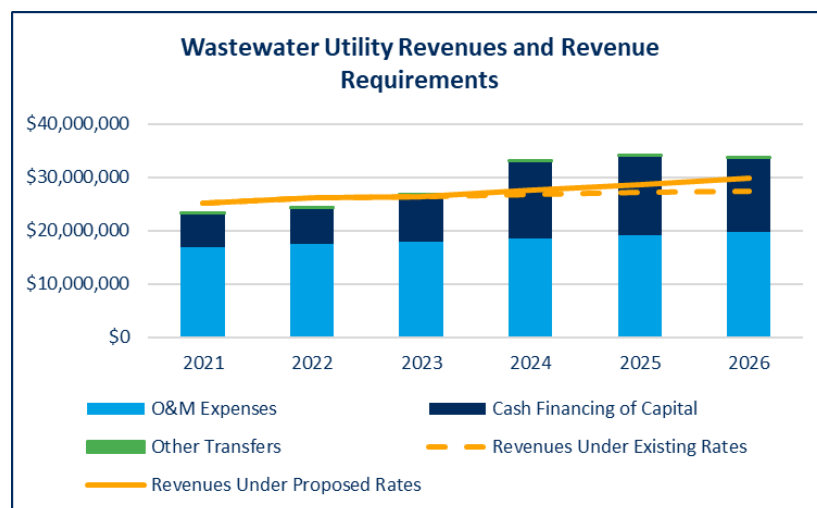


Figure 6-5 - Wastewater Revenues and Revenue Requirements

Table S - 10 in Appendix 2 presents the wastewater utility's operating reserve, capital reserve and impact fee fund balances. The City has identified the minimum balance requirements for each of the following funds:

- **O&M Reserve Balance:** A cash balance of at least 90 days of the follow's year operating expenses.
- **Operating Fund Balance:** A minimum target of \$100,000.
- **Capital Fund Balance:** A minimum target of \$500,000.
- **Capital Reserve Fund Balance:** An amount necessary to fully fund anticipate capital projects.

As shown in Table S - 9, the proposed annual revenue adjustments will allow the water utility to meet the minimum fund balance requirements for all funds through 2026.

6.5 Wastewater Cost of Service

A key step to developing an equitable rate structure involves the cost of service analysis. The financial plan discussed in sub sections 6.1 through 6.4 provides an estimate of the total annual revenue requirements for a given fiscal year. The test year for which the cost of service study was performed is 2023.

The key components of the cost of service analysis are:

- Determination of Cost of Service (net revenue requirements);
- Determination of Functional Costs;
- Allocation of Functional Costs to Cost Components; and
- Distribution of Wastewater Utility Costs to Customer Classes

6.5.1 Determination of Cost of Service

The first step is to determine the cost of service that is to be recovered from user rates and charges. As briefly discussed in Section 2.3, cost of service is defined as, and synonymous with, the "net revenue requirement" that is to be recovered for the test year through user rates and charges. Table S - 11 in Appendix 2 presents the derivation of the cost of service to be recovered through the wastewater charges. As Line 18 in Table S - 11 indicated, wastewater cost of service for 2023 is projected to be \$25.7 million. This cost of service consists of \$17.3 million of net operation and maintenance expense and \$8.4 million of net capital costs.

As performed for the water utility, costs of services are apportioned among customer classes in this study on a Utility Basis.

The depreciation expense and return on system investments that were already explained in Section 4.5.1 are applicable to the wastewater utility cost of service analysis as well. The depreciation expense associated with the wastewater utility is estimated in this study recognizing depreciation rates presently in use by the wastewater utility. This results in a projected test year depreciation expense of \$8.3 million

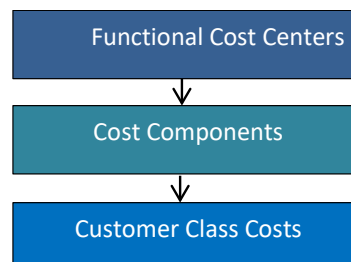
exclusive of depreciation on contributed plant, which is not recognized for cost allocation or rate design purposes. The contributed plant adjustment is consistent with generally accepted regulatory practices.

Total return for the test year is projected to be \$132,600 as shown on Line 17 of Table S - 11.

6.5.2 Determination of Functional Costs

As a basis for developing an equitable rate structure, the test year cost of service should be allocated to the various customer classes according to respective service requirements.

The basic underlying principle in developing cost of service rates is the determination of what elements in a wastewater system are responsible for causing the level of revenue requirements that is needed. To allocate the costs to customer classes, first the operating and capital costs of service are aggregated into “Functional Cost Centers.” The functional costs are then further allocated to cost components. Each component cost is then apportioned to customer classes.



Functional Cost Centers

Functional cost centers of a wastewater utility represent the activities that contribute to the incurrence of O&M and capital costs. For a wastewater utility, they often include source of *collection, pumping, conveyance, treatment, disposal, meters, billing, and other administration* costs. Both the O&M and capital costs defined for the Test Year, discussed in 6.5.1, need to be allocated to functional cost centers.

Functional Costs

The **capital costs** associated with the functional cost centers are determined using detailed fixed assets data, provided by the City, for each class of asset that is currently in service, construction work in progress and projected capital improvement program for the test year. The total value of the fixed assets (referred to as “Net Plant Investment”) in the system is usually presented as Original Cost Less Depreciation (“OCLD”). The total estimated OCLD value of the wastewater system is \$200.0 million, as presented in Line 26 in Table S - 12 in Appendix 2. This plant investment is subsequently used as a basis for the allocation to cost components, discussed in the following subsection 6.5.3.2.

The **O&M costs** for the Test Year are allocated to the various functional cost centers based on specific nature of costs. The allocation of the projected O&M cost of service (net operating revenue requirement) of \$17.3 million, to the various functional cost centers is presented in Table S - 14 in Appendix 2.

The various cost elements of wastewater service are assigned to functional cost components as the first step in the subsequent distribution of the costs of service to customer classes.

6.5.3 Allocation of Costs to the Functional Cost Components

The principal functional cost components consist of volume related costs, strength related costs, and customer related costs.

Volume costs are those which vary directly with the quantity of wastewater contributed. They consist of capital costs related to investment in system facilities which are sized on the basis of, or required

because of, wastewater volume. This also includes operation and maintenance expense related to those facilities, and the expense of volume related treatment chemicals and purchased power.

Wastewater strength costs consist of the operation and maintenance expense and capital costs related to system facilities which are designed principally to treat the wastewater pollutant loadings of pollutants such as BOD, TSS, and other pollutants. BOD costs reflect costs associated with the treatment of influent BOD and include costs related to activated sludge aeration and disposal of BOD related sludge. Suspended solids strength costs are those costs of wastewater treatment which tend to vary according to the quantity of suspended solids in the raw wastewater.

Customer costs are those which tend to vary in proportion to the number of customer bills or customers served. These include the wastewater utility share of customer related meter reading, billing, collection, and account expense.

The delineation of costs of service into functional components provides a means of distributing such costs to the various customer classes based on the respective total wastewater volume, strength, and customer cost requirements of each.

Wholesale customers generally do not use lateral wastewater lines as do retail users. Therefore, separate functional cost of service categories are designated for costs which are common to all customer classes and those which are common to retail service classes only.

6.5.3.1 Wastewater Utility Cost Allocation to Cost Components

In establishing the costs associated with each functional cost component, the return portion of the test year cost of service is distributed to cost functions based on an allocation of the estimated test year value of wastewater system facilities. The test year depreciation expense associated with each major element of plant facilities is allocated to cost functions in the same manner as the plant value. Operating expense is similarly allocated to cost functions based on the projected test year expense estimated for each wastewater system component.

6.5.3.2 Allocation of Net Wastewater Plant Investment

The estimated test year value of wastewater facilities consists of net plan in service as of December 31, 2019, the 2020 construction work in progress, and the estimated cost of proposed capital improvements expected to be in service by the end of calendar year 2022. Table S - 12 in Appendix 2 presents the allocation of the wastewater utility's total estimated plant value less contributions on an original cost less depreciation value basis. Total plant investment is estimated to be \$200.0 million as indicated by Line 26 of the Table S - 12.

Plant investment is allocated to cost components on a design basis recognizing the principal purpose governing the design of the facility. The allocation of net plant investment provides the basis for allocation of depreciation expense.

The Owl Creek Lift Station and Force Main serve only the City of Fayetteville, hence the plant investment associated with Owl Creek is allocated directly to the City of Fayetteville customers. Additionally, the outside City customers maintain their own wastewater connections, hence, the plant investment associated with wastewater connections is allocated 100% to the City of Fayetteville customers.

The City has a contract with the City of Farmington stipulating that Farmington will be allocated 8.2% of the costs associated with the West Treatment Plant. Hence, 8.2% of the West Treatment Plant's investment is allocated directly to the City of Farmington customers.

Wastewater collection net plant is allocated 41% to both retail and wholesale (common to all) and 59% to retail only based on the ratio of interceptors (large diameter mains) which is 41% of the collection system.

6.5.3.3 Allocation of Wastewater Facilities Depreciation Expense

As explained in Section 4.5.3.3, depreciation expense is a real part of the cost of operating a utility.

The total estimated depreciation cost (excluding depreciation on contributed facilities) for the wastewater system is \$8,259,600 as presented on Line 26 in Table S - 13 in Appendix 2. The items of expense are allocated to cost components on the same design or cost causative basis used to allocate plant investment. Hence, the depreciation expense associated with Owl Creek Lift Station and Force main and Wastewater connections is directly allocated to the City of Fayetteville customers and 8.2% of the West Treatment Plant's depreciation is allocated directly to the City of Farmington customers.

6.5.3.4 Allocation of Wastewater Utility Operating Expenses

Table S - 14 in Appendix 2 presents the allocation of operation and maintenance expense to functional cost components. Total test year operation and maintenance expense, as shown on Line 10 of this table, amounts to \$18.1 million. Operating expenses are allocated to functional cost components in generally the same manner as plant investment.

6.5.4 Distribution of Wastewater Utility Costs to Customer Classes

The total cost responsibility of each customer class is determined by developing unit costs of service for each cost component and applying the unit costs to the respective service requirements of each class. In accomplishing this, each customer class is allocated the share of volume, strength, and customer costs for which it is responsible.

6.5.4.1 Wastewater Customer Classification

Customer classes consist of residential, non-residential, industrial and wholesale. The residential class includes single family residential, duplex, fourplex, apartment, multi-unit residential and rooming house customers. The non-residential class includes commercial, combination, construction, government, and non-profit customers. Outside City includes Farmington, Greenland, Washington County/Growth Area and Johnson. Wholesale includes the community of Elkins and West Fork.

6.5.4.2 Wastewater Units of Service

Derivation of the responsibility of customer classes for costs of service require that each class be allocated a portion of the volume, strength, and customer costs of service according to their respective service requirements.

The cost of service responsibility for volume costs, which vary with the volume of wastewater contributed to the wastewater system, is distributed to customer classes on that basis. Strength costs are principally related to the function of reducing wastewater suspended solids, and BOD strength loading. Customer costs, which consist of meter related costs, billing, collection and accounting costs, are allocated on the basis of equivalent meters and monthly bills.

The estimated test year service requirements or units of service for the various customer classes are shown in Table S - 15 in Appendix 2. Wastewater collected and treated consists of two elements: (1) sanitary wastewater flow and (2) infiltration/inflow (I/I) of ground water into the sewers. Contributed wastewater flow is that portion of the annual water use and/or other flows from each customer class that are discharged to the wastewater system. Estimates of the contributed volume of each class is generally based upon wastewater billing records. For residential customers, the billed wastewater volume is based on average water consumption for the preceding months of December, January and February. This methodology of using a winter quarter average for quantity of wastewater flows is used to exclude outdoor uses such as irrigation, which do not return water to the collection system. For all other customer classes, the billed wastewater volume is the same as the water volume.

The difference between the measured plant influent and the customer contributed wastewater flow is attributed to Infiltration and Inflow (I/I) volume. Based on discussions with the City staff, 40% of the total treated volume is assumed to be I/I flows. Each customer class should bear its proportionate share of the costs associated with I/I, as it is integral aspect of wastewater system costs. The number of customer connections to a wastewater collection system and the volume of customer flows conveyed both influence the extent of I/I in a system. Recognizing that the major cost responsibility for I/I is allocable on an individual connection basis, two-thirds of the total I/I volume projected is allocated to customer classes based on the number of customers with the remaining one-third allocated on the basis of contributed volume.

Estimated total strength units shown for each customer class are based on an average BOD concentration of 365 milligrams per liter (mg/l) and an average suspended solids concentration of 285 mg/l. I/I strength allowances for BOD and suspended solids are assumed at 25 mg/l and 50 mg/l, respectively. Estimated BOD and suspended solids responsibilities of each customer class presented in Table S - 15 in Appendix 2 are based on the respective indicated average strength concentrations and contributed wastewater and I/I volumes for each class.

Customer billing and accounting costs are distributed to classes on the basis of the number of bills for each customer class (Column 7) in Table S - 15. Customer related meter and service costs are allocated on the basis of the number of equivalent 3/4 inch meters serving each customer class. The number of equivalent meters in each customer class (Column 8) is estimated by relating typical costs for meters and services larger than 3/4 inch in size to the typical cost of a 3/4 inch meter.

6.5.5 Wastewater Utility Customer Class Costs of Service

Unit costs of service are developed by dividing the total cost allocated to each functional cost component by the total applicable units of service. The customer class responsibility for service is obtained by applying unit costs of service to the number of units for which the customer class is responsible.

The wastewater utility has been built with the provision for service to customers outside the City, yet the inside City customers must bear the responsibility of providing system facilities by undertaking the necessary investment. Revenues derived from outside City service should provide a margin of return on capital adequate to induce the citizens of Fayetteville to bear the risks of providing outside City service. To recognize the proprietary interest and responsibility of inside City customers in the system, it is proper to charge outside City customers, in addition to their share of operating expense and depreciation, a reasonable return on their allocated portion of value. A 7.0% (4.0 % for future debt

service plus 3.0% risk component) annual rate of return on the value of wastewater facilities serving outside City customers is recognized for purposes of this study.

Table S - 16 in Appendix 2 shows the development of the unit costs of service applicable to each cost function. Lines 1 through 3 summarize the units of service developed in Table S - 15. Total allocated costs or investment shown on Lines 5, 7, and 9 were previously developed in Table S - 14, Table S - 13 and Table S - 12, respectively.

Total allocated unit costs of service for inside City and outside City customers (Line 18, Line 19, Line 20 and Line 21) are determined by adding the unit costs for net operating expense (Line 6) and depreciation expense (Line 8) to the respective inside and outside City unit costs for return on investment (Lines 11 and 12). These unit costs applied to the respective units of service shown on Lines 1, 2 and 3 determine the allocated total costs of service for inside and outside City customers shown on Lines 18 through 21. In order to determine the allocated costs for each customer class, the costs are allocated to the various customer classes by applying the appropriate unit cost of service to the respective service requirements of each customer class.

Table S - 17 in Appendix 2 shows the resulting allocated cost of service by customer class, revenue under existing rates, and the indicated increase or decrease in revenue required to meet the allocated cost of service.

7.0 Wastewater Rate Design

The principal consideration in establishing wastewater rate schedules is to establish charges to recover costs that are reasonably commensurate with the cost of providing wastewater service.

The revenue requirements and cost of service allocations described in the preceding sections provide the basis for adjusting wastewater rates. The revenue requirements show the need for adjustment and the level of revenue required. This cost of service analysis provides the unit costs of service to be used in the rate design process and gives a basis for determining whether resultant rates will generate revenues which recover costs of service from customer classes in proportion to service required and provide the total level of revenue required.

7.1 Existing Wastewater Rates

The existing schedule of rates for wastewater service became effective on January 1, 2022. For retail customers, these rates include a monthly base charge bill, which varies by meter size. The volume charge varies by customer class. Surcharge rates are based on excess strength of BOD and TSS. The existing wastewater rate structure is described in Section 3.3.2. The existing schedule of base and volume rates for wastewater service is shown in Table S - 3 in Appendix 2.

7.2 Proposed Wastewater Rates

The cost of service study described in preceding sections of this report provides a basis for the design of a schedule of wastewater rates to meet those costs. Proposed wastewater rates have been designed to meet the test year allocated costs of service and are presented in Table S - 18. The proposed rate structure presented in Figure 7 - 1 is similar to the existing structure.

Figure 7 - 1 Proposed Wastewater Rate Structure

Rate Component	Applicable Customer Classes
Base Charge by Meter Size	- Retail Inside City (Residential, Non-Residential and Major Industrial); - Retail Outside City (Residential, Non-Residential and Major Industrial);
- Volume Rate (2-Tier Inclining Block) - Based on winter water usage of December, January and February	Retail Inside City Residential
Volume Rate (Uniform)	- Retail Inside City (Non-Residential and Major Industrial) - Retail Outside City (Residential, Non-Residential and Major Industrial)
Volume Rate (Uniform)	Wholesale

As already explained in Section 5.2, practical rate design should consider multiple factors including previous rate levels, customer bill impact, and magnitude of cost shifts among customer classes.

A comparison of estimated test year revenue under the proposed rates with allocated costs of service for each of the customer classes is shown in Table S - 19 in Appendix 2. This comparison indicates the proposed rates will recover revenues from inside and outside City customer groups reasonably commensurate with the cost of service and practical considerations previously noted.

To better reflect the total effect the proposed rates have on customer bills, a comparison of typical bills under existing rates and the rates proposed to become effective January 1, 2023, is shown in Table S - 20.

8.0 Combined Water and Wastewater Utilities

Table C - 1 in Appendix 3 presents the combined operating reserve, capital reserve and impact fee fund balances.

Table C - 2 in Appendix 3 provides a summary of the combined revenue and revenue requirements (financial plan) for the study period.

The revenue under existing rates are not sufficient to meet the obligations of the two utilities. As discussed in Section 4 and Section 6, a series of annual 3% proposed revenue adjustments enable the utilities to meet their operating, capital and reserve obligations. Figure 8-1 presents the projected revenue and revenue requirements through 2026 for the wastewater utility.

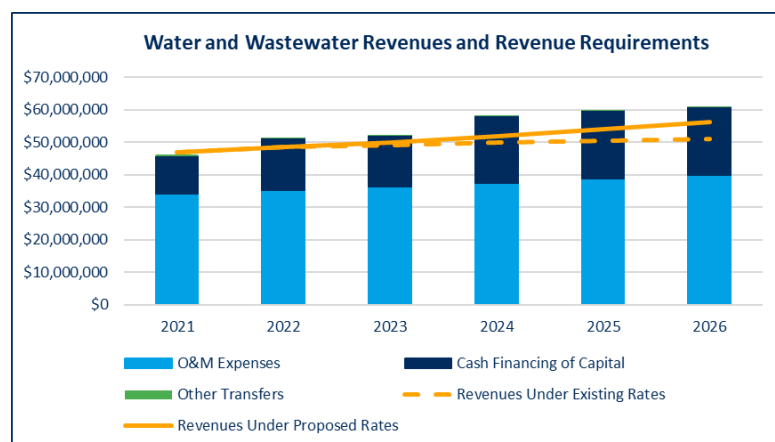


Figure 8-1 - Water and Wastewater Revenues and Revenue Requirements

Table C - 2 in Appendix 3 presents the combined water and wastewater operating reserve, capital reserve and impact fee fund balances. The City has identified the minimum balance requirements for each of the following funds:

O&M Reserve Balance: A cash balance of at least 90 days of the follow's year operating expenses.

Operating Fund Balance: A minimum target of \$200,000.

Capital Fund Balance: A minimum target of \$1,000,000.

Capital Reserve Fund Balance: An amount necessary to fully fund anticipated capital projects.

As shown in Table C - 2, the proposed annual revenue adjustments will allow the utilities on a combined basis to meet the minimum fund balance requirements for all funds through 2026.

A comparison of combined water and wastewater typical bills under existing rates and the rates proposed to become effective January 1, 2022, is shown in Table C - 3.

9.0 Disclaimer

This report was prepared for the City of Fayetteville (Client) by Black & Veatch Management Consulting, LLC (Black & Veatch) and is based on information provided by the Client not within the control of Black & Veatch. While it is believed that the information, data and opinions contained herein will be reliable under the conditions and subject to the limitations set forth in this report, Black & Veatch does not guarantee the accuracy thereof. Black & Veatch has assumed that the information provided by others, both verbal and written, is complete and correct. The projections set forth in this report are intended as "forward-looking statements." In formulating these projections, Black & Veatch has made certain assumptions with respect to conditions, events, and circumstances that may occur in the future. While Black & Veatch believes the assumptions are reasonable actual results may differ materially from those projected, as influenced by the conditions, events, and circumstances that occur. As such, Black & Veatch does not take responsibility for the accuracy of data or projections provided by or prepared on behalf of the Client, nor does Black & Veatch have any responsibility for updating this report for events occurring after the date of this report.

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10.0 Appendix 1: Water Tables

Table W - 1 - Water Projected Number of Accounts

Line	Customer Class	Projected						Change
No.		2021	2022	2023	2024	2025	2026	5-Year
Inside City								
1	Residential	35,200	35,800	36,400	37,100	37,700	38,400	3,200
2	Non-Residential	3,500	3,500	3,500	3,500	3,500	3,500	0
3	Industrial	21	21	21	21	21	21	0
4	Irrigation	2,000	2,100	2,100	2,100	2,200	2,200	200
5	Private Fire	713	713	713	713	713	713	0
6	Subtotal	41,434	42,134	42,734	43,434	44,134	44,834	3,400
Outside City								
7	Residential	6,500	6,600	6,800	6,900	7,100	7,200	700
8	Non-Residential	400	400	400	500	500	500	100
9	Industrial	0	0	0	0	0	0	0
10	Irrigation	271	277	285	292	299	307	37
11	Private Fire	14	14	14	14	14	14	0
12	Subtotal	7,185	7,291	7,499	7,706	7,913	8,021	837
Wholesale								
13	Elkins	1	1	1	1	1	1	0
14	Mount Olive	2	2	2	2	2	2	0
15	West Fork	1	1	1	1	1	1	0
16	RDA/WWA	4	4	4	4	4	4	0
17	Subtotal	8	8	8	8	8	8	0
18	Total	48,627	49,433	50,241	51,148	52,055	52,863	4,237
19	% Change	3.26%	1.66%	1.63%	1.81%	1.77%	1.55%	8.71%

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Table W - 2 - Water Projected Billed Volume (1,000 Gallons)

Line No.	Customer Class	Projected						Change
		2021	2022	2023	2024	2025	2026	5-Year
		1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.	
	Inside City							
1	Residential	1,896,300	1,769,800	1,800,800	1,832,300	1,864,400	1,897,000	700
2	Non-Residential	678,600	827,100	827,100	827,100	827,100	827,100	148,500
3	Industrial	322,300	401,800	401,800	401,800	401,800	401,800	79,500
4	Irrigation	249,600	244,300	248,600	252,900	257,300	261,800	12,200
5	Subtotal	3,146,800	3,243,000	3,278,300	3,314,100	3,350,600	3,387,700	240,900
	Outside City							
6	Residential	427,900	385,700	394,600	403,800	413,300	423,100	-4,800
7	Non-Residential	51,300	65,600	66,400	67,300	68,300	69,200	17,900
8	Irrigation	28,400	24,400	25,000	25,700	26,400	27,100	-1,300
9	Subtotal	507,600	475,700	486,000	496,800	508,000	519,400	11,800
	Wholesale							
10	Elkins	81,000	75,000	75,000	75,000	75,000	75,000	-6,000
11	Mount Olive	68,900	62,100	62,100	62,100	62,100	62,100	-6,800
12	West Fork	69,200	65,200	65,200	65,200	65,200	65,200	-4,000
13	RDA/WWA	0	0	0	0	0	0	0
14	Subtotal	219,100	202,300	202,300	202,300	202,300	202,300	-16,800
15	Total	3,873,500	3,921,000	3,966,600	4,013,200	4,060,900	4,109,400	235,900
16	% Change	1.26%	1.23%	1.16%	1.17%	1.19%	1.19%	6.09%

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Table W - 3 - Water Existing Rates

Existing Water Rates Effective January 1, 2022

Monthly Base Charge					
Meter Size	Inside City	Outside City	Wholesale	Inside City Private Fire	Outside City Private Fire
Inches	\$/month	\$/month	\$/month	\$/month	\$/month
5/8	6.59	7.54	8.31		
3/4	6.59	7.54	8.31		
1	9.14	10.52	11.49	9.75	11.68
1 1/2	15.93	18.31	20.00	10.17	12.10
2	23.20	26.66	29.07	20.33	23.37
3	54.05	62.18	64.38	30.48	35.06
4	89.50	102.93	112.25	60.97	70.11
6	178.99	205.82	212.76	169.34	197.74
8	268.41	308.67	332.91	355.65	409.00
10				609.68	701.11

Volume Charge			
Monthly Water Usage	Inside City	Outside City	Wholesale
1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.

Residential

0 - 2,000 Gallons	3.51	4.04
2,000 - 15,000 Gallons	4.65	5.35
Over 15,000 Gallons	6.59	7.54

Non-Residential

First 300,000 Gallons	3.79	4.38
Over 300,000 Gallons	3.39	3.90

Major Industrial

All Usage	2.96	3.40
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Irrigation

First 300,000 Gallons	5.04	5.80
Over 300,000 Gallons	4.53	5.22

Wholesale

Reduced Peak Demand	2.87
Peak Demand	3.20

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Table W - 4 - Water Projected Revenues Under Existing Rates

Line No.	Customer Class	Projected						Change
		2021	2022 (a)	2023	2024	2025	2026	5-Year
		\$	\$	\$	\$	\$	\$	
Inside City								
1	Residential	11,196,100	11,001,700	11,194,200	11,390,100	11,589,500	11,792,300	596,200
2	Non-Residential	2,844,700	3,476,000	3,476,000	3,476,000	3,476,000	3,476,000	631,300
3	Industrial	933,000	1,196,700	1,196,700	1,196,700	1,196,700	1,196,700	263,700
4	Irrigation	1,410,700	1,431,200	1,456,300	1,481,800	1,507,700	1,534,100	123,400
5	Private Fire	967,600	967,600	967,600	967,600	967,600	967,600	0
6	Subtotal	17,352,100	18,073,200	18,290,800	18,512,200	18,737,500	18,966,700	1,614,600
Outside City								
7	Residential	2,743,800	2,614,600	2,674,900	2,737,200	2,801,400	2,867,700	123,900
8	Non-Residential	258,700	328,200	333,000	338,000	343,300	348,800	90,100
9	Industrial	0	0	0	0	0	0	0
10	Irrigation	190,000	173,400	177,900	182,500	187,400	192,400	2,400
11	Private Fire	27,100	27,100	27,100	27,100	27,100	27,100	0
12	Subtotal	3,219,600	3,143,300	3,212,900	3,284,800	3,359,200	3,436,000	216,400
Wholesale								
13	Elkins	226,800	216,200	216,200	216,200	216,200	216,200	-10,600
14	Mount Olive	193,900	179,800	179,800	179,800	179,800	179,800	-14,100
15	West Fork	194,000	188,100	188,100	188,100	188,100	188,100	-5,900
16	RDA/WWA	0	0	0	0	0	0	0
17	Subtotal	614,700	584,100	584,100	584,100	584,100	584,100	-30,600
18	Total	21,186,400	21,800,600	22,087,800	22,381,100	22,680,800	22,986,800	1,800,400
19	% Change	4.28%	2.90%	1.32%	1.33%	1.34%	1.35%	8.50%

(a) Reflects 3.0% revenue increase effective January 1, 2022.

Table W - 5 - Water Projected Other Revenues

Line No.	Description	Projected						Change
		2021	2022	2023	2024	2025	2026	5-Year
		\$	\$	\$	\$	\$	\$	
1	Water Impact Fee Revenue	976,300	976,300	976,300	976,300	976,300	976,300	0
2	Water Sales Not on Computer	300	300	300	300	300	300	0
3	Water Connection Fees	162,000	162,000	162,000	162,000	162,000	162,000	0
4	Rural Water Connection Fees	2,700	2,700	2,700	2,700	2,700	2,700	0
5	Service Charge/Trip Fee - Billed Service	9,500	9,500	9,500	9,500	9,500	9,500	0
6	Tampering Fee - Billed Service	200	200	200	200	200	200	0
7	Penalties	103,700	207,400	207,400	207,400	207,400	207,400	103,700
8	Safe Drinking Water Fee	230,000	233,800	237,800	241,800	245,900	250,200	20,200
9	Total	1,484,700	1,592,200	1,596,200	1,600,200	1,604,300	1,608,600	123,900
10	% Change	-0.99%	7.24%	0.25%	0.25%	0.26%	0.27%	8.35%

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Table W - 6 - Water Capital Improvement Program

Line No.	Description	Projected (a)					
		2021	2022	2023	2024	2025	2026
		\$	\$	\$	\$	\$	\$
1	Water System Rehabilitation/Replacement	2,060,000	0	2,185,500	2,251,000	2,318,500	0
2	Water Tank Improvements	1,030,000	1,060,900	1,092,700	1,125,500	1,159,300	2,149,300
3	Water Storage & Pump Station Maintenance	103,000	106,100	109,300	112,600	115,900	0
4	Water Meters	849,800	875,200	901,500	928,500	956,400	0
5	Backflow Prevention Assemblies	51,500	53,000	54,600	56,300	58,000	0
6	W/S Improvements defined by Study (West Water Transmission Line)	618,000	636,500	655,600	675,300	695,600	4,776,200
7	Water Impact Fee Improvements	412,000	424,400	437,100	450,200	463,700	0
8	Utilities Financial Services Improvements	0	11,100	3,300	1,700	8,700	0
9	Water/Sewer Relocations - Bond Projects	174,600	265,200	273,200	281,400	289,800	0
10	Water/Sewer Impact Fee Cost Sharing	0	79,600	82,000	84,400	86,900	0
11	Utilities Technology Improvements	0	228,100	234,900	130,000	10,400	0
12	Water/Sewer Building-Office Improvements	0	26,500	27,300	28,100	29,000	0
13	Water/Sewer Equipment Expansions	0	26,500	27,300	28,100	29,000	0
14	Water & Sewer Rate/Operational Studies	0	10,600	10,900	11,300	11,600	0
15	Phosphorus Standards Management	0	26,500	27,300	28,100	29,000	0
16	Water & Sewer Technology Equipment Replacements	0	0	0	0	0	0
17	Water & Sewer Improvements Defined By Study	0	0	0	0	0	0
18	Huntsville Water Line Replacement (6 -inch upto 8-inch)	776,300	0	0	0	0	0
19	Benson Water Tank	1,030,000	338,200	0	0	0	0
20	East Water Service Improvements - Township	3,290,600	0	0	0	0	0
21	South Garland Ave Waterline Replacement	253,800	0	0	0	0	0
22	East Water Service Improvements CS 3 (Gulley, PS, Goshen Lines)	0	5,304,500	0	0	0	0
23	Ila/Oaks Manor/Persimmon Waterline Replacements	927,000	0	0	0	0	0
24	Western Park Waterline Replacement	309,000	0	0	0	0	0
25	N. College Waterline Replacement - upgrade from 8" to 12"	0	0	2,185,400	0	0	0
26	Total Capital Improvement Program	11,885,600	9,472,900	8,307,900	6,192,500	6,261,800	6,925,500

(a) Capital costs reflect 3% annual inflation starting in 2021.

Table W - 7 - Water Projected O&M Expenses

Line No.	Description	Projected					
		2021	2022	2023	2024	2025	2026
		\$	\$	\$	\$	\$	\$
1	Personal Costs	3,433,900	3,580,100	3,732,600	3,891,600	4,057,400	4,230,400
2	Materials and Supplies	968,100	997,100	1,027,000	1,057,800	1,089,600	1,122,200
3	Services and Charges	9,994,600	10,294,400	10,603,300	10,921,400	11,249,000	11,586,500
4	Motorpool	837,100	862,200	888,000	914,700	942,100	970,400
5	Cost Allocation	631,100	650,000	669,500	689,600	710,300	731,600
6	Maintenance	85,800	88,400	91,100	93,800	96,600	99,500
7	Total	15,950,600	16,472,200	17,011,500	17,568,900	18,145,000	18,740,600
8	% Change	1.91%	3.27%	3.27%	3.28%	3.28%	3.28%

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Table W - 8 - Capital Program Financing

Line No.	Description	Year Ending December 31,					
		2021	2022	2023	2024	2025	2026
		\$	\$	\$	\$	\$	\$
	Sources of Funds						
1	Funds Available at Beginning of Year	500,200	506,800	501,700	501,700	503,600	508,700
2	Cash Financing of Capital Projects	5,460,000	9,050,000	6,860,000	6,110,000	6,180,000	6,920,000
3	Transfer from Impact Fee Fund	6,432,200	417,800	1,447,900	84,400	86,900	0
4	Subtotal	12,392,400	9,974,600	8,809,600	6,696,100	6,770,500	7,428,700
	Application of Funds						
5	Major Capital Improvements	11,885,600	9,472,900	8,307,900	6,192,500	6,261,800	6,925,500
6	Subtotal	11,885,600	9,472,900	8,307,900	6,192,500	6,261,800	6,925,500
7	End of Year Balance	506,800	501,700	501,700	503,600	508,700	503,200
8	Capital Reserve EOY Balance - Cumulative	12,915,000	8,453,000	6,559,000	5,789,000	5,359,000	4,634,000

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Table W - 9 - Water Operating Cash Flow

Line No.	Description	Year Ending December 31,					
		2021	2022	2023	2024	2025	2026
		\$	\$	\$	\$	\$	\$
Revenues							
1	Revenue Under Existing Rates	21,186,600	21,800,700	22,087,800	22,381,200	22,680,800	22,986,900
Indicated Revenue Increases							
2	0 % Increase Effective January 1, 2022		0	0	0	0	0
3	0 % Increase Effective January 1, 2023		0	0	0	0	0
4	3 % Increase Effective January 1, 2024		0	0	615,500	680,400	689,600
5	3 % Increase Effective January 1, 2025		0	0	0	642,400	710,300
6	3 % Increase Effective January 1, 2026		0	0	0	0	670,600
7	Total Revenue from Rates	21,186,600	21,800,700	22,087,800	22,996,700	24,003,600	25,057,400
8	Other Revenues (a)	533,100	641,500	644,200	649,800	655,800	662,300
9	Total Revenue	21,719,700	22,442,200	22,732,000	23,646,500	24,659,400	25,719,700
Expenses							
10	Operating Expenses	15,950,600	16,472,200	17,011,500	17,568,900	18,145,000	18,740,600
11	Bad Debt	105,900	109,000	110,400	115,000	120,000	125,300
12	PILOT	900,400	926,500	938,700	977,400	1,020,200	1,064,900
13	Safe Drinking Water Fee	230,000	233,800	237,800	241,800	245,900	250,200
14	Debt Service	0	0	0	0	0	0
15	Total Expenses	17,186,900	17,741,500	18,298,400	18,903,100	19,531,100	20,181,000
Transfers							
16	Transfer to Shop Fund	33,000	0	0	0	0	0
17	Transfer to Operating Reserve	128,600	133,000	137,500	142,000	146,900	151,800
18	Cash Financing of Capital	5,460,000	9,050,000	6,860,000	6,110,000	6,180,000	6,920,000
19	Transfer to/from Capital Reserve	-1,093,000	-4,479,000	-2,567,500	-1,505,000	-1,210,000	-1,522,000
20	Total Transfers	4,528,600	4,704,000	4,430,000	4,747,000	5,116,900	5,549,800
Fund Balance							
21	Beginning Balance	99,400	103,600	100,300	103,900	100,300	111,700
22	Annual Operating Balance	4,200	-3,300	3,600	-3,600	11,400	-11,100
23	Ending Fund Balance	103,600	100,300	103,900	100,300	111,700	100,600
Performance Metrics							
24	Debt Service Coverage	NA	NA	NA	NA	NA	NA
25	O&M Reserve Balance (Days) (b)	90	90	90	90	90	90

(a) Includes interest income on operating fund balance.

(b) Minimum requirement is 90 days of following year's Operating Expenses.

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Table W - 10 - Water Fund Balances

Line No.	Description	Year Ending December 31,					
		2021	2022	2023	2024	2025	2026
		\$	\$	\$	\$	\$	\$
Operating Funds							
1	O&M Reserve Balance (a)	4,061,600	4,194,600	4,332,100	4,474,100	4,621,000	4,772,800
2	Operating Fund Balance (b)	103,600	100,300	103,900	100,300	111,700	100,600
3	Total (e)	4,165,200	4,294,900	4,436,000	4,574,400	4,732,700	4,873,400
Capital Funds							
4	Capital Fund Balance (c)	506,800	501,700	501,700	503,600	508,700	503,200
5	Capital Reserve Fund Balance (d)	12,915,000	8,436,000	5,868,500	4,363,500	3,153,500	1,631,500
6	Total (e)	13,421,800	8,937,700	6,370,200	4,867,100	3,662,200	2,134,700
7	Impact Fee Fund Balance (e)	22,800	581,300	109,700	1,001,600	1,891,000	2,867,300

(a) Calculated as 90 days of following year's Operating Expenses.

(b)

Target minimum balance is \$100,000 to account for any adjustments that may be needed to the O&M balance at the end of the year.

(c) Target minimum balance is \$500,000.

(d) Does not include expenses associated with facilities master plan to be completed in FY 2022

(e) All balances are cumulative.

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Table W - 11 - Water 2023 Cost of Service

Line No.	Description	Operating Expense \$	Capital Cost \$	Total Cost \$
Statement of Net Revenue Requirements (Cash Basis)				
	Revenue Requirements			
1	O&M Expenses	17,011,500		17,011,500
2	Bad Debt Expense	110,400		110,400
3	PILOT	938,700		938,700
4	Debt Service	0		0
	Other Expenditures & Transfers:			
	Transfer to Shop Fund (Capital Outlay)			
5	Transfer to Operating Reserve	137,500		137,500
6	Cash Funding of Capital Projects		6,860,000	6,860,000
7	Transfer to Capital Reserve		-2,567,500	-2,567,500
8	Subtotal	18,198,100	4,292,500	22,490,600
	Less Revenue Requirements Met from Other Sources			
9	Other Revenues	382,100		382,100
10	Interest Earned	24,300		24,300
11	Net Balance Available		-3,600	-3,600
12	Full Year Rate Adjustment			
13	Subtotal	406,400	-3,600	402,800
14	Net Revenue Requirements to be Recovered by	17,791,700	4,296,100	22,087,800
Restatement of Net Cost of Service (Utility Basis)				
15	O&M Expenses	17,791,700		17,791,700
16	Depreciation		2,820,100	2,820,100
17	Return		1,476,000	1,476,000
18	Net Cost of Service	17,791,700	4,296,100	22,087,800

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Table W - 12 - Water 2023 Allocation of Net Plant Investment to Functional Cost Components

Line No.	Description	Total	Common to All			Retail Only			Customers		
			Base	Extra Capacity		Base	Extra Capacity		Meters and Services	Billing &	Fire
				Max. Day	Max. Hour		Max. Day	Max. Hour			
		\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Net Plant Investment:											
1	Water Land and Land Rights	2,191,756	1,043,693	1,148,063							
2	Water Supply	6,819,846	3,247,546	3,572,300							
3	Water Storage and Pumping	6,090,361				2,900,172	3,190,189				
4	Water Transmission	26,043,791	12,401,805	13,641,986							
5	Water Distribution	47,479,642				17,391,810	9,565,496	5,478,420	15,043,916		
6	Water Meters	3,289,003							3,289,003		
7	Fire Hydrants	7,535,573									7,535,573
8	Water General System	4,537,529	761,641	837,805		925,847	581,994	249,960	836,462		343,820
9	Total Net Plant Investment	103,987,502	17,454,685	19,200,154	0	21,217,829	13,337,679	5,728,380	19,169,381	0	7,879,393

Table W - 13 - Water 2023 Allocation of Net Annual Depreciation to Functional Cost Components

Line No.	Description	Total	Common to All			Retail Only			Customers		
			Base	Extra Capacity		Base	Extra Capacity		Meters and Services	Billing &	Fire
				Max. Day	Max. Hour		Max. Day	Max. Hour			
		\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Net Depreciation Expense:											
1	Water Land and Land Rights										
2	Water Supply	277,295	132,045	145,250							
3	Water Storage and Pumping	219,139				104,352	114,787				
4	Water Transmission	706,125	336,250	369,875							
5	Water Distribution	1,134,421				415,539	228,546	130,895	359,441		
6	Water Meters	169,405							169,405		
7	Fire Hydrants	215,879									215,879
8	Water General System	97,807	16,825	18,508		18,679	12,336	4,703	19,001		7,756
9	Total Net Depreciation Expense	2,820,070	485,120	533,632	0	538,570	355,669	135,598	547,847	0	223,635

Table W - 14 - Water 2023 Allocation of O&M Expenses to Functional Cost Components

Line No.	Description	Total	Common to All			Retail Only			Customers		Fire Protection	
			Base	Extra Capacity		Base	Extra Capacity		Meters and Services	Billing & Collection	Public	Private
				Max. Day	Max. Hour		Max. Day	Max. Hour				
		\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
1	Water Purchased	9,611,754	4,577,026	5,034,728								
2	Water Storage and Pumping	269,987				98,896	108,786	62,305				
3	Water Distribution (a)	3,105,785				1,005,654	1,251,415	716,720			100,938	31,058
4	Meter Services (b)	1,007,563							1,007,563			
5	Customer Billing (c)	1,051,559								1,051,559		
6	All Other Cost	3,151,452	958,637	1,054,501		231,343	284,888	163,163	211,029	220,244	21,141	6,505
7	Subtotal	18,198,100	5,535,663	6,089,229	0	1,335,894	1,645,089	942,187	1,218,592	1,271,804	122,079	37,563
Less:												
8	Water Connection Fees (d)	164,700							164,700			
9	Other Income Sources	241,700	89,707	80,875		17,743	21,849	12,514		16,892	1,621	499
10	Subtotal	406,400	89,707	80,875		17,743	21,849	12,514	164,700	16,892	1,621	499
11	Net O&M Expenses	17,791,700	5,445,956	6,008,355		1,318,151	1,623,240	929,674	1,053,892	1,254,912	120,458	37,064

(a) 3.25% of 2020 water repair costs was associated with hydrants.

(b) Includes costs for Meter Reading and Meter Maintenance and Backflow prevention

(c) Includes costs under Utilities Financial Services

(d) Includes revenues from Water Connection Fees and Rural Water Connection Fees

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Table W - 15 - Water 2023 Estimated Units of Service

Line No.	Description	Consumption		Capacity Factor	Maximum Day		Capacity Factor	Maximum Hour		Customer		Direct Fire protection	
		Annual	Avg. Day		Total	Extra		Total	Extra	Eq. Meters	Billing/Collection	Public	Private
		1,000 gal.	1,000 gal. (1)/365		1,000 gal. (2) x (3)	1,000 gal. (4) - (2)		1,000 gal. (2) x (6)	1,000 gal. (7) - (4)	Equiv. Meters	Bills	Equiv. Hydrant	Equiv. Hydrants
Inside City													
1	Residential	1,800,801	4,934	250%	12,334	7,401	370%	18,255	5,920	34,939	437,192		
2	Non-Residential	827,079	2,266	240%	5,438	3,172	355%	8,044	2,606	6,761	41,712		
3	Industrial	401,767	1,101	200%	2,201	1,101	295%	3,247	1,046	261	252		
4	Irrigation	248,556	681	240%	1,634	953	355%	2,417	783	3,141	25,333		
5	Subtotal	3,278,204	8,981		21,608	12,627		31,964	10,355	45,102	504,489		
Fire Protection													
6	Public				4,201	4,201		10,083	5,882			4,035	
7	Private				491	491		1,179	688				472
8	Subtotal	3,278,204	8,981		26,300	17,319		43,226	16,925	45,102	504,489	4,035	472
Outside City													
Farmington													
9	Residential	85,288	234	250%	584	350	370%	865	280	1,762	23,614		
10	Non-Residential	17,853	49	240%	117	68	355%	174	56	245	2,431		
11	Industrial			200%			295%						
12	Irrigation	1,359	4	240%	9	5	355%	13	4	46	480		
13	Subtotal	104,500	286		710	424		1,051	341	2,053	26,525		
Greenland													
14	Residential	19,818	54	250%	136	81	370%	201	65	458	5,676		
15	Non-Residential	4,298	12	240%	28	16	355%	42	14	59	588		
16	Industrial			200%			295%						
17	Irrigation	1,230	3	240%	8	5	355%	12	4	20	96		
18	Subtotal	25,345	69		172	103		255	83	537	6,360		
Washington County/Growth													
19	Residential	198,114	543	250%	1,357	814	370%	2,008	651	2,618	34,384		
20	Non-Residential	24,123	66	240%	159	93	355%	235	76	109	1,368		
21	Industrial			200%			295%						
22	Irrigation	14,574	40	240%	96	56	355%	142	46	188	1,884		
23	Subtotal	236,811	649		1,611	963		2,385	773	2,915	37,635		
Johnson													
24	Residential	6,718	18	250%	46	28	370%	68	22	158	2,064		
26	Non-Residential	8,320	23	240%	55	32	355%	81	26	35	240		
27	Industrial			200%			295%						
28	Irrigation	77	0	240%	1	0	355%	1	0	3	24		
29	Subtotal	15,115	41		101	60		150	49	196	2,328		
Goshen/White River													
30	Residential	84,663	232	250%	580	348	370%	858	278	1,054	15,447		
31	Non-Residential	11,837	32	240%	78	45	355%	115	37	52	768		
32	Industrial			200%			295%						
33	Irrigation	7,781	21	240%	51	30	355%	76	25	86	931		
34	Subtotal	104,281	286		709	423		1,049	340	1,192	17,146		
Fire Protection													
35	Public				696	696		1,669	973			668	
36	Private				12	12		29	17				12
37	Subtotal	486,052	1,332		4,012	2,680		6,588	2,575	6,892	89,994	668	12
38	Total Retail	3,764,256	10,313		30,312	19,999		49,813	19,501	51,994	594,483		
Wholesale													
39	Elkins	75,031	206	240%	493	288	355%	730	236	23	12		
40	Mount Olive	62,062	170	240%	408	238	355%	604	196	38	24		
41	West Fork	65,226	179	240%	429	250	355%	634	206	23	12		
42	RDA/WWA			240%			355%				48		
43	Subtotal	202,319	554		1,330	776		1,968	637	83	96		
44	Subtotal (Inside City)	3,278,204	8,981		26,300	17,319		43,226	16,925	45,102	504,489	4,035	472
45	Subtotal (Outside City)	486,052	1,332		4,012	2,680		6,588	2,575	6,892	89,994	668	12
46	Subtotal (Wholesale)	202,319	554		1,330	776		1,968	637	83	96		
47	Total System	3,966,575	10,867		31,643	20,775		51,781	20,138	52,077	594,579	4,703	483

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Table W - 16 - Water 2023 Unit Cost of Service

Line No.	Description	Total	Common to All Customers			Common to Retail Customers			Customer		Direct Fire protection	
			Base	Extra Capacity		Base	Extra Capacity		Eq. Meters	Billing/Collectio	Public	Private
				Max. Day	Max. Hour		Max. Day	Max. Hour				
		\$	1,000 gal.	1,000 gpd.	1,000 gpd.	1,000 gal.	1,000 gpd.	1,000 gpd.	Equiv. Meters	Bills	Hydrants	Hydrants
Units of Service												
1	Inside City		3,278,204	17,319	16,925	3,278,204	17,319	16,925	45,102	504,489	4,035	472
2	Outside City		688,371	3,456	3,213	486,052	2,680	2,575	6,975	90,090	668	12
3	Total System		3,966,575	20,775	20,138	3,764,256	19,999	19,501	52,077	594,579	4,703	483
Costs of Service												
Net Operating Costs												
4	Total - \$	17,791,700	5,445,956	6,008,355	0	1,318,151	1,623,240	929,674	1,053,892	1,254,912	120,458	37,064
5	Unit Cost - \$/unit		1.37	289.20	0.00	0.35	81.16	47.67	20.24	2.11	25.61	76.68
Depreciation Expense												
6	Total - \$	2,820,070	485,120	533,632	0	538,570	355,669	135,598	547,847		223,635	
7	Unit Cost - \$/unit		0.12	25.69	0.00	0.14	17.78	6.95	10.52		47.55	
Net Plant Investment												
8	Total - \$	103,987,502	17,454,685	19,200,154	0	21,217,829	13,337,679	5,728,380	19,169,381		7,879,393	
9	Unit Cost - \$/unit		4.40	924.18	0.00	5.64	666.90	293.75	368.09		1,675.40	
Return on Investment												
10	Inside City, Unit Return - \$/unit		0.02	4.29	0.00	0.03	3.10	1.36	1.71		7.78	
11	Outside City, Unit Return - \$/Unit		0.31	64.69	0.00	0.39	46.68	20.56	25.77		117.28	
Total Return												
12	Inside City - \$	412,445	67,007	74,347	0	85,831	53,650	23,094	77,115		31,401	
13	Outside City - \$	1,063,585	212,040	223,605	0	191,780	125,131	52,959	179,730		78,342	
14	Total Return - \$	1,476,030	279,046	297,952	0	277,610	178,781	76,053	256,845		109,743	
Total Unit Cost of Service												
15	Inside City Unit Cost - \$/unit		1.52	319.18	0.00	0.52	102.05	55.99	32.47	2.11	80.95	76.68
16	Outside City Unit Cost - \$/unit		1.80	379.58	0.00	0.89	145.63	75.19	56.52	2.11	190.44	76.68
17	Inside City - Cost of Service - \$	17,806,421	4,968,786	5,527,935	0	1,702,806	1,767,336	947,674	1,464,315	1,064,768	326,620	36,179
18	Outside City- Cost of Service - \$	4,281,379	1,241,336	1,312,003	0	431,525	390,353	193,649	394,269	190,144	127,215	885
19	Total Cost of Service - \$	22,087,800	6,210,122	6,839,938	0	2,134,331	2,157,689	1,141,324	1,858,584	1,254,912	453,835	37,064

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Table W - 17 - Water 2023 Cost of Service by Customer Class

	(1)	(2)	(3)	(4)	(5)	(6)
Line No.	Description	Allocated Cost of Service	Allocation Public Fire	Adjusted Cost of Service	Existing Revenues	Indicated Revenue Increase
	\$	\$	\$	\$	\$	
Inside City						
1	Residential	9,170,800	1,473,200	10,644,000	11,194,200	-4.9%
2	Non-Residential	3,473,000	557,900	4,030,800	3,476,000	16.0%
3	Industrial	1,348,900	216,700	1,565,600	1,196,700	30.8%
4	Irrigation	1,106,700	177,800	1,284,500	1,456,300	-11.8%
Fire Protection						
5	Public	2,425,500	-2,425,500			
6	Private	281,500		281,500	967,600	-70.9%
7	Subtotal	17,806,400	100	17,806,400	18,290,800	-2.6%
Outside City						
8	Residential	2,524,400	469,500	2,994,000	2,674,900	11.9%
9	Non-Residential	368,000	68,400	436,500	333,000	31.1%
10	Industrial					0.0%
11	Irrigation	150,200	27,900	178,200	177,900	0.2%
Fire Protection						
12	Public	565,900	-565,900			
13	Private	8,500		8,500	27,100	-68.6%
14	Subtotal	3,617,000	-100	3,617,200	3,212,900	12.6%
Wholesale						
15	Elkins	245,800		245,800	216,200	13.7%
16	Mount Olive	204,500		204,500	179,800	13.7%
17	West Fork	213,900		213,900	188,100	13.7%
18	RDA/WWA	0		0	0	0.0%
19	Subtotal Wholesale	664,200	0	664,200	584,100	13.7%
20	Total Retail	21,423,400	0	21,423,600	21,503,700	-0.4%
21	Total Wholesale	664,200	0	664,200	584,100	13.7%
22	Total	22,087,600	0	22,087,800	22,087,800	0.0%

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Table W - 18 - Water Proposed 2023 Rates

Existing Water Rates Effective January 1, 2022

Monthly Base Charge					
Meter Size	Inside City	Outside City	Wholesale	Inside City Private Fire	Outside City Private Fire
Inches	\$/month	\$/month	\$/month	\$/month	\$/month
5/8	6.59	7.54	8.31		
3/4	6.59	7.54	8.31		
1	9.14	10.52	11.49	9.75	11.68
1 1/2	15.93	18.31	20.00	10.17	12.10
2	23.20	26.66	29.07	20.33	23.37
3	54.05	62.18	64.38	30.48	35.06
4	89.50	102.93	112.25	60.97	70.11
6	178.99	205.82	212.76	169.34	197.74
8	268.41	308.67	332.91	355.65	409.00
10				609.68	701.11

Volume Charge			
Monthly Water Usage	Inside City	Outside City	Wholesale
1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.

Residential

0 - 2,000 Gallons	3.51	4.04	
2,000 - 15,000 Gallons	4.65	5.35	
Over 15,000 Gallons	6.59	7.54	

Non-Residential

First 300,000 Gallons	3.79	4.38	
Over 300,000 Gallons	3.39	3.90	

Major Industrial

All Usage	2.96	3.40	
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Irrigation

First 300,000 Gallons	5.04	5.80	
Over 300,000 Gallons	4.53	5.22	

Wholesale

Reduced Peak Demand			2.87
Peak Demand			3.20

Proposed Water Rates Effective January 1, 2023

Monthly Base Charge					
Meter Size	Inside City	Outside City	Wholesale	Inside City Private Fire	Outside City Private Fire
Inches	\$/month	\$/month	\$/month	\$/month	\$/month
5/8	6.59	7.54	8.31		
3/4	6.59	7.54	8.31		
1	9.14	12.26	12.26	9.75	11.68
1 1/2	15.93	24.22	24.22	10.17	12.10
2	23.20	33.52	33.52	20.33	23.37
3	54.05	69.84	69.84	30.48	35.06
4	89.50	102.93	112.25	60.97	70.11
6	178.99	205.82	212.76	169.34	197.74
8	268.41	308.67	332.91	355.65	409.00
10				609.68	701.11

Volume Charge			
Monthly Water Usage	Inside City	Outside City	Wholesale
1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.

Residential

0 - 2,000 Gallons	3.30	4.47	
2,000 - 15,000 Gallons	4.27	5.91	
Over 15,000 Gallons	6.20	8.38	

Non-Residential

First 300,000 Gallons	3.93	5.05	
Over 300,000 Gallons	3.93	5.05	

Major Industrial

All Usage	3.14	3.49	
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Irrigation

First 300,000 Gallons	4.29	5.43	
Over 300,000 Gallons	4.29	5.43	

Wholesale

Reduced Peak Demand			3.16
Peak Demand			3.16

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Table W - 19 - Water 2023 Cost of Service Under Proposed Rates

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Line No.	Description	Adjusted Cost of Service	Revenue Under Existing Rates	Indicated Revenue Increase	Revenues Under Proposed Rates	Proposed Revenue as % Cost of Service	Indicated Revenue Increase	Indicated Revenue Increase
		\$	\$		\$			\$
Inside City								
1	Residential	10,644,000	11,194,200	-4.9%	10,652,800	100%	-5%	-541,400
2	Non-Residential	4,030,800	3,476,000	16.0%	3,687,200	91%	6%	211,200
3	Industrial	1,565,600	1,196,700	30.8%	1,272,200	81%	6%	75,500
4	Irrigation	1,284,500	1,456,300	-11.8%	1,294,800	101%	-11%	-161,500
5	Subtotal	17,524,900	17,323,200	1.2%	16,907,000	96%	-2%	-416,200
Outside City								
6	Residential	2,994,000	2,674,900	11.9%	2,903,900	97%	9%	229,000
7	Non-Residential	436,500	333,000	31.1%	387,400	89%	16%	54,400
8	Irrigation	178,200	177,900	0.2%	172,900	97%	-3%	-5,000
9	Subtotal	3,608,700	3,185,800	13.3%	3,464,200	96%	9%	278,400
Private Fire								
10	Inside City	281,500	967,600	-70.9%	967,600	344%	0%	0
11	Outside City	8,500	27,100	-68.6%	27,100	319%	0%	0
12	Subtotal	290,000	994,700	-70.8%	994,700	343%	0%	0
Wholesale								
13	Elkins	245,800	216,200	13.7%	238,400	97%	10%	22,200
14	Mount Olive	204,500	179,800	13.7%	198,300	97%	10%	18,500
15	West Fork	213,900	188,100	13.7%	207,500	97%	10%	19,400
16	RDA/WWA	0	0		0	0%	0%	
17	Subtotal	664,200	584,100	13.7%	644,200	97%	10%	60,100
18	Total	22,087,800	22,087,800	0.0%	22,010,100	100%	0%	-77,700

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Table W - 20 - Water 2023 Bill Impact

Line No.	Meter Size	Monthly Usage 1,000 gal.	Inside City				Outside City			
			Existing Rates	Proposed Rates	Increase / Decrease	Increase / Decrease	Existing Rates	Proposed Rates	Increase / Decrease	Increase / Decrease
	Inches		\$	\$	\$		\$	\$	\$	
Residential										
1	3/4	0.5	9.91	8.24	-1.67	-16.9%	11.36	9.78	-1.59	-14.0%
2	3/4	2	13.42	13.19	-0.23	-1.7%	15.40	16.48	1.08	7.0%
3	3/4	4	22.72	21.73	-0.99	-4.4%	26.10	28.30	2.20	8.4%
4	3/4	8	41.32	38.81	-2.51	-6.1%	47.50	51.94	4.44	9.3%
5	3/4	10	50.62	47.35	-3.27	-6.5%	58.20	63.76	5.56	9.6%
6	3/4	15	73.87	68.70	-5.17	-7.0%	84.95	93.31	8.36	9.8%
Non-Residential										
7	3/4	10	44.30	45.89	1.59	3.6%	51.12	58.04	6.92	13.5%
8	3/4	20	82.20	85.19	2.99	3.6%	94.92	108.54	13.62	14.3%
9	1	50	198.37	205.64	7.27	3.7%	229.21	264.76	35.55	15.5%
10	1	100	387.87	402.14	14.27	3.7%	448.21	517.26	69.05	15.4%
11	1 1/2	50	204.97	212.43	7.46	3.6%	236.78	276.72	39.94	16.9%
12	1 1/2	100	394.47	408.93	14.46	3.7%	455.78	529.22	73.44	16.1%
13	2	100	401.52	416.20	14.68	3.7%	463.88	538.52	74.64	16.1%
14	2	500	1,837.52	1,988.20	150.68	8.2%	2,119.88	2,558.52	438.64	20.7%
Industrial										
15	2	100	318.52	337.20	18.68	5.9%	362.52	382.52	20.00	5.5%
16	2	1,000	2,982.52	3,163.20	180.68	6.1%	3,422.52	3,523.52	101.00	3.0%
17	4	500	1,566.89	1,659.50	92.61	5.9%	1,786.89	1,847.93	61.04	3.4%
18	4	1,500	4,526.89	4,799.50	272.61	6.0%	5,186.89	5,337.93	151.04	2.9%
19	6	2,500	7,573.78	8,028.99	455.21	6.0%	8,673.78	8,930.82	257.04	3.0%
20	6	5,000	14,973.78	15,878.99	905.21	6.0%	17,173.78	17,655.82	482.04	2.8%
21	6	10,000	29,773.78	31,578.99	1,805.21	6.1%	34,173.78	35,105.82	932.04	2.7%

11.0 Appendix 2: Wastewater Tables

Table S - 1 - Wastewater Projected Accounts

Line No.	Customer Class	Projected						Change
		2021	2022	2023	2024	2025	2026	5-Year
Inside City								
1	Residential	34,600	35,200	35,800	36,400	37,000	37,700	3,100
2	Non-Residential	2,900	2,900	2,900	2,900	2,900	2,900	0
3	Industrial	21	21	21	21	21	21	0
4	Subtotal	37,521	38,121	38,721	39,321	39,921	40,621	3,100
Outside City								
5	Residential	2,400	2,400	2,500	2,500	2,500	2,500	100
6	Non-Residential	184	184	184	184	184	184	0
7	Industrial	0	0	0	0	0	0	0
8	Subtotal	2,584	2,584	2,684	2,684	2,684	2,684	100
Wholesale								
9	Elkins	2	2	2	2	2	2	0
10	West Fork	1	1	1	1	1	1	0
11	Subtotal	2	2	2	2	2	2	0
11	Total	40,107	40,707	41,407	42,007	42,607	43,307	3,200
12	% Change	1.52%	1.50%	1.72%	1.45%	1.43%	1.64%	7.98%

Table S - 2 - Wastewater Projected Billed Volume (1,000 Gallons)

Line No.	Customer Class	Projected						Change
		2021	2022	2023	2024	2025	2026	5-Year
		1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.	
Inside City								
1	Residential	1,861,300	1,741,200	1,771,800	1,802,800	1,834,400	1,866,500	5,200
2	Non-Residential	626,900	698,700	698,600	698,600	698,600	698,600	71,700
3	Industrial	318,500	396,700	396,700	396,700	396,700	396,700	78,200
4	Subtotal	2,806,700	2,836,600	2,867,100	2,898,100	2,929,700	2,961,800	155,100
Outside City								
5	Residential	94,500	97,400	98,700	100,100	101,400	102,800	8,300
6	Non-Residential	15,300	15,000	15,000	15,000	15,000	15,000	-300
7	Industrial	0	0	0	0	0	0	0
8	Subtotal	109,800	112,400	113,700	115,100	116,400	117,800	8,000
Wholesale								
8	Elkins	81,000	81,000	81,000	81,000	81,000	81,000	0
9	West Fork	45,600	45,600	45,600	45,600	45,600	45,600	0
10	Subtotal	126,600	126,600	126,600	126,600	126,600	126,600	0
10	Total	3,043,100	3,075,600	3,107,400	3,139,800	3,172,700	3,206,200	163,100
11	% Change	2.30%	1.07%	1.03%	1.04%	1.05%	1.06%	5.36%

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Table S - 3 - Wastewater Existing Charges

Existing Wastewater Rates Effective January 1, 2022

Monthly Base Charge			
Meter Size	Inside City	Outside City	Farmington
Inches	\$/month	\$/month	\$/month
5/8	18.28	18.28	16.74
3/4	18.28	18.28	16.74
1	23.74	33.92	31.28
1 1/2	38.77	60.37	55.50
2	55.43	79.73	73.45
3	128.73	184.24	169.29
4	212.13	303.44	278.93
6	420.39	601.46	553.70
8	628.73	899.76	826.81

Volume Charge			
Monthly Water Usage	Inside City	Outside City	Farmington
1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.

Residential

First 2,000 Gallons	4.35		
> 2,000 Gallons	5.80		
All Usage		8.18	7.52

Non-Residential

All Usage	4.40	8.18	7.52
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Major Industrial

All Usage	4.71	8.18	7.52
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Wholesale

85% of metered water usage		5.19	
Above 85% of metered water		2.71	

Surcharge

BOD - \$/lb for strength in excess of 300 ppm		0.4352	
TSS - \$/lb for strength in excess of 300 ppm		0.3056	

City of Fayetteville, Arkansas | Water and Wastewater Comprehensive Rate Study

Table S - 4 - Wastewater Projected Revenues at Existing Rates

Line No.	Customer Class	Projected						Change
		2021	2022 (a)	2023	2024	2025	2026	5-Year
		\$	\$	\$	\$	\$	\$	
Inside City								
1	Residential	16,696,700	16,719,800	17,013,000	17,310,700	17,613,700	17,921,900	1,225,200
2	Non-Residential	3,505,200	3,926,200	3,926,100	3,926,100	3,926,100	3,926,100	420,900
3	Industrial	1,477,500	1,890,100	1,890,100	1,890,100	1,890,100	1,890,100	412,600
4	Subtotal	21,679,400	22,536,100	22,829,200	23,126,900	23,429,900	23,738,100	2,058,700
Outside City								
5	Residential	1,177,400	1,242,000	1,258,300	1,274,800	1,291,700	1,308,800	131,400
6	Non-Residential	158,100	160,400	160,400	160,400	160,400	160,400	2,300
7	Industrial	0	0	0	0	0	0	0
8	Subtotal	1,335,500	1,402,400	1,418,700	1,435,200	1,452,100	1,469,200	133,700
Wholesale								
9	Elkins	407,300	419,500	419,500	419,500	419,500	419,500	12,200
10	West Fork	229,400	236,200	236,200	236,200	236,200	236,200	6,800
11	Subtotal	636,700	655,700	655,700	655,700	655,700	655,700	19,000
12	Surcharge	810,300	834,600	834,600	834,600	834,600	834,600	24,300
13	Total	24,461,900	25,428,800	25,738,200	26,052,400	26,372,300	26,697,600	2,235,700
14	% Change	4.90%	3.95%	1.22%	1.22%	1.23%	1.23%	9.14%

(a) Reflects 3.0% revenue increase effective January 1, 2022.

Table S - 5 - Wastewater Projected Other Revenues

Line No.	Description	Projected						Change
		2021	2022	2023	2024	2025	2026	5-Year
		\$	\$	\$	\$	\$	\$	
1	Sewer Impact Fee Rev	743,900	743,900	743,900	743,900	743,900	743,900	0
2	Sewer Sales Not on Cc	11,800	11,800	11,800	11,800	11,800	11,800	0
3	Sewer Connection Fee	47,900	47,900	47,900	47,900	47,900	47,900	0
4	WWTP Hay Sales	134,800	134,800	134,800	134,800	134,800	134,800	0
5	WWTP Biosolids/Fertil	54,900	54,900	54,900	54,900	54,900	54,900	0
6	WWTP Water Treatme	180,800	180,800	180,800	180,800	180,800	180,800	0
7	Penalties	123,000	246,100	246,100	246,100	246,100	246,100	123,100
8	Total	1,297,100	1,420,200	1,420,200	1,420,200	1,420,200	1,420,200	123,100
9	% Change	-1.52%	9.49%	0.00%	0.00%	0.00%	0.00%	9.49%

City of Fayetteville, Arkansas | Water and Wastewater Comprehensive Rate Study

Table S - 6 - Wastewater Capital Improvement Program

Line No.	Description	Projected (a)					
		2021	2022	2023	2024	2025	2026
		\$	\$	\$	\$	\$	\$
1	Sanitary Sewer Rehabilitation	2,956,100	3,044,800	3,136,100	3,230,200	3,327,100	0
2	Plant Pumps and Equipment - W.W.T.P.	515,000	530,500	546,400	562,800	579,600	0
3	W.W.T.P. Building Improvements	1,699,500	1,750,500	163,900	168,800	173,900	0
4	Upgrade/Replace Lift Stations - W.W.T.P.	309,000	318,300	327,800	337,700	347,800	0
5	Lake Sequoyah Sediment Removal/Dredging	515,000	530,500	546,400	562,800	579,600	0
6	Wastewater Treatment/Water Quality Improvements	103,000	106,100	109,300	112,600	115,900	0
7	Wastewater Impact Fee Improvements	309,000	318,300	327,800	337,700	347,800	0
8	Utilities Financial Services Improvements	0	11,100	3,300	1,700	8,700	0
9	Water/Sewer Relocations - Bond Projects	174,600	265,200	273,200	281,400	289,800	0
10	Water/Sewer Impact Fee Cost Sharing	0	79,600	82,000	84,400	86,900	0
11	Utilities Technology Improvements	0	228,100	234,900	130,000	10,400	0
12	Water/Sewer Building-Office Improvements	0	26,500	27,300	28,100	29,000	0
13	Water/Sewer Equipment Expansions	0	26,500	27,300	28,100	29,000	0
14	Water & Sewer Rate/Operational Studies	0	10,600	10,900	11,300	11,600	0
15	Phosphorus Standards Management	0	26,500	27,300	28,100	29,000	0
16	Water & Sewer Technology Equipment Replacements	0	0	0	0	0	0
17	Water & Sewer Improvements Defined By Study	0	0	0	0	0	0
18	Biosolids Dryer Replacement	0	0	3,278,200	9,004,100	9,274,200	9,552,400
19	Filter Cell Upgrade/Replacement at Noland WWTP	0	0	0	0	0	1,432,900
20	Upgrade Automation at both WWTPs	0	0	0	0	0	1,671,700
21	CIPP of 36" Sewer Line from Armstrong Ave to Nolan	0	0	0	0	0	1,194,100
22	Bypass Sewer Fulbright & North Gregg	1,442,000	0	0	0	0	0
23	Hamestring Lift Station Bottle Neck Resolution	0	848,700	0	0	0	0
24	Total Capital Improvement Program	8,023,200	8,121,800	9,122,100	14,909,800	15,240,300	13,851,100

(a) Capital costs reflect 3% annual inflation starting in 2021.

Table S - 7 - Wastewater Projected O&M Expenses

Line No.	Description	Projected					
		2021	2022	2023	2024	2025	2026
		\$	\$	\$	\$	\$	\$
1	Personal Costs	3,074,800	3,205,800	3,342,400	3,484,900	3,633,500	3,788,600
2	Materials and Supplies	724,700	746,400	768,800	791,800	815,600	840,100
3	Services and Charges	6,080,800	6,263,300	6,451,200	6,644,700	6,844,000	7,049,400
4	WWTP Contract	3,995,600	4,115,500	4,238,900	4,366,100	4,497,100	4,632,000
5	Motorpool	1,032,500	1,063,400	1,095,300	1,128,200	1,162,100	1,196,900
6	Cost Allocation	680,700	701,200	722,200	743,900	766,200	789,200
7	Maintenance	84,800	87,400	90,000	92,700	95,500	98,300
8	Total	15,673,900	16,183,000	16,708,800	17,252,300	17,814,000	18,394,500
9	% Change	0.81%	3.25%	3.25%	3.25%	3.26%	3.26%

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Table S - 8 - Wastewater Cash Financed Capital

Line No.	Description	Year Ending December 31,					
		2021	2022	2023	2024	2025	2026
		\$	\$	\$	\$	\$	\$
Sources of Funds							
1	Funds Available at Beginning of Year	504,100	501,900	506,700	504,400	506,700	501,100
2	Cash Financing of Capital Projects	6,270,000	6,880,000	8,710,000	14,490,000	14,800,000	13,850,000
3	Transfer from Impact Fee Fund	1,751,000	1,246,600	409,800	422,100	434,700	0
4	Subtotal	8,525,100	8,628,500	9,626,500	15,416,500	15,741,400	14,351,100
Application of Funds							
5	Major Capital Improvements	8,023,200	8,121,800	9,122,100	14,909,800	15,240,300	13,851,100
6	Subtotal	8,023,200	8,121,800	9,122,100	14,909,800	15,240,300	13,851,100
7	End of Year Balance	501,900	506,700	504,400	506,700	501,100	500,000
8	Capital Reserve EOY Balance - Cumulative	19,995,000	21,737,000	22,105,000	17,205,000	12,555,000	9,445,000

Table S - 9 - Wastewater Operating Cash Flow

Description	Year Ending December 31,					
	2021	2022	2023	2024	2025	2026
	\$	\$	\$	\$	\$	\$
Revenues						
Revenues Under Existing Rates	24,461,900	25,428,800	25,738,200	26,052,500	26,372,200	26,697,600
Revenue Increases						
0 % Increase Effective January 1, 2022		0	0	0	0	0
0 % Increase Effective January 1, 2023		0	0	0	0	0
3 % Increase Effective January 1, 2024		0	0	716,400	791,200	800,900
3 % Increase Effective January 1, 2025		0	0	0	747,000	825,000
3 % Increase Effective January 1, 2026		0	0	0	0	778,900
Total Revenue from Rates	24,461,900	25,428,800	25,738,200	26,768,900	27,910,400	29,102,400
Other Revenues (a)	594,700	720,500	719,400	721,600	724,200	727,000
Total Revenues	25,056,600	26,149,300	26,457,600	27,490,500	28,634,600	29,829,400
Expenses						
Operating Expenses	15,673,900	16,183,000	16,708,800	17,252,300	17,814,000	18,394,500
Bad Debt	122,300	127,100	128,700	133,800	139,600	145,500
PILOT	1,039,600	1,080,700	1,093,900	1,137,700	1,186,200	1,236,900
Debt Service	0	0	0	0	0	0
Total Expenses	16,835,800	17,390,800	17,931,400	18,523,800	19,139,800	19,776,900
Transfers						
Transfer to Shop Fund	33,000	0	0	0	0	0
Transfer to Operating Reserve	125,500	129,700	134,000	138,500	143,100	147,900
Cash Financing of Capital	6,270,000	6,880,000	8,710,000	14,490,000	14,800,000	13,850,000
Transfer to/from Capital Reserve	1,793,000	1,742,000	-312,000	-5,670,000	-5,450,000	-3,940,000
Total Transfers	8,221,500	8,751,700	8,532,000	8,958,500	9,493,100	10,057,900
Fund Balance						
Beginning Balance	106,700	106,000	112,800	107,000	115,200	116,900
Annual Operating Balance	-700	6,800	-5,800	8,200	1,700	-5,400
Ending Fund Balance	106,000	112,800	107,000	115,200	116,900	111,500
Performance Metrics						
Debt Service Coverage	NA	NA	NA	NA	NA	NA
O&M Reserve Balance (Days)	90.00	90.00	90.00	90.00	90.00	90.00

Includes interest income on operating fund balance.

Minimum requirement is 90 days of following year's Operating Expenses.

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Table S - 10 - Wastewater Projected Fund Balances

Line No.	Description	Year Ending December 31,					
		2021	2022	2023	2024	2025	2026
		\$	\$	\$	\$	\$	\$
Operating Funds							
1	O&M Reserve Balance (a)	3,990,300	4,120,000	4,254,000	4,392,500	4,535,600	4,683,500
2	Operating Fund Balance (b)	106,000	112,800	107,000	115,200	116,900	111,500
3	Total (e)	4,096,300	4,232,800	4,361,000	4,507,700	4,652,500	4,795,000
Capital Funds							
4	Capital Fund Balance (c)	501,900	506,700	504,400	506,700	501,100	500,000
5	Capital Reserve Fund Balance (d)	19,995,000	21,737,000	21,425,000	15,755,000	10,305,000	6,365,000
6	Total (e)	20,496,900	22,243,700	21,929,400	16,261,700	10,806,100	6,865,000
7	Impact Fee Fund Balance (e)	4,437,800	3,935,100	4,269,200	4,591,000	4,900,200	5,644,100

(a) Calculated as 90 days of following year's Operating Expenses.

(b) Target minimum balance is \$100,000 to account for any adjustments that may be needed to the O&M balance at the end of the year.

(c) Target minimum balance is \$500,000.

(d) Does not include expenses associated with facilities master plan to be completed in FY 2022

(e) All balances are cumulative.

Table S - 11 - Wastewater 2023 Cost of Service

Line No.	Description	Operating Expense	Capital Cost	Total Cost
		\$	\$	\$

Statement of Net Revenue Requirements (Cash Basis)

Revenue Requirements				
1	O&M Expenses	16,708,800		16,708,800
2	Bad Debt	128,700		128,700
3	PILOT	1,093,900		1,093,900
4	Debt Service		0	0
Other Expenditures & Transfers:				
	Transfer to Shop Fund (Capital Outlay)		0	0
5	Transfer to Operating Reserve	134,000		134,000
6	Cash Funding of Capital Projects		8,710,000	8,710,000
7	Transfer to Capital Reserve		(312,000)	(312,000)
8	Subtotal	18,065,400	8,398,000	26,463,400
Less Revenue Requirements Met from Other Sources				
9	Other Revenues and Adjustments	676,300		676,300
10	Interest Earned	43,100		43,100
11	Net Balance Available		5,800	5,800
12	Full Year Rate Adjustment			
13	Subtotal	719,400	5,800	725,200
14	Net Revenue Requirements to be Recovered by Rates	17,346,000	8,392,200	25,738,200

Restatement of Net Cost of Service (Utility Basis)

15	O&M Expenses	17,346,000		17,346,000
16	Depreciation		8,259,600	8,259,600
17	Return		132,600	132,600
18	Net Cost of Service	17,346,000	8,392,200	25,738,200

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Table S - 12 - Wastewater 2023 Allocation of Net Plant Investment

Line No.	Description	Total	Volume				Farmington Direct	Wastewater Strength				Customer Billing	Customer Connections	Fayetteville Direct
			Common to All		Retail Only			BOD		TSS				
			All	w/o Farmington	Volume	w/o Farmington		All	w/o Farmington	All	w/o Farmington			
		\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Net Plant Investment:														
1	Sewer Collection	106,713,735	43,521,511		63,192,224									
2	Sewer Connections	319,887												319,887
3	Water Meters	2,741,021											2,741,021	
4	Owl Creek Lift Station and Force Main	14,103												14,103
5	Lift Stations	5,257,834	5,257,834											
Sewer Treatment Plant- Noland														
6	Sewage Pumping	229,919		229,919										
7	Mechanical Bar Screens	172,282							51,685		120,597			
8	Grit Removal													
9	Primary Sedimentation													
10	Disinfection	1,684,829		1,684,829										
11	Aeration Equipment	1,120,704							560,352		560,352			
12	Sludge Handling	400,690							220,380		180,311			
13	Other Plant and Misc Equipment	961,187		510,038					221,733		229,416			
14	General Treatment	14,870,670		7,890,861					3,430,472		3,549,337			
Sewer Treatment Plant- West														
15	Sewage Pumping	921,333		845,784			75,549							
16	Mechanical Bar Screens	169,727					13,918		46,743		109,066			
17	Grit Removal	1,380,570					113,207				1,267,363			
18	Primary Sedimentation	6,927,776					568,078		1,907,909		4,451,789			
19	Disinfection	667,246		612,532			54,714							
20	Aeration Equipment	1,490,202					122,197		684,003		684,003			
21	Sludge Handling	34,604,278					2,837,551		17,471,700		14,295,027			
22	Other Plant and Misc Equipment	3,425,729		108,225			280,910		1,492,438		1,544,156			
23	General Treatment	7,795,332		246,269			639,217		3,396,080		3,513,766			
24	Sewer Land and Land Rights	6,358,594	1,917,514	132,595	2,484,085		148,797		823,260		851,789			554
25	General Plant	1,768,194	449,533	111,771	582,356		43,363		271,709		281,124		25,260	3,078
26	Total Net Plant Investment	199,995,842	51,146,392	12,372,823	66,258,665	0	4,897,501	0	30,578,464	0	31,638,096	0	2,766,281	337,622

Table S - 13 - Wastewater 2023 Allocation of Depreciation

Line No.	Description	Total	Volume					Wastewater Strength				Customer Billing	Customer Connections	Fayetteville Direct
			Common to All		Retail Only		Farmington Direct	BOD		TSS				
			All	w/o Farmington	Volume	w/o Farmington		All	w/o Farmington	All	w/o Farmington			
		\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Net Depreciation Expense:														
1	Sewer Collection	2,890,542	1,178,862		1,711,680									
2	Sewer Connections	22,463												22,463
3	Water Meters	141,180											141,180	
4	Owl Creek Lift Station and Force Main	6,509												6,509
5	Lift Stations	113,991	113,991											
Sewer Treatment Plant- Noland														
6	Sewage Pumping	42,418		42,418										
7	Mechanical Bar Screens	33,421							10,026		23,395			
8	Grit Removal													
9	Primary Sedimentation													
10	Disinfection	282,757		282,757										
11	Aeration Equipment	124,523	(1)						62,262		62,262			
12	Sludge Handling	83,361	(1)						45,849		37,513			
13	Other Plant and Misc Equipment	68,718		36,464					15,852		16,402			
14	General Treatment	935,042		496,164					215,702		223,176			
Sewer Treatment Plant- West														
15	Sewage Pumping	117,218		107,606			9,612							
16	Mechanical Bar Screens	55,071					4,516		15,167		35,388			
17	Grit Removal	135,374					11,101				124,273			
18	Primary Sedimentation	397,767					32,617		109,545		255,605			
19	Disinfection	41,250		37,868			3,382							
20	Aeration Equipment	140,345	1				11,508		64,418		64,418			
21	Sludge Handling	2,080,224					170,578		1,050,305		859,341			
22	Other Plant and Misc Equipment	320,819		10,135			26,307		139,767		144,610			
23	General Treatment	54,927	1	1,735			4,504		23,929		24,758			
24	Sewer Land and Land Rights	4,692	1,415	98	1,833		110		607		629			
25	General Plant	166,944	42,443	10,553	54,983		4,094		25,653		26,542		2,385	291
26	Total Net Depreciation Expense	8,259,556	1,336,711	1,025,798	1,768,496	0	278,329	0	1,779,082	0	1,898,312	0	143,565	29,263

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Table S - 14 - Wastewater 2023 Allocation of O&M Expenses

Line No.	Description	Total	Volume					Wastewater Strength				Customer Billing	Customer Connections	Fayetteville Direct
			Common to All		Retail Only		Farmington Direct	BOD		TSS				
			All	w/o Farmington	Volume	w/o Farmington		All	w/o Farmington	All	w/o Farmington			
		\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
1	Sewer Mains Maintenance	2,527,372	1,030,749		1,496,623									
2	Wastewater Treatment Plant	1,930,453		367,405			42,158		747,493		773,396			
3	Wastewater Treatment Plant-Noland	5,578,707		1,183,574					2,160,139		2,234,994			
4	Wastewater Treatment Plant-West	2,025,047		263,578			166,054		784,121		811,293			
5	Lift Stations	990,432	990,432											
6	Meter Operations (a)	1,716,051										1,716,051		
7	Water & Sewer Connections	205,698												205,698
8	Operations and Administration	1,443,897	194,900	174,975	144,317		20,078		355,990		368,326	165,476		19,835
9	All Other O&M Cost	1,647,745	222,415	199,678	164,692		22,912		406,249		420,326	188,838		22,635
10	Subtotal	18,065,400	2,438,495	2,189,210	1,805,632	0	251,202	0	4,453,993	0	4,608,336	2,070,365	0	248,168
	Less: Other Income Sources													
11	Sewer Connection Fees	47,900												47,900
12	Other Income Sources	671,500	49,206	87,179	71,904		10,003		177,367		183,513	82,446		9,883
13	Subtotal	719,400	49,206	87,179	71,904	0	10,003	0	177,367	0	183,513	82,446	0	57,783
14	Net O&M Expenses	17,346,000	2,389,289	2,102,031	1,733,728	0	241,199	0	4,276,626	0	4,424,823	1,987,918	0	190,386

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Table S - 15 - Wastewater 2023 Units of Service

Line	(1) Customer Classes	(2)	(3)	(4)	(5)	(6)	(7)	(8)
		Contributed	Infiltration	Total Treated	Strength		Customer	
		Volume	& Inflow	Volume	BOD	TSS	Bills	Meter
		1,000 gal.	1,000 gal.	1,000 gal. (2) + (3)	Pounds	Pounds	Bills	Equiv. Meters
Inside City								
1	Residential	1,771,796	1,590,308	3,362,104	5,725,103	4,874,540	429,266	34,346
2	Non-Residential	698,638	250,840	949,478	2,179,024	1,765,193	34,296	5,157
3	Industrial	396,716	88,853	485,569	1,226,169	980,006	252	249
4	Subtotal	2,867,150	1,930,001	4,797,151	9,130,296	7,619,739	463,814	39,752
Outside City								
Farmington								
5	Residential	77,284	77,958	155,242	251,513	216,205	21,806	1,603
6	Non-Residential	12,743	7,448	20,191	40,344	33,395	1,656	157
7	Industrial							
8	Subtotal	90,027	85,406	175,432	291,857	249,600	23,462	
Greenland								
9	Residential	10,633	17,382	28,016	35,993	32,523	5,388	435
10	Non-Residential	2,212	1,830	4,041	7,114	6,020	480	22
11	Industrial							
12	Subtotal	12,845	19,212	32,057	43,107	38,543	5,868	
Washington County/ Growth Area								
13	Residential	4,304	1,893	6,197	13,496	11,019	336	74
14	Non-Residential		67	67	14	28	24	
15	Industrial							
16	Subtotal	4,304	1,960	6,264	13,510	11,047	360	
Johnson								
17	Residential	6,479	6,692	13,171	21,119	18,191	1,884	151
18	Non-Residential	28	140	168	114	125	48	18
19	Industrial							
20	Subtotal	6,507	6,832	13,339	21,233	18,316	1,932	
21	Total Retail	2,974,326	2,036,578	5,010,904	9,478,770	7,918,929	493,504	39,752
Wholesale								
22	Elkins	81,017	18,069	99,086	250,391	200,104	24	23
23	West Fork	45,625	10,171	55,796	141,008	112,687	12	23
24	Subtotal	126,642	28,240	154,882	391,399	312,791	36	45
25	Subtotal (Inside City)	2,867,150	1,930,001	4,797,151	9,130,296	7,619,739	463,814	39,752
26	Subtotal (Outside City)	113,683	113,409	227,092	369,707	317,506	31,622	-
27	Subtotal (Wholesale)	126,642	28,240	154,882	391,399	312,791	36	45
28	Surcharge Customers				1,282,742	910,900		
29	Total System	3,107,475	2,071,650	5,179,125	11,174,144	9,160,936	495,472	42,258

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Table S - 16 - Wastewater 2023 Unit Cost of Service

Line No.	Description	Total	Common to All		Volume		Farmington Direct	Wastewater Strength				Customer Billing	Customer Connections	Fayetteville Direct
			All	w/o Farmington	Volume	w/o Farmington		BOD		TSS				
								All	w/o Farmington	All	w/o Farmington			
		\$	1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.	Pounds	Pounds	Pounds	Pounds	Bills	Equiv. Meters	Bills
Units of Service														
1	Inside City		4,797,151	4,797,151	4,797,151	4,797,151		9,130,296	9,130,296	7,619,739	7,619,739	463,814	39,752	463,814
2	Outside City-w/o Farmington		206,542	206,542	51,660	51,660		469,249	469,249	380,697	380,697	8,196	746	
3	Surcharge		175,432		175,432		175,432	291,857		249,600		23,462	1,761	
4	Total System		5,179,125	5,003,693	5,024,243	4,848,811	175,432	9,891,402	9,599,545	8,250,036	8,000,436	495,472	42,258	463,814
Costs of Service														
Net Operating Expense														
5	Total - \$	17,346,000	2,389,289	2,102,031	1,733,728		241,199		4,276,626		4,424,823	1,987,918		190,386
6	Unit Cost - \$/unit		0.46	0.42	0.35		1.37		0.39		0.50	4.01		0.41
Depreciation Expense:														
7	Total - \$	8,259,555	1,336,711	1,025,798	1,768,496		278,329		1,779,082		1,898,312		\$ 143,565	29,263
8	Unit Cost - \$/unit		0.26	0.21	0.35		1.59		0.16		0.21		\$ 3.3974	0.06
Net Plant Investment:														
9	Total - \$	199,995,842	51,146,392	12,372,823	66,258,665		4,897,501		30,578,464		31,638,096		2,766,281	337,622
10	Unit Cost - \$/unit		9.88	2.47	13.19		27.92		2.81		3.55		65.46	0.73
Return on Investment														
11	Inside City, Unit Return - \$/unit		(0.04)	(0.01)	(0.06)				(0.01)		(0.02)		(0.28)	(0.00)
12	Outside City - Except Farmington - Unit Return - \$/Unit		0.69	0.17	0.92				0.20		0.25		4.58	
13	Outside City - Farmington - Unit Return - \$/Unit		0.54		0.73		\$1.5354						3.60	
Total Return														
14	Inside City - \$	(782,136)	(200,302)	(50,154)	(267,484)				(123,713)		(128,054)		(11,002)	(1,427)
15	Outside City - Except Farmington - \$	416,547	142,779	35,751	47,689				92,299		94,612		3,417	
16	Outside City - Farmington - \$	498,234	95,286		127,246		269,363						6,339	
17	Total Return - \$	132,645	37,764	(14,403)	(92,549)		269,363		(31,414)		(33,442)		(1,247)	(1,427)
Total Unit Cost of Service														
18	Inside City - \$/unit		0.68	0.61	0.64				0.54		0.69	4.01	3.12	0.47
19	Outside City (Exc Farmington)- \$/uni		1.41	0.80	1.62				0.75		0.96	4.01	7.98	
20	Outside City - Farmington - \$/unit		1.26		1.42		\$ 4.4968					4.01	7.00	
Total Cost of Service														
21	Inside City - Retail - \$	21,743,660	3,250,896	2,948,565	3,076,442				4,972,298		5,292,288	1,860,902	124,048	218,221
22	Inside City-Surcharge - \$	1,331,238							698,572		632,665			
23	Outside City - Except Farmington - \$	1,296,928	291,370	164,861	83,700				353,424		364,739	32,884	5,950	
24	Outside City - Farmington - \$	1,366,374	221,497		249,534		788,890					94,133	12,320	
25	Total Cost of Service - \$	25,738,200	3,763,763	3,113,426	3,409,676	0	788,890	0	6,024,294	0	6,289,693	1,987,918	142,318	218,221

Table S - 17 - Wastewater 2023 Cost of Service by Customer Class

Line	Description	(1)	(2)	(3)	(4)
			Allocated Cost of Service	Existing Revenues	Indicated Revenue Increase
			\$	\$	
Inside City					
1	Residential		15,035,955	17,013,006	-11.6%
2	Non-Residential		4,418,463	3,926,109	12.5%
3	Industrial		2,289,243	1,890,075	21.1%
4	Subtotal		21,743,660	22,829,190	-4.8%
Outside City					
5	Residential		1,543,180	1,258,314	22.6%
6	Non-Residential		183,028	160,409	14.1%
7	Industrial				100.0%
8	Subtotal		1,726,208	1,418,723	21.7%
9	Total Retail		23,469,868	24,247,913	-3.2%
10	Wholesale		937,095	655,689	42.9%
11	Surcharge		1,331,238	834,607	59.5%
12	Total		25,738,201	25,738,209	0.0%

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Table S - 18 - Wastewater Proposed 2023 Charges

Existing Wastewater Rates Effective January 1, 2022

Monthly Base Charge			
Meter Size	Inside City	Outside City	Farmington
Inches	\$/month	\$/month	\$/month
5/8	18.28	18.28	16.74
3/4	18.28	18.28	16.74
1	23.74	33.92	31.28
1 1/2	38.77	60.37	55.50
2	55.43	79.73	73.45
3	128.73	184.24	169.29
4	212.13	303.44	278.93
6	420.39	601.46	553.70
8	628.73	899.76	826.81

Volume Charge			
Monthly Water Usage	Inside City	Outside City	Farmington
1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.

Residential

First 2,000 Gallons	4.35		
> 2,000 Gallons	5.80		
All Usage		8.18	7.52

Non-Residential

All Usage	4.40	8.18	7.52
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Major Industrial

All Usage	4.71	8.18	7.52
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Wholesale

85% of metered water usage	5.19		
Above 85% of metered water	2.71		

Surcharge

BOD - \$/lb for strength in excess of 300 ppm	0.4352		
TSS - \$/lb for strength in excess of 300 ppm	0.3056		

Proposed Wastewater Rates Effective January 1, 2023

Monthly Base Charge			
Meter Size	Inside City	Outside City	Farmington
Inches	\$/month	\$/month	\$/month
5/8	18.28	18.28	25.10
3/4	18.28	18.28	25.10
1	23.74	33.92	52.62
1 1/2	38.77	66.73	109.78
2	55.43	93.11	154.24
3	128.73	196.10	327.83
4	212.13	303.44	482.37
6	420.39	601.46	897.30
8	628.73	899.76	998.92

Volume Charge			
Monthly Water Usage	Inside City	Outside City	Farmington
1,000 gal.	1,000 gal.	1,000 gal.	1,000 gal.

Residential

First 2,000 Gallons	3.39		
> 2,000 Gallons	4.52		
All Usage		8.55	8.27

Non-Residential

All Usage	5.10	8.55	8.27
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Major Industrial

All Usage	5.71	8.55	8.27
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Wholesale

85% of metered water usage	7.20		
Above 85% of metered water	7.20		

Surcharge

BOD - \$/lb for strength in excess of 300 ppm	0.5426		
TSS - \$/lb for strength in excess of 300 ppm	0.6921		

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Table S - 19 - Wastewater 2023 Cost of Service Under Proposed Rates

(1) Line No.	(2) Description	(3) Adjusted Cost of Service \$	(4) Revenue Under Existing Rates \$	(5) Indicated Revenue Increase	(6) Revenues Under Proposed Rates \$	(7) Proposed Revenue as % Cost of Service	(8) Indicated Revenue Increase	(9) Indicated Revenue Increase \$
Inside City								
1	Residential	15,036,000	17,013,000	-11.6%	15,049,500	100%	-12%	-1,963,500
2	Non-Residential	4,418,500	3,926,100	12.5%	4,424,800	100%	13%	498,700
3	Industrial	2,289,200	1,890,100	21.1%	2,291,500	100%	21%	401,400
4	Subtotal	21,743,700	22,829,200	-4.8%	21,765,800	100%	-5%	-1,063,400
Outside City								
5	Residential	1,543,200	1,258,300	22.6%	1,510,400	98%	20%	252,100
6	Non-Residential	183,000	160,400	14.1%	193,500	106%	21%	33,100
7	Industrial					0%	0%	
8	Subtotal	1,726,200	1,418,700	21.7%	1,703,900	99%	20%	285,200
Wholesale								
9	Elkins	599,500	419,500	42.9%	583,300	97%	39%	163,800
10	West Fork	337,600	236,200	42.9%	328,500	97%	39%	92,300
11	Subtotal	937,100	655,700	42.9%	911,800	97%	39%	256,100
12	Surcharge	1,331,200	834,600	59.5%	1,326,400	100%	59%	491,800
13	Total	25,738,200	25,738,200	0.0%	25,707,900	100%	0%	-30,300

Table S - 20 - Wastewater 2023 Bill Impact

Line No.	Meter Size	Monthly Usage	Inside City				Outside City			
			Existing Rates	Proposed Rates	Increase / Decrease	Increase / Decrease	Existing Rates	Proposed Rates	Increase / Decrease	Increase / Decrease
Inches		1,000 gal.	\$	\$	\$		\$	\$	\$	
Residential										
1	3/4	0.5	22.10	19.98	-2.13	-9.6%	26.46	22.56	-3.91	-14.8%
2	3/4	2	26.45	25.06	-1.39	-5.3%	34.64	35.38	0.74	2.1%
3	3/4	4	38.05	31.84	-6.21	-16.3%	51.00	52.48	1.48	2.9%
4	3/4	8	61.25	45.40	-15.85	-25.9%	83.72	86.68	2.96	3.5%
5	3/4	10	72.85	52.18	-20.67	-28.4%	100.08	103.78	3.70	3.7%
6	3/4	15	101.85	69.13	-32.72	-32.1%	140.98	146.53	5.55	3.9%
Non-Residential										
7	3/4	10	61.75	69.28	7.53	12.2%	100.08	103.78	3.70	3.7%
8	3/4	20	105.75	120.28	14.53	13.7%	181.88	189.28	7.40	4.1%
9	1	50	243.05	278.74	35.69	14.7%	442.92	461.42	18.50	4.2%
10	1	100	463.05	533.74	70.69	15.3%	851.92	888.92	37.00	4.3%
11	1 1/2	50	257.64	293.77	36.13	14.0%	469.37	494.23	24.86	5.3%
12	1 1/2	100	477.64	548.77	71.13	14.9%	878.37	921.73	43.36	4.9%
13	2	100	493.82	565.43	71.61	14.5%	897.73	948.11	50.38	5.6%
14	2	500	2,253.82	2,605.43	351.61	15.6%	4,169.73	4,368.11	198.38	4.8%
Industrial										
15	2	100	493.52	626.43	132.91	26.9%	897.73	948.11	50.38	5.6%
16	2	1,000	4,732.52	5,765.43	1,032.91	21.8%	8,259.73	8,643.11	383.38	4.6%
17	4	500	2,441.89	3,067.13	625.24	25.6%	4,393.44	4,578.44	185.00	4.2%
18	4	1,500	7,151.89	8,777.13	1,625.24	22.7%	12,573.44	13,128.44	555.00	4.4%
19	6	2,500	11,948.78	14,695.39	2,746.61	23.0%	21,051.46	21,976.46	925.00	4.4%
20	6	5,000	23,723.78	28,970.39	5,246.61	22.1%	41,501.46	43,351.46	1,850.00	4.5%
21	6	10,000	47,273.78	57,520.39	10,246.61	21.7%	82,401.46	86,101.46	3,700.00	4.5%

12.0 Appendix 3: Combined Tables

Table C - 1 - Combined Projected Fund Balances

Line No.	Description	Year Ending December 31,					
		2021	2022	2023	2024	2025	2026
		\$	\$	\$	\$	\$	\$
	Operating Funds						
1	O&M Reserve Balance (a)	8,051,900	8,314,600	8,586,100	8,866,600	9,156,600	9,456,300
2	Operating Fund Balance (b)	209,600	213,100	210,900	215,500	228,600	212,100
3	Subtotal Operating Funds Balance (e)	8,261,500	8,527,700	8,797,000	9,082,100	9,385,200	9,668,400
	Capital Funds						
4	Capital Fund Balance (c)	1,008,700	1,008,400	1,006,100	1,010,300	1,009,800	1,003,200
5	Capital Reserve Fund Balance (d)	32,910,000	30,173,000	27,293,500	20,118,500	13,458,500	7,996,500
6	Subtotal Capital Funds Balance (e)	33,918,700	31,181,400	28,299,600	21,128,800	14,468,300	8,999,700
7	Impact Fee Fund Balance (e)	4,460,597	4,516,397	4,378,897	5,592,597	6,791,197	8,511,397

(a) Calculated as 90 days of following year's Operating Expenses.

(b) Target minimum combined balance is \$200,000 to account for any adjustments that may be needed to the O&M balance at the end of the year.

(c) Target minimum combined balance is \$1,000,000.

(d) Does not include expenses associated with facilities master plan to be completed in FY 2022

(e) All balances are cumulative.

City of Fayetteville, Arkansas | Water and Wastewater Comprehensive Rate Study

Table C - 2 - Combined Operating Cash Flow

Line No.	Description	Year Ending December 31,					
		2021	2022	2023	2024	2025	2026
		\$	\$	\$	\$	\$	\$
Revenues							
1	Revenues Under Existing Rates	45,648,500	47,229,500	47,826,000	48,433,700	49,053,000	49,684,500
Revenue Increases							
2	0.0 % Increase Effective January 1, 2022		0	0	0	0	0
3	0.0 % Increase Effective January 1, 2023		0	0	0	0	0
4	3.0 % Increase Effective January 1, 2024		0	0	1,331,900	1,471,600	1,490,500
5	3.0 % Increase Effective January 1, 2025		0	0	0	1,389,400	1,535,300
6	3.0 % Increase Effective January 1, 2026		0	0	0	0	1,449,500
7	Total Revenue from Rates	45,648,500	47,229,500	47,826,000	49,765,600	51,914,000	54,159,800
8	Other Revenues (a)	1,127,800	1,362,000	1,363,600	1,371,400	1,380,000	1,389,300
9	Subtotal Revenues	46,776,300	48,591,500	49,189,600	51,137,000	53,294,000	55,549,100
Expenses							
10	Operating Expenses	31,624,500	32,655,200	33,720,300	34,821,200	35,959,000	37,135,100
11	Bad Debt	228,200	236,100	239,100	248,800	259,600	270,800
12	PILOT	1,940,000	2,007,200	2,032,600	2,115,100	2,206,400	2,301,800
13	SDWF-Reimbursement to ADPH	230,000	233,800	237,800	241,800	245,900	250,200
14	Debt Service	0	0	0	0	0	0
15	Total Expenses	34,022,700	35,132,300	36,229,800	37,426,900	38,670,900	39,957,900
Transfers							
16	Transfer to Shop Fund	66,000	0	0	0	0	0
17	Transfer to Operating Reserve	254,100	262,700	271,500	280,500	290,000	299,700
18	Cash Financing of Capital	11,730,000	15,930,000	15,570,000	20,600,000	20,980,000	20,770,000
19	Transfer to/from Capital Reserve	700,000	-2,737,000	-2,879,500	-7,175,000	-6,660,000	-5,462,000
20	Total Transfers	12,750,100	13,455,700	12,962,000	13,705,500	14,610,000	15,607,700
Fund Balance							
21	Beginning Balance	206,100	209,600	213,100	210,900	215,500	228,600
22	Annual Operating Balance	3,500	3,500	-2,200	4,600	13,100	-16,500
23	Ending Fund Balance	209,600	213,100	210,900	215,500	228,600	212,100
Performance Metrics							
24	Debt Service Coverage	NA	NA	NA	NA	NA	NA
25	O&M Reserve Balance (Days)(b)	✓ 90.00	✓ 90.00	✓ 90.00	✓ 90.00	✓ 90.00	✓ 90.00

(a) Includes interest income on operating fund balance.

(b) Minimum requirement is 90 days of following year's Operating Expenses.

City of Fayetteville, Arkansas | Water and Wastewater Comprehensive Rate Study

Table C - 3 - Combined 2023 Bill Impact

Line No.	Meter Size	Monthly Usage	Inside City				Outside City			
			Existing Rates	Proposed Rates	Increase / Decrease	Increase / Decrease	Existing Rates	Proposed Rates	Increase / Decrease	Increase / Decrease
	Inches	1,000 gal.	\$	\$	\$		\$	\$	\$	
Residential										
1	3/4	0.5	32.01	28.22	-3.80	-11.9%	37.82	32.33	-5.49	-14.5%
2	3/4	2	39.87	38.25	-1.62	-4.1%	50.04	51.86	1.82	3.6%
3	3/4	4	60.77	53.57	-7.20	-11.8%	77.10	80.78	3.68	4.8%
4	3/4	8	102.57	84.21	-18.36	-17.9%	131.22	138.62	7.40	5.6%
5	3/4	10	123.47	99.53	-23.94	-19.4%	158.28	167.54	9.26	5.9%
6	3/4	15	175.72	137.83	-37.89	-21.6%	225.93	239.84	13.91	6.2%
Non-Residential										
7	3/4	10	106.05	115.17	9.12	8.6%	151.20	161.82	10.62	7.0%
8	3/4	20	187.95	205.47	17.52	9.3%	276.80	297.82	21.02	7.6%
9	1	50	441.42	484.38	42.96	9.7%	672.13	726.18	54.05	8.0%
10	1.5	100	872.11	957.70	85.59	9.8%	1,334.15	1,450.95	116.80	8.8%
11	2	500	4,091.34	4,593.63	502.29	12.3%	6,289.61	6,926.63	637.02	10.1%
Industrial										
12	2	100	812.04	963.63	151.59	18.7%	1,260.25	1,330.63	70.38	5.6%
13	2	1,000	7,715.04	8,928.63	1,213.59	15.7%	11,682.25	12,166.63	484.38	4.1%
14	4	1,500	11,678.78	13,576.63	1,897.85	16.3%	17,760.33	18,466.37	706.04	4.0%
15	6	5,000	38,697.56	44,849.38	6,151.82	15.9%	58,675.24	61,007.28	2,332.04	4.0%
16	6	10,000	77,047.56	89,099.38	12,051.82	15.6%	116,575.24	121,207.28	4,632.04	4.0%



CITY OF FAYETTEVILLE, ARKANSAS

Notice of Public Hearing on Proposed Water and Sewer Rate Changes

City Council Agenda Session: Tuesday, June 14, 2022 at 4:30 PM

City Council Meeting: Tuesday, June 21, 2022 at 5:30 PM

City of Fayetteville Administration Building, City Hall
113 W. Mountain – Room 219 or via Zoom link at www.fayetteville-ar.gov

The City of Fayetteville AR, on the dates and times mentioned above, will hold a public hearing as part of the City Council Agenda Session and City Council Meeting with Fayetteville City Council prior to the adoption of the 2023 water and sewer rate increases. The public can attend in person or remotely via the link on the City's website, www.fayetteville-ar.gov.

If adopted, the proposed new rates would take effect on or after January 01, 2023, with 3% increases annually thereafter. All property owners/tenants and other interested parties are invited to attend the public hearing and be heard on the matter.

A water and sewer cost of service study was conducted by Black & Veatch pursuant to Fayetteville City Council Resolution 212-20 to perform a cost analysis to determine if costs allocations are fair and equitable among customer classes, to review the existing rate structure and design proposed rates that provide adequate revenues. The rate study was conducted following the industry standard methodology from the American Water Works Association (M1 Principles of Water Rates, Fees, and Charges).

The proposed water and sewer rate changes below are necessary for the City of Fayetteville to continue to provide safe and reliable water and sewer services to its citizens because extensive new capital needs are required at this point in time and operating costs have increased above the revenue increases generated by the current annual 3% proportional adjustment.

PROPOSED WATER RATE CHANGES – ON OR AFTER 1/1/2023

FIXED BASE CHARGE \$/MONTH		WATER INSIDE CITY			WATER OUTSIDE CITY		
Meter Size		EXISTING	PROPOSED	CHANGE	EXISTING	PROPOSED	CHANGE
5/8"		6.59	6.59	0.0%	7.54	7.54	0.0%
3/4"		6.59	6.59	0.0%	7.54	7.54	0.0%
1"		9.14	9.14	0.0%	10.52	12.26	16.5%
1.5"		15.93	15.93	0.0%	18.31	24.22	32.3%
2"		23.20	23.20	0.0%	26.66	33.52	25.7%
3"		54.05	54.05	0.0%	62.18	69.84	12.3%
4"		89.50	89.50	0.0%	102.93	102.93	0.0%
6"		178.99	178.99	0.0%	205.82	205.82	0.0%
8"		268.41	268.41	0.0%	308.67	308.67	0.0%
			AVG	0.0%		AVG	9.7%
QUANTITY CHARGE \$/1,000 GALLONS							
Residential							
First 2,000 gallons		3.51	3.30	-6.0%	4.04	4.47	10.6%
Next 13,000 gallons		4.64	4.37	-5.8%	5.34	5.91	10.7%
All over 15,000 gallons		6.59	6.20	-5.9%	7.54	8.38	11.1%
			AVG	-5.9%		AVG	10.8%
Non-Residential							
First 300,000 gallons		3.79	3.93	3.7%	4.38	5.05	15.3%
All over 300,000 gallons		3.38	3.93	16.3%	3.90	5.05	29.5%
			AVG	10.0%		AVG	22.4%
Major Industrial							
All Usage		2.96	3.14	6.1%	3.20	3.49	9.1%
Irrigation							
First 300,000 gallons		5.04	4.29	-14.9%	5.80	5.43	-6.4%
All over 300,000 gallons		4.53	4.29	-5.3%	5.22	5.43	4.0%
			AVG	-10.1%		AVG	-1.2%
Wholesale							
Reduced Peak Demand					2.87	3.16	10.1%
Peak Demand					3.20	3.16	-1.3%
						AVG	4.4%

***Beginning January 1, 2024, all monthly water rates shall be increased by 3% per year**

PROPOSED SEWER RATE CHANGES – ON OR AFTER 1/1/2023

FIXED BASE CHARGE \$/MONTH Meter Size	SEWER INSIDE CITY			SEWER OUTSIDE CITY			SEWER FARMINGTON		
	EXISTING	PROPOSED	CHANGE	EXISTING	PROPOSED	CHANGE	EXISTING	PROPOSED	CHANGE
5/8"	18.28	18.28	0.0%	18.28	18.28	0.0%	16.74	25.10	49.9%
3/4"	18.28	18.28	0.0%	18.28	18.28	0.0%	16.74	25.10	49.9%
1"	23.74	23.74	0.0%	33.92	33.92	0.0%	31.28	52.62	68.2%
1.5"	38.77	38.77	0.0%	60.37	66.73	10.5%	55.50	109.78	97.8%
2"	55.43	55.43	0.0%	79.73	93.11	16.8%	73.45	154.24	110.0%
3"	128.73	128.73	0.0%	184.24	196.10	6.4%	169.29	327.83	93.6%
4"	212.13	212.13	0.0%	303.44	303.44	0.0%	278.93	482.37	72.9%
6"	420.39	420.39	0.0%	601.46	601.46	0.0%	553.70	897.30	62.1%
8"	628.73	628.73	0.0%	899.76	899.76	0.0%	826.81	998.92	20.8%
		AVG	0.0%		AVG	3.8%		AVG	69.5%
QUANTITY CHARGE \$/1,000 GALLONS									
Residential									
First 2,000 Gallons	4.35	3.39	-22.1%	8.18	8.55	4.5%	7.52	8.27	10.0%
All over 2,000 Gallons	5.80	4.52	-22.1%	8.18	8.55	4.5%	7.52	8.27	10.0%
		AVG	-22.1%		AVG	4.5%		AVG	10.0%
Non-Residential									
All Usage	4.40	5.10	15.9%	8.18	8.55	4.5%	7.52	8.27	10.0%
Major Industrial									
All Usage	4.71	5.71	21.2%	8.18	8.55	4.5%	7.52	8.27	10.0%
Wholesale									
Reduced Peak Demand				5.19	7.20	38.7%			
Peak Demand				2.71	7.20	165.7%			
					AVG	102.2%			

***Beginning January 1, 2024, all monthly sewer rates shall be increased by 3% per year**

For more information or questions about the proposed water and sewer rate changes, contact the City of Fayetteville, Utilities Financial Services Division at (479) 575-8224 or visit the City's website for at www.fayetteville-ar.gov.

City of Fayetteville, Arkansas

By: Tim Nyander

Water & Sewer Utilities Director

Date: 06/08/2022



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Jodi Batker
Paralegal

TO: **Mayor Jordan**
City Council
Kara Paxton, City Clerk/Treasurer

CC: **Susan Norton, Chief of Staff**
Paul Becker, Chief Financial Officer
Tim Nyander, Utilities Director

FROM: **Kit Williams, City Attorney**

DATE: **July 15, 2022**

RE: **Statutory Procedure Required For Adopting New Sewer Rates**

There is a precise and unusual procedural schedule that is required by A.C.A. §14-235-223 **Rates and charges for services – Lien** for sewer rate changes. Prior to raising or changing sewer rates, the City must carefully follow every statutorily required step pursuant to A.C.A. §14-235-223 as shown below:

“(d)(1)(A) No rates or charges shall be established until after a public hearing, at which all the users of the works and owners of property served or to be served by them and others interested shall have opportunity to be heard concerning the proposed rates or charges.

(B) After introduction of the ordinance fixing the rates or charges, and before the ordinance is finally enacted, notice of the hearing, setting forth the proposed schedule of the rates or charges, shall be given by one (1) publication in a newspaper published ... at least ten (10) days before the date fixed in the notice for the hearing, which may be adjourned from time to time.

(2) After the hearing the ordinance establishing rates or charges, either as originally introduced or as modified and amended, shall be passed and put into effect.”

Statutorily Required Schedule

- (1) Introduce (Read) the ordinance proposing to change the sewer rates at a City Council meeting;
- (2) Publish "notice of the hearing setting forth the proposed schedule of the rates and charges ... by one publication in a newspaper..."
- (3) This notice must be published "at least ten (10) days before the date fixed in the notice for the hearing..."
- (4) After this public hearing, the ordinance may be passed.

The sewer rate ordinance will be read for the first time (introduced) at the June 21st City Council Meeting. **After such introduction** (reading), the City needs to set the date of the public hearing no earlier than ten (10) days from date such notice can be published (which might be Sunday, June 26, or if that cannot be accomplished, then Sunday July 3rd). Ten days after either publication date would allow the public hearing to be held at the July 19th City Council Meeting and the ordinance acted upon at that meeting after the Public Hearing.

As you see, the currently scheduled Public Hearing for next Tuesday does not fulfill the statutory requirement for such Public Hearing because the ordinance must be introduced (read) **BEFORE** the public hearing is even scheduled. Then the notice of such public hearing date must be published in the paper. Such notice must also set "forth the proposed schedule of the rates and charges" as well as the date of the public hearing.

Since the City has scheduled a public hearing for the next City Council Meeting, we may still wish to conduct one, but it will not suffice for our statutory requirement. The very first requirement is the reading of the ordinance which statutorily begins the full process which we must accomplish before the ordinance can be passed.

The Agenda for the June 21st City Council Meeting needs to have the sewer rate change ordinance as an item of New Business where it will be placed on its first reading. Since all such items of New Business allow public comment, persons wishing to speak to the proposed rate changes can publicly comment then so we do not need a separate public hearing on the June 21st Agenda. During the discussion of the sewer rate ordinance, the Council needs to agree that the Public Hearing will be scheduled for the July 19th City Council Meeting.

more than such sum turned over to it in maintaining the system, the city having been operating and maintaining this system out of general revenues with no expenses to the district, and the desire for audit of the accounts was made after the retirement of the bonds issued for the maintenance of the sewer. *Lawrence v. Jones*, 228 Ark. 1136, 313 S.W.2d 228 (1958).

Scope.

This section contemplates that revenue bonds authorized to construct sewers will

be paid from the revenues derived from that service and nothing in this subchapter authorizes any part of the revenues derived from the system to be devoted and appropriated to pay the cost of construction or operation of waterworks system. *Mathers v. Moss*, 202 Ark. 554, 151 S.W.2d 660 (1941).

14-235-223. Rates and charges for services — Lien.

(a)(1) The council of the municipality shall have power, and it shall be its duty, by ordinance to establish and maintain just and equitable rates or charges for the use of and the service rendered by the works, to be paid by each user of the sewerage system of the municipality.

(2) The council may change and readjust the rates or charges from time to time to such extent as will not render insecure the rights of the holders of revenue bonds or violate any sinking fund agreement, or other lawful agreement, with such bondholders.

(b) The rates or charges shall be sufficient in each year for the payment of the proper and reasonable expense of operation, repair, replacements, and maintenance of the works and for the payment of the sums required in this subchapter to be paid into the sinking fund.

(c) Revenues collected pursuant to this section shall be deemed the revenues of the works.

(d)(1)(A) No rates or charges shall be established until after a public hearing, at which all the users of the works and owners of property served or to be served by them and others interested shall have opportunity to be heard concerning the proposed rates or charges.

(B) After introduction of the ordinance fixing the rates or charges, and before the ordinance is finally enacted, notice of the hearing, setting forth the proposed schedule of the rates or charges, shall be given by one (1) publication in a newspaper published in the municipality if there is such a newspaper, but otherwise in a newspaper having general circulation in the municipality, at least ten (10) days before the date fixed in the notice for the hearing, which may be adjourned from time to time.

(2) After the hearing the ordinance establishing rates or charges, either as originally introduced or as modified and amended, shall be passed and put into effect.

(e) A copy of the schedule of the rates and charges established shall be kept on file in the office of the sewer committee having charge of the operation of the works, and also in the office of the municipal clerk or recorder, and shall be open to inspection by all parties interested.

(f)(1) The rates or charges so established for any class of users or property served shall be extended to cover any additional premises

Paxton, Kara

From: Paxton, Kara
Sent: Tuesday, June 14, 2022 5:07 PM
To: Bolinger, Bonnie; Pennington, Blake; Brown, Chris; Bunch, Sarah; CityClerk; Curth, Jonathan; Harvey, Sonia; Hertzberg, Holly; Batker, Jodi; Jones, D'Andre; Kelley, Courtney; Kinion, Mark; Johnson, Kimberly; Rogers, Kristin; Williams, Kit; Jordan, Lioneld; Mathis, Jeana; Paxton, Kara; Mulford, Patti; Rea, Christine; Scroggin, Sloan; Norton, Susan; Thurber, Lisa; Turk, Teresa; Wiederkehr, Mike
Subject: FW: Pre-Agenda Meeting

Good afternoon,

The Public Hearing item C.1 Public Hearing Discussion on Recommendations for Water and Sewer Rates Effective January 1, 2023 on the 06/14/2022 Tentative Agenda was placed on the agenda per the request I received via email on Wednesday, June 8, 2022 2:23 PM.

Based on the City Attorney requesting that this item now be moved the below email will be placed as additional documents in the agenda packet.

Thank you,

#

Kara Paxton, MSISM, CMC, CMO

City Clerk Treasurer

City of Fayetteville, Arkansas

kapaxton@fayetteville-ar.gov

T 479.575.8323#



From: Norton, Susan <snorton@fayetteville-ar.gov>
Sent: Thursday, June 9, 2022 3:12 PM
To: Paxton, Kara <kapaxton@fayetteville-ar.gov>
Subject: RE: Pre-Agenda Meeting

Thank you!

From: Paxton, Kara <kapaxton@fayetteville-ar.gov>
Sent: Thursday, June 9, 2022 3:02 PM
To: Norton, Susan <snorton@fayetteville-ar.gov>
Subject: RE: Pre-Agenda Meeting

I processed the change and uploaded the document. The agenda can be viewed at the below link.

https://accessfayetteville.granicus.com/GeneratedAgendaViewer.php?view_id=14&event_id=2591

Thank you,

#

Kara Paxton, MSISM, CMC, CMO

City Clerk Treasurer

City of Fayetteville, Arkansas

kapaxton@fayetteville-ar.gov

T 479.575.8323#



From: Norton, Susan <snorton@fayetteville-ar.gov>

Sent: Wednesday, June 8, 2022 4:07 PM

To: Paxton, Kara <kapaxton@fayetteville-ar.gov>; Williams, Kit <kwilliams@fayetteville-ar.gov>; Thurber, Lisa <lthurber@fayetteville-ar.gov>; Curth, Jonathan <jcurth@fayetteville-ar.gov>; Brown, Chris <cbrown@fayetteville-ar.gov>; Becker, Paul <pbecker@fayetteville-ar.gov>

Cc: Rogers, Kristin <kr Rogers@fayetteville-ar.gov>; Bolinger, Bonnie <bbolinger@fayetteville-ar.gov>

Subject: RE: Pre-Agenda Meeting

Kara - Please add the following descriptor to that Public Hearing title and include the attached as a link in the packet. Please let me know if you have any questions.

Public Hearing: Discussion on Recommendations for Water and Sewer Rates Effective January 1, 2023

Thank you.

Susan

From: Paxton, Kara <kapaxton@fayetteville-ar.gov>

Sent: Wednesday, June 8, 2022 3:37 PM

To: Williams, Kit <kwilliams@fayetteville-ar.gov>; Thurber, Lisa <lthurber@fayetteville-ar.gov>; Norton, Susan <snorton@fayetteville-ar.gov>; Curth, Jonathan <jcurth@fayetteville-ar.gov>; Brown, Chris <cbrown@fayetteville-ar.gov>; Becker, Paul <pbecker@fayetteville-ar.gov>

Cc: Rogers, Kristin <kr Rogers@fayetteville-ar.gov>; Bolinger, Bonnie <bbolinger@fayetteville-ar.gov>

Subject: RE: Pre-Agenda Meeting

Kit,

Thank you for your response. I have added the Public Hearing section and moved the item you mentioned. I have attached a copy of the agenda to this email for your records.

This agenda will be published on the website tomorrow afternoon.

Thank you,

#

Kara Paxton, MSISM, CMC, CMO

City Clerk Treasurer

City of Fayetteville, Arkansas

kapaxton@fayetteville-ar.gov

T 479.575.8323#



From: Williams, Kit <kwilliams@fayetteville-ar.gov>

Sent: Wednesday, June 8, 2022 2:23 PM

To: Paxton, Kara <kapaxton@fayetteville-ar.gov>; Thurber, Lisa <lthurber@fayetteville-ar.gov>; Norton, Susan <snorton@fayetteville-ar.gov>; Curth, Jonathan <jcurth@fayetteville-ar.gov>; Brown, Chris <cbrown@fayetteville-ar.gov>; Becker, Paul <pbecker@fayetteville-ar.gov>

Subject: RE: Pre-Agenda Meeting

Kara,

Looks very good to me. We need to have a separate place for a public hearing on the new water/sewer rates (before item for the ordinance.).

Kit

From: Paxton, Kara

Sent: Wednesday, June 08, 2022 12:31 PM

To: Thurber, Lisa <lthurber@fayetteville-ar.gov>; Norton, Susan <snorton@fayetteville-ar.gov>; Curth, Jonathan <jcurth@fayetteville-ar.gov>; Brown, Chris <cbrown@fayetteville-ar.gov>; Becker, Paul <pbecker@fayetteville-ar.gov>; Williams, Kit <kwilliams@fayetteville-ar.gov>

Cc: Bolinger, Bonnie <bbolinger@fayetteville-ar.gov>; Rogers, Kristin <kr Rogers@fayetteville-ar.gov>

Subject: Pre-Agenda Meeting

Good afternoon,

I have attached the draft version of the Tentative Agenda. Once you have had a chance to review this document please email me and let me know what your agenda item preferred order is for the Consent Agenda and New Business.

Thank you,

#

Kara Paxton, MSISM, CMC, CMO

City Clerk Treasurer

City of Fayetteville, Arkansas

kapaxton@fayetteville-ar.gov

T 479.575.8323#





OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Jodi Batker
Paralegal

TO: Mayor Jordan
City Council
Kara Paxton, City Clerk/Treasurer

CC: Paul Becker, Chief Financial Officer
Tim Nyander, Utilities Director
Corey Granderson, Utilities Engineer

FROM: Kit Williams, City Attorney

A handwritten signature in blue ink, appearing to be "Kit Williams", with a long horizontal line extending to the right.

DATE: July 13, 2022

RE: Contracting with other political subdivisions

The City of Fayetteville has constructed a very efficient and effective wastewater system for our residents, businesses, and factories which we have graciously allowed residents and businesses outside our city limits to access for decades. The City is authorized to contract with other cities or their residents (Elkins, Greenland, Farmington, Johnson, and West Fork) by A.C.A. §14-235-212 **Contracting with other political subdivisions.**

These contracts are statutorily authorized, "but only to the extent of the capacity of the works without impairing the usefulness of them to the owners (Fayetteville), **upon such terms and conditions as may be fixed by the sewer committee ...**" *Id.* at (a)(1)(B). (emphasis added)

In a sewer rate challenge case, the Arkansas Supreme Court held:

"Rate making being a legislative act, unless the city council has acted arbitrarily and unreasonably in fixing these rates, there is a prima facie presumption in favor of their correctness, and the burden is on complainant to show otherwise." *Lawrence v. Jones*, 228 Ark. 1136, 313 S.W. 2d. 228, 231 (1958).

In a recent case, the City of Fayetteville was sued because it substantially increased its rates to a nonresident wholesale water customer.

“Water may be supplied to nonresident consumers at such rates as the legislative body of the municipality may deem just and reasonable, and the rates need not be the same as the rates charged residents of the municipality.” *Mount Olive Water Association v. City of Fayetteville*, 313 Ark, 606, 856 S.W. 2d 864, 866 (1993).

The water association challenged a 9.8% rate of return for computing revenue requirements. *Id.* The Arkansas Supreme Court rejected the water association’s argument that the 9.8% rate of return establishing the water rates was not just or reasonable. The Court ruled:

“We have stated no hard and fast rule regarding what constitutes a reasonable rate or the variables properly employed by which a municipality may charge in these situations. Reasonableness of rates must therefore be dictated by the facts of each situation and the definition of ‘reasonable’ established by the common meaning of the term.

Webster's Third New International Dictionary (Unabridged) (1968) gives several definitions of ‘reasonable’ including ‘not conflicting with reason: not absurd: not ridiculous . . . b. being or remaining within the bounds of reason.’” *Mount Olive Water Association v. City of Fayetteville*, *Supra* at 867.

The Arkansas Supreme Court cited “the *Report on Revenue Requirements, Cost of Service, and Rates for Water and Sewer Services for Fayetteville, Arkansas* prepared by Black and Veatch/Engineers - Architects of Kansas City,” *Id.* as “evidence presented by the City (which) showed the rates were based upon ‘reason’ and were ‘reasonable’ in accordance with the dictionary definitions quoted.” *Id.*

Although the current Black and Veatch report may need to be slightly modified, once the City Council is satisfied that Black and Veatch has properly considered all relevant factors including realistic and relevant concerns of the City of Farmington and others, rates based upon the *Report* should satisfy the reasonableness standard here just as they did in the *Mount Olive Water*

Association case. The Court in that case found that the charge per 1000 gallon rate there which more than tripled in four years was reasonable and legal.

“The burden of proving the city’s rate schedule to be arbitrary and unreasonable rested upon the plaintiffs, for the ordinance is entitled to the presumption of validity that legislative enactments ordinarily receive.” *Lawrence v. Jones*, Supra at 231.

CONCLUSION

The City of Fayetteville has always strived to fairly apportion the costs of building, maintaining, and operating its water and sewer systems among all of its customers. The law clearly gives the City Council the right to protect the interests of our citizens and businesses by crediting their recent 200 Million Dollar investment into the wastewater system project which was needed to service not only our intown customers, but our many out of town customers in Farmington, Greenland and Johnson as well as our wholesale customers of Elkins and West Fork.

A reasonable rate of return from our out-of-town customers to compensate our citizens’ 200 Million Dollar investment is not only legal, but fair and reasonable.



MEETING OF MAY 16, 2023

TO: Mayor Jordan and City Council

THRU: Susan Norton, Chief of Staff
Chris Brown, Public Works Director

FROM: Justin Clay, Parking Manager

DATE:

**SUBJECT: AN ORDINANCE TO AMEND PARKING REGULATIONS AND TO AUTHORIZE THE
MAYOR TO SET PARKING RATES AND REGULATIONS SUBJECT TO LIMITATIONS
ESTABLISHED BY THE CITY COUNCIL**

RECOMMENDATION:

Staff recommends amending the parking code to authorize the Mayor to establish and alter parking rates, regulations, and parking permitting programs subject to limitations established by the City Council.

BACKGROUND:

Currently, parking rates and regulations are set forth by the City Council and may only be altered by ordinance. While this framework has worked well to establish rates, regulations, and permitting options for defined parking districts, a nimbler approach may be desired to more effectively manage the City's parking supply.

DISCUSSION:

Analysis of downtown parking inventory and utilization shows opportunities where changes to our rate and regulatory structure may create greater parking availability and enhance the customer/visitor experience within our downtown.

One objective of parking management is to create an environment where some degree of available parking can always be found - block-by-block and facility-by-facility. There are many strategies that can be deployed to help achieve this objective (pricing according to demand, time-limits, permit restrictions, discounted employee options, etc.), however alterations to any one of those strategies must currently be approved via ordinance.

Staff recommends that greater administrative decision-making authority be given so that different strategies may be utilized to achieve desired outcomes. As we continue to transition from a rate and regulatory structure that was established to fund parking facility construction to one that best manages our parking supply, flexibility should exist in order to respond to new developments or behavioral patterns associated with those who visit, enjoy, work, and reside in our downtown.

Staff envisions implementing policies that encourage turnover within the core areas of our downtown, offer long-term and reduced price (or even free) options within less-utilized parking areas, and provide for permitting options that balance user convenience while preventing vehicle storage within the downtown core.

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

To arrive at this data-driven, results-focused approach to parking management, staff recommends that the Mayor be authorized to establish the on-street and off-street locations within established parking district zones whereby parking fees are required, to set the parking fees and associated permitting options for such locations, and to set the days and times when payment shall be required. The Mayor would also have the authority to suspend parking regulations within established parking district zones during city holidays. Similar authority was established in 2019 with the creation of the Wilson Park South Neighborhood Parking District and has been effective in achieving desired results.

The Mayor may also adjust the paid parking rates within already established parking districts, subject to the following limitations:

- The paid parking rates shall not be increased within six months of the initial establishment of a parking district zone or within six months of any previous increase.
- The Parking Division shall conduct a utilization assessment based on peak hours and days prior to any rate adjustment.
- The Parking Division shall report to the City Council or a committee thereof annually on the current status of its programs.
- Rate and hour adjustments shall be based on deviation from ideal utilization rate between 75% and 85% of the paid parking spaces as determined by the Parking Division. The Parking Division shall implement any increase or decrease to the paid parking rates as necessary to achieve the goal of reaching the ideal utilization rate.
- Hourly rate increases shall not exceed \$2.00 per hour per adjustment period.
- Adjustments to the paid parking rates or times shall be communicated through signage within the district for fourteen (14) days prior to the enforcement of any new rates.

BUDGET/STAFF IMPACT:

NONE

ATTACHMENTS: EXHIBITS A, B & C - Amend Ch. 72 Parking Regulations, SRF 2023-674_Parking Reg Authority_4.6.2023, REDLINE - CHAPTER_72___PARKING_REGULATIONS_Ordinance Revisions

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2023-674

AN ORDINANCE TO AMEND PARKING REGULATIONS AND TO AUTHORIZE THE MAYOR TO SET PARKING RATES AND REGULATIONS SUBJECT TO LIMITATIONS ESTABLISHED BY THE CITY COUNCIL

AN ORDINANCE TO AMEND CHAPTER 72 PARKING REGULATIONS OF THE FAYETTEVILLE CITY CODE TO AUTHORIZE THE MAYOR TO ESTABLISH AND ADMINISTER RULES REGULATING PARKING FEES IN ESTABLISHED PARKING ZONES, AND TO MAKE TECHNICAL REVISIONS

WHEREAS, analysis of downtown parking inventory and utilization shows opportunities in which changes to the City's rate and regulatory structure may create greater parking availability and enhance the customer and visitor experience within our downtown and entertainment district areas; and

WHEREAS, a major objective of parking management is to create an environment in which some degree of available parking can always be found; and

WHEREAS, there are many strategies that can be deployed to help achieve this objective including pricing according to demand, time-limits, permit restrictions, and discounted employee options but alterations to any of those strategies currently require the passage of an ordinance by the City Council; and

WHEREAS, staff recommends that greater administrative decision-making authority be provided so that different strategies may be utilized to achieve desired outcomes; and

WHEREAS, staff recommends providing flexibility for the Mayor and the Parking Division to establish locations, fees, and times requiring the payment of parking fees and rates and to create parking permit programs in established parking district zones within certain parameters set by the City Council.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby repeals § 72.18 **Residential Parking Permit Program For The Entertainment District Parking Zone** of the Fayetteville City Code and enacts a replacement § 72.18 as shown in Exhibit A attached which shall have the effect of authorizing the Mayor or the Mayor's designee to establish timeframes for parking restrictions for the Residential Parking Permit Program in the Entertainment District Parking Zone.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby amends § 72.21 **Residential Parking Permit Program For The Downtown Business District Parking Zone** of the Fayetteville City Code by repealing subsection (E) *Cost of Program* and enacting a replacement (E) as follows:

“Cost of Program. The Parking Division is authorized to assess permit fees to cover the actual costs of administration of the Downtown Business District Parking program.”

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby amends § 72.50 **Definitions** of the Fayetteville City Code by repealing the definitions of “Electronic payment stations” and “Employee parking card” and enacting replacement definitions as follows:

“Electronic payment stations. A place where a person who has parked his or her vehicle in a Downtown Business District or Entertainment District Parking Zone paid parking space may pay the appropriate fee for the paid parking space. Electronic payment stations may include physical payment stations, mobile applications, or other technologies used by the City as part of its parking management system.

Employee parking card. A card or code issued by the Parking Division for use only by employees of businesses operating in an established parking district zone which may be discounted by the Mayor up to 90% of normal parking rates for certain paid parking spaces within the zone.”

Section 4: That the City Council of the City of Fayetteville, Arkansas hereby amends § 72.51 **Presumption As To Unlawful Parking In Metered Space And Paid Parking Space Or Lot Serviced By An Electronic Payment Station** of the Fayetteville City Code by changing both instances of the term “lot” to “facility”.

Section 5: That the City Council of the City of Fayetteville, Arkansas hereby repeals § 72.52 **Purpose of Deposit Or Electronic Payment Requirement** of the Fayetteville City Code enacts a replacement § 72.52 as follows:

“The coins required to be deposited in parking meters or the electronic payment required to be made at electronic payment stations by this article are for the purpose of regulating parking, to cover part of the cost of such necessary regulation for the convenience and protection of the public, and to accumulate revenues to use for the construction of additional parking facilities including parking decks.”

Section 6: That the City Council of the City of Fayetteville, Arkansas hereby repeals § 72.55 **Collections From Meters And Electronic Payment Stations** of the Fayetteville City Code enacts a replacement § 72.55 as follows:

“The Parking Manager shall be responsible for the collection all deposits or electronic transactions from parking meters and electronic payment stations installed under this article and deliver them to the Accounting Department or as directed by the Mayor.”

Section 7: That the City Council of the City of Fayetteville, Arkansas hereby repeals § 72.57 **Parking Meter Zones** and enacts a replacement § 72.57 as shown on Exhibit B attached hereto and made a part

hereof which shall have the effect of authorizing the Mayor to establish the locations, dates, and times payment is required at parking meters within established parking zones.

Section 8: That the City Council of the City of Fayetteville, Arkansas hereby repeals § 72.58 **Off-Street Parking Facilities; Rules And Rates** and enacts a replacement § 72.58 as shown on Exhibit C attached hereto and made a part hereof which shall have the effect of authorizing the Mayor to establish the locations, dates, and times payment is required in off-street parking facilities within established parking zones.

Section 9: Section 9: That the City Council of the City of Fayetteville, Arkansas hereby repeals § 72.59 **Dickson Street Entertainment District Annual Parking Pass Program** and enacts a replacement § 72.59 **Establishment of Parking Permit Programs** as follows:

“72.59 Establishment of Parking Permit Programs

The Mayor or the Mayor’s designee is authorized to create parking permit programs within established parking districts, set the permit fees, and establish the locations, dates and times a permit may be valid. Permit fees may not be increased more than one time each calendar year.”

Section 10: That the City Council of the City of Fayetteville, Arkansas hereby enacts § 72.60 **Establishment and Adjustment of Paid Parking Rates within Parking District Zones** as follows:

“72.60 Establishment and Adjustment of Paid Parking Rates within Parking District Zones

(A) The Mayor or the Mayor’s designee is authorized to establish on-street and off-street locations within established parking district zones in which parking fees are required; to establish the parking rates for such locations; and to establish the days and times when payment shall be required to be paid by the owner or operator of any vehicle parked in those parking spaces or facilities. The Mayor or the Mayor’s designee may suspend parking regulations within established parking district zones during city holidays.

(B) The Mayor or the Mayor’s designee is authorized to adjust paid parking rates subject to the following limitations:

1. Paid parking rates shall not be increased within six months of the initial establishment of a parking district zone or within six months of any previous rate adjustment. Hourly rate adjustments shall not be increased by more than \$2.00 per hour per adjustment.
2. The Parking Division shall conduct a utilization assessment based on peak hours and days prior to any adjustment.
3. Rate and hour adjustments shall be based on deviation from ideal utilization rate between 75% and 85% of the paid parking spaces as determined by the Parking Division. The Mayor or the Mayor’s designee may increase or decrease paid parking rates as necessary to achieve the goal of reaching the ideal utilization rate.
4. Adjustments to the paid parking rates or times shall be communicated through signage within the district for at least fourteen (14) days prior to the implementation of the adjustment.
5. Any proposed paid parking rate reductions shall be reviewed by the Chief Financial Officer who will advise the Mayor on the net revenue impact prior to the approval and implementation of the

rate reduction to ensure compliance with bond covenants.”

Section 11: That the City Council of the City of Fayetteville, Arkansas hereby amends § 72.70 **Application** by replacing “the Entertainment District Parking Zone shown on Exhibit A” with “established parking district zones” in subsections (A) and (B).

Section 12: That the City Council of the City of Fayetteville, Arkansas hereby amends § 72.71 **Requirements For Proper Signage Before Nonconsensual Towing From Private Parking Lots Is Permitted Within The Entertainment District Parking Zone** by repealing the title of the section and replacing it with the following title:

“72.71 Requirements For Proper Signage Before Nonconsensual Towing From Private Parking Lots Is Permitted Within Established Parking District Zones.”

Section 13: That the City Council of the City of Fayetteville, Arkansas hereby amends § 72.72 **Regulations Of Towing And Storage Companies** by replacing “the Entertainment District Parking Zone” with “established parking district zones” in subsection (B).

EXHIBIT A

72.18 Residential Parking Permit Program For The Entertainment District Parking Zone

- (A) *Applicability:* This Residential Parking Permit Program shall be applicable within the Entertainment District Parking Zone as shown and described on Exhibit A attached to the enacting ordinance. This parking zone will be further divided by Dickson Street into the North Zone for included residents living north of Dickson Street and the South Zone for included residents living south of Dickson Street.
- (B) *Definitions:*
- Fuel efficient scooter or bicycle* means bicycles, gas powered scooters not exceeding 70 cubic centimeters and electric powered bicycles and scooters.
- Guest pass* means the pass or authorization to park within the appropriate on-street parking zone pursuant to this section.
- Registered vehicle* means a motorized, validly state licensed and insured vehicle kept at the residence owned or leased by the resident within the Entertainment District Parking Zone. The Arkansas Vehicle Registration Certificate for the vehicle should list the residence within the Entertainment District. The Parking Division may accept other reliable documentation of ownership or occupancy of a residence within the Zone to justify issuance of a residential parking permit for a resident's vehicle.
- Resident* means a natural person residing within a dwelling that the resident owns, leases or rents within the Entertainment District Parking Zone.
- Residential parking permit* means the currently valid permit issued by Parking Division which allows the resident to park the permitted resident's vehicle in an authorized on-street parking zone pursuant to the terms of this section.
- (C) *Restricted Parking Periods:* The Mayor or Mayor's designee shall have the authority to set the timeframes by which designated on-street parking spaces within the Entertainment District Parking Zone North and South shall be restricted to properly permitted vehicles. The owner of any vehicle improperly parked during this period shall be subject to the penalties set forth in §72.99.
- (D) *On-street Parking Restrictions for Most Vehicles in the Entertainment District Parking Zone:* As authorized by the Mayor or Mayor's designee and where designated by signs only residents of the Entertainment District Parking Zone North shall be permitted to park their properly permitted vehicles in the designated on-street parking areas of the Residential Parking Zone North of Dickson Street during the restricted parking period and only residents of the Entertainment District Parking Zone South shall be permitted to park their properly permitted vehicles in the designated on-street parking areas of the Residential Parking Zone South of Dickson Street during the restricted parking period.
- (E) *Special Regulations for Oversized Vehicles, Motorcycles, Motor Scooters and Bicycles:* No vehicle that cannot fit within a standard on-street parking space may be parked on-street in the Entertainment District Parking Zone unless its owner or operator has obtained a special limited time and location permit pursuant to (1).
- (1) An operator or owner of a moving van or other oversized vehicle that needs to park on-street in a designated area for a limited time to serve a residence, business or office within the Entertainment District Parking Zone may be issued a special, limited time and location parking permit by the Parking Division.
 - (2) A resident of the Entertainment District Parking Zone who owns a motorcycle or motor scooter with over 70 cubic centimeters displacement may be issued a residential permit which shall allow free parking only in specially designed motorcycle/motor scooter on-street parking spaces and is prohibited from parking in standard on-street parking spaces reserved for residents' cars. Operators of

motorcycles and motor scooters may park in paid parking spaces at the standard parking rate. No motorcycle nor any motor scooters may be parked on a sidewalk.

- (3) Operators of fuel efficient scooters and bicycles may park for free in specially designated parking spaces, but must pay the standard parking rate if parked in a normal paid parking space. No bicycle may be parked on a sidewalk unless it is utilizing a permanently installed and permitted bicycle rack.
- (F) *Mixed Use Parking.* The mayor or designee shall have the authority to establish mixed-use parking spaces and locations which shall be available to the public for paid parking and to residents of the corresponding Entertainment District Parking Zone for properly permitted vehicles.
- (G) *Permit Fees.* The Parking Division is authorized to assess permit fees to cover the actual costs of administration of its residential parking permit program.
- (H) *Temporary Guest Passes:* An Entertainment District Parking Zone resident may request the city to issue temporary guest passes for visitors to their residence. The Mayor or designee shall administer a guest pass program with the goal of accommodating the needs of both residents and businesses within the Entertainment District Parking Zone. Use of a guest pass in a manner not authorized by the guest pass program shall be a violation of this section for the vehicle's owner.
- (I) *Residential Parking Permits May Not Be Loaned, Transferred, Sold or Used Except on the Designated Registered Vehicle:* Any resident who attempts to or does loan, transfer, sell or give a residential parking permit to another person or entity, or who facilitates the use of the permit obtained for his registered vehicle on a nonregistered vehicle shall, in addition to the general penalty provisions in this chapter, immediately forfeit all permits issued to the resident and the right to apply for any future permits for three (3) years.
- (J) *Penalty:* The owner of any vehicle parked in violation of any term or requirement of this section shall be guilty of a violation and shall be subject to the penalties set forth in §72.99.

EXHIBIT B

72.57 Parking Meter Zones

- (A) The Mayor or the Mayor's designee is authorized to describe, establish and alter parking meter zones.
- (B) Parking meters shall be installed not more than 2 feet from the curb nor more than 4 feet from the front line of the parking space. Spaces shall be marked out as individual parking meter spaces for vehicles and kept clearly marked at all times. No parking meter authorized herein shall be so installed or a parking space so established that it will obstruct the convenient egress and ingress to any property butting on any street.
- (C) Each parking meter installed under this section, shall be set to operate upon the deposit therein of the prescribed payment for the period of time prescribed as parking time limits in subsection (F) below. Each of such meters shall be so arranged so as to show or display a signal, which shall clearly indicate whether the time limit during which parking in that space is permitted has expired.
- (D) Any person parking a vehicle within a parking meter zone established by this section shall park the same wholly within the lines of the parking space marked as provided in subsection (B), and it shall be unlawful for any person to park or leave a vehicle in any such zone, unless it is wholly within such space. Where the parking meters are placed in front of parking spaces, the radiator shall be as near as possible to the parking meter controlling the space; where the parking meters are placed alongside the parking spaces, the front fender or front wheels of the vehicle shall be as near as possible to the parking meter controlling the space; and for back-in parking spaces, the rear license plate or rear bumper of the vehicle shall be as near as possible to the parking meter controlling the space.
- (E) *Regulated Hours for Parking Meters.*
 - (1) The Mayor or the Mayor's designee is authorized to establish dates and times within established parking district zones whereby the owner or driver of a vehicle upon parking the vehicle in a parking meter space shall immediately deposit into the parking meter or electronic payment station sufficient money or other authorized payment.
 - (2) The Mayor or the Mayor's designee is authorized to establish grace periods within the Entertainment and Downtown Business Parking Zones whereby the parking rate may be waived for a limited amount of time upon the arrival of a vehicle into a paid parking space.
- (F) *Unlawful to Leave Vehicle Parked in Excess of Allowed Time.* Upon the expiration of the legal parking time paid for and allowed pursuant to this chapter during the period that paid parking is required, it is unlawful for the owner or driver to leave the vehicle in the parking space. Violation of such overtime parking shall be punished pursuant to §72.99.

Exhibit C

72.58 Off-Street Parking Facilities; Rules And Rates

- (A) *Established.* The following named and described real estate lying within the corporate limits of the city is hereby established as and shall constitute public off-street automobile parking facilities within the Downtown Business District Parking Zone.
- (1) Lots 8 to 15, inclusive, in Block 26 of the original plat of the city, including an alley 10 feet in width and running in an east and west direction and adjoining the southern boundary of Lots 12 to 15, inclusive, and the northern boundary of Lots 8 to 11 inclusive.
 - (2) Lots 8, 9, 10, 11, 12, 13, 14 and 15 of Block 30, in the town (now city), as designated upon the original plat of said town.
 - (3) Lot 9A and a part of Lot 10, in Block 29, of the original plat of the city.
 - (4) Part of the Northwest Quarter of the Southwest Quarter of Section 15, Township 16 North, Range 30 West, described as follows: Beginning at a point 84 feet south and 25 feet east of the northwest corner of the said 40-acre tract, and running thence south 178 feet; thence east 70.3 feet; thence north 178 feet; thence west 70.3 feet to the point of beginning.
 - (5) A part of Block 7, of the original plat of the city, more particularly described as beginning at a point 13 feet and two inches south of the northwest corner of said Block 7, running thence east 50 feet; thence south 267 feet to the point of beginning.
 - (6) Lots 7, 8, 9 and 10 of Block 17 in the town (now city) as designated upon the original plat of said town.
 - (7) Lots 8, 9 and 10 of Block 13 in the town (now city) as designated upon the original plat of said town.
 - (8) Lots 1, 2, Lot 3, less 52.53 feet of equal and uniform width off the south side thereof, and Lot 12, less 50 feet of equal and uniform width off the south side thereof of Block 13 in the town (now city) as designated upon the original plat of said town.
 - (9) Part of Block 25, in the town (now city) as designated upon the original plat of said town, and more particularly described as follows: Beginning at the northeast corner of Lot 1 in said Block 25, thence west 42 feet; thence south 49.3 feet; thence west 58 feet; thence south 58.7 feet to the center of a platted alley; thence east 100 feet; thence north 107 feet to the point of beginning.
 - (10) Part of Block 15, in the original plat of the city, described as follows: Beginning at a point 127 feet west of the northeast corner of Block 15 and running thence south 206 feet to the north line of a 12-foot alley; thence west 177 feet to the east line of an alley; thence north 90 feet; thence east 22 feet; thence north 116 feet to the south line of Meadow Street; thence east 17 feet; thence south 27 feet; thence east 20 feet; thence north 27 feet to the south line of Meadow Street; thence east 118 feet to the point of beginning.
 - (11) Lots numbered 12 and 13 in Block 30 of the original town (now city).
- (B) *Definitions.* For the purpose of this section "public off-street automobile parking facilities" are defined as accommodations procured or provided, or both, by public authority for the parking of motor vehicle off the street or highway, and open to public use with or without charge. Parking facilities may consist of lots, garages, or other structures and accessories; they may be surfaced facilities or facilities above or below ground.

- (C) *Marking of Parking Spaces.* The Mayor or the Mayor's designee is authorized to mark off individual parking spaces in the parking facilities established by this section, such parking spaces to be designated by lines painted or durably marked on the curbing or otherwise.
- (D) *Installation, Location, Mechanical Requirements, and Maintenance of Meters within the Downtown Business District Parking Zone.* In the parking facilities established by this article, the Mayor or the Mayor's designee is authorized to install parking meters. Where parking meters are installed, the Mayor or the Mayor's designee shall cause parking meters to be installed upon the curb immediately adjacent to the parking spaces marked in accord with subsection (C) above, such installation to be placed not more than two feet from the curb or concrete islands as provided, from the front line of the parking space as indicated, and the mayor shall be responsible for the regulation, control, operation, maintenance, and use of such parking meters. Each parking meter installed shall indicate by proper legend the legal parking time established by the city and, when operated, shall at all times indicate the balance of legal parking time, and at the expiration of such period shall indicate illegal or overtime parking.
- (E) *Vehicles to Be Parked Entirely Within Parking Spaces.* At each space marked off in accord with subsection (C) above, it shall be unlawful for any person to park any vehicle across any lines or markings of such space or in such position that the vehicle shall not be entirely within the area designated by such lines or markings.
- (F) *Payment Required.*
- (1) Except in a period of emergency determined by an officer of the Fire or Police Departments, or in compliance with the directions of a police officer or traffic control sign or signal, when any vehicle is parked in any parking space within a parking facility where a parking meter or *electronic payment station* is located in accord with this section, the operator of such vehicle shall, upon entering the parking space, immediately make payment for the applicable parking rate. If paying by coin, the operator of such vehicle shall deposit or cause to be deposited in the meter such proper coin of the United States or other payment as is required for such parking meter or *electronic payment station* and is designated by proper directions on the meter or *electronic payment station*, and when required by the directions on the meter, the operator of such vehicle, after the deposit of the proper coin or coins or other payment, shall also set in operation the timing mechanism on such meter in accordance with directions properly appearing thereon. Failure to deposit such proper coin or other payment, and to set the timing mechanism in operation when so required, shall constitute a violation of this section. Upon proper payment (and the setting of the timing mechanism in operation when so required) the parking space may be lawfully occupied by such vehicle during the period of time which has been prescribed; provided that any person placing a vehicle in a parking meter space adjacent to a meter which indicates that unused time has been left in the meter by the previous occupant of the space shall not be required to deposit a coin so long as his occupancy of the space does not exceed the indicated unused parking time.
 - (2) The Mayor or the Mayor's designee may suspend parking regulations within established parking district zones during city holidays
- (G) *City Parking Lots and Parking Meters Within the Downtown Business District Parking Zone.* The Mayor or the Mayor's designee is authorized to establish the parking fees for all the parking lots identified in subsection (A) and all parking meters. The established parking fees shall be required to be paid by the owner or operator of any vehicle parked in those spaces or parking facilities:
- (1) Town Center Parking Deck — fees shall be set by the Fayetteville Advertising and Promotion Commission pursuant to the terms of its contract with the City of Fayetteville for the operation and maintenance of the Town Center Parking Deck. If the contract expires or is terminated, fees shall be set at not more than \$70.00 per month nor more than \$4.00 per day if space is available.
 - (2) *Discounted Parking rates for Employees (employee parking cards or coupons).* In order to assist employees working in the Downtown Business District Parking Zone, the Mayor is authorized to sell and issue employee parking cards or codes that can be used for certain more distant parking spaces at a highly discounted rate of up to 90% off the normal parking rate.

- (H) *City Parking Lots, Parking Decks and Paid On-street Parking Spaces Within the Entertainment District Parking Zone.* The Mayor or the Mayor's designee is authorized to establish the on-street and off-street locations within the Entertainment District Parking Zone whereby parking fees are required, to set the parking fees for such locations, and to set the dates and times when payment shall be required to be paid by the owner or operator of any vehicle parked in those spaces or facilities. The Mayor or Mayor's designee may suspend parking regulations within established parking district zones during city holidays
- (1) *Motorcycle and Motor Scooter Parking in Specially Designated Motorcycle/Motor Scooter Paid Parking Spaces.* Parking rates for normal, passenger car sized paid parking spaces shall be reduced by 50% for all specially designated motorcycle/motor scooter paid parking spaces. All motorcycles and motor scooters will have to pay the normal full rate if parked within a normal, passenger car sized parking space.
 - (2) *Discounted Parking rates for Employees (employee parking cards or coupons).* In order to assist employees working in the Entertainment District Parking Zone, the Mayor is authorized to sell and issue employee parking cards or codes that can be used for certain more distant parking spaces at a highly discounted rate of up to 90% off the normal parking rate.
- (I) *Rates for Parking in City Parking Garages.*
- (1) Parking garages shall be rented monthly at a market rate as determined by the Mayor or the Mayor's designee.
 - (2) It shall be unlawful for any person to cause, allow, permit or suffer any vehicle operated by him or registered in his name to be parked in any city parking garage without paying the parking fees prescribed above.
- (J) *Overtime Parking.* If any vehicle remains parked in any metered parking space or within a paid parking facility beyond the period paid for such parking, the owner or operator of such vehicle shall be guilty of overtime parking and be subject to the punishment specified in §72.99.
- (K) *One-way Traffic and Improperly Driving Through or Around Gates on City Parking Lots.*
- (1) The Mayor is hereby authorized to determine and designate specific lanes upon the real estate described in subsection (A) above upon which vehicular traffic shall proceed in one direction only and shall cause to be placed appropriate markings, signs, barriers, or other devices to give notice thereof. The Mayor shall cause to be erected signs temporarily designating lanes to be used by traffic moving in a particular direction, regardless of the centerline of the roadway.
 - (2) When signs indicating the direction of traffic are erected and maintained in accord with subsection (1) above, vehicular traffic shall move only in the indicated direction, and it shall be unlawful for any person to operate any vehicle in violation of the markings, signs, barriers, or other devices placed in accordance with subsection (1) above.
 - (3) No driver may attempt to leave a gated city parking lot without paying the amount of parking fees due pursuant to subsections (G) or (H) by driving around the gate, by improperly driving through a gated entry or exit or by damaging or improperly manipulating any part of the gate.
- (L) *Immobilization of Illegally Parked Motor Vehicle.*
- (1) *Immobilization Authorized.* Employees of the Parking Division and officers of the Police Department are authorized to temporarily immobilize any vehicle which is parked in violation of any provision of this chapter and whose owner has been cited for violating these parking regulations at least twice in the preceding thirty days or has outstanding fines and costs from previous parking violations due and owing.
 - (2) *Post-deprivation Hearing.* When any vehicle is immobilized under the provisions of this section, the owner or operator shall have the right to a post-deprivation administrative hearing by filing a written request for such a hearing with the Mayor.

(3) *Conduct of Hearing.*

- (a) A hearing shall be conducted before a hearing officer designated by the Mayor and shall be held within twenty-four (24) hours from receipt of a written demand therefor, unless the right to a speedy hearing is waived in writing. Saturdays, Sundays, and city holidays are to be excluded from calculating said twenty-four (24) hour period. The hearing officer shall not be the person who directed the impounding and storage of the vehicle. The sole issue before the hearing officer shall be whether there was probable cause to immobilize the vehicle in question.
- (b) The hearing officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The person demanding the hearing shall carry the burden of establishing that such person has the right to possession of the vehicle. The city shall carry the burden of establishing that there was probable cause to immobilize the vehicle in question. At the conclusion of the hearing, the hearing officer shall prepare a written decision. A copy of such decision shall be provided to the person demanding the hearing and to the registered owner of the vehicle. The hearing officer's decision shall in no way affect any criminal proceeding in connection with the immobilization. The decision of the hearing officer shall be final. Failure to request a post-immobilization hearing within three (3) days from the date of immobilization, or failure to attend a scheduled post-immobilization hearing shall be deemed a waiver of the right to such hearing; and, the Police Department shall be authorized to have the vehicle towed to and stored at a safe place designated as an official police garage by the Chief of Police. The owner or operator of the vehicle shall be liable for all towing and storage fees.

(4) *Decision of Hearing Officer.*

- (a) The hearing officer shall only determine whether there was probable cause to immobilize the vehicle. If the hearing officer determines that there was no probable cause, the hearing officer shall prepare and date a certificate of no probable cause, a copy of which shall be given to the registered owner of the vehicle or his agent and to the Police Department and Traffic Division. Upon receipt of the owner's copy of such certificate, an employee of the traffic division or an officer of the Police Department shall remove the immobilization device from the vehicle.
- (b) If the hearing officer determines that there was probable cause for immobilizing the vehicle, the registered owner, or his agent, may obtain removal of the immobilization device by posting a bond in a reasonable amount specified by the District Court. The amount of said bond shall be not less than a sum equivalent to the cumulative total of applicable fines, court costs, towing fees and storage fees. Upon presentation of a receipt evidencing the posting of said bond, an employee of the Traffic Division or an officer of the Police Department shall remove the immobilization device from the vehicle.

(M) *Special Event Permits Needed to Use City Owned Parking Lots, Paid On-Street Parking Spaces, or to Close City Streets.*

- (1) *Events Needing the Use of City Owned Parking Lots or Paid Parking Spaces Along City Streets for up to Eight (8) Hours.* The Mayor is empowered by the issuance of a special event permit to assign any and all city owned paid parking lots and some or all on-street paid parking spaces for up to eight (8) consecutive hours, but not more than a total of sixteen (16) days per calendar year.
- (2) *Events Requesting the Use of City Owned Parking Lot or On-street Paid Parking Spaces or to Close City Streets for More Than Eight (8) Consecutive Hours.*
 - (a) When an applicant for a special event permit proposes to use a city paid parking lot or close a city street for more than eight (8) consecutive hours, nearby residents shall be notified and be provided an opportunity to comment. Subject to the overall limit of sixteen (16) days per calendar year, the Mayor may propose to approve or to reject an expanded special event permit which would authorize the special event applicant to use city owned paid parking lots or on-street paid parking for more than eight (8) consecutive hours. The Mayor may also propose to approve or to reject the closure of city streets for more than eight (8) consecutive hours for a special event.

- (b) The Mayor by and through his staff shall notify the City Council Members by email or otherwise of the decision to grant or deny the special event permit and provide the City Council Members the results of the neighbor notification including comments by such citizens. If at least two (2) City Council Members notify the City Clerk's Office in writing within seven (7) days of the Mayor's notification of his or her decision that they wish to appeal such decision, then the issue will be presented on the next City Council meeting in which the Mayor's decision could reasonably be considered. The City Council would then be able to decide by Resolution whether to reverse the Mayor's decision and upon what condition (if any) the permit would be granted.
- (N) *Electric Vehicle Charging Stations.* The Mayor is authorized to designate Electric Vehicle Charging Station parking spaces in city parking facilities to prohibit all non-electric vehicles from parking in these spaces. The owner or operator of an electric vehicle shall only park in this space while charging the vehicle's battery and shall pay normal parking rates while parked in this space.
- (O) *Event Parking.* The Parking Division may implement event parking in city managed parking facilities as deemed necessary by the Mayor or designee. Such event parking will require a person desiring to park a vehicle in a designated event parking facility to pay the event parking fee as established by the Mayor or the Mayor's designee. The City of Fayetteville shall provide sufficient personnel to staff event parking.

City of Fayetteville Staff Review Form

2023-674

Item ID

4/25/2023

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Justin Clay

4/6/2023

PARKING MANAGEMENT (430)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

AN ORDINANCE TO AMEND PARKING REGULATIONS AND TO AUTHORIZE THE MAYOR TO SET PARKING RATES AND REGULATIONS SUBJECT TO LIMITATIONS ESTABLISHED BY THE CITY COUNCIL

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? No

Total Amended Budget

\$ -

Expenses (Actual+Encum)

\$ -

Available Budget

\$ -

Does item have a direct cost? No

Item Cost

\$ -

Is a Budget Adjustment attached? No

Budget Adjustment

\$ -

Remaining Budget

\$ -

V20221130

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:

CHAPTER 72 PARKING REGULATIONS

72.18 Residential Parking Permit Program For The Entertainment District Parking Zone

(A) *Applicability:* This Residential Parking Permit Program shall be applicable within the Entertainment District Parking Zone as shown and described on Exhibit A attached to the enacting ordinance. This parking zone will be further divided by Dickson Street into the North Zone for included residents living north of Dickson Street and the South Zone for included residents living south of Dickson Street.

(B) *Definitions:*

Fuel efficient scooter or bicycle means bicycles, gas powered scooters not exceeding 70 cubic centimeters and electric powered bicycles and scooters.

Guest pass means the pass or authorization to park within the appropriate on-street parking zone pursuant to this section.

Registered vehicle means a motorized, validly state licensed and insured vehicle kept at the residence owned or leased by the resident within the Entertainment District Parking Zone. The Arkansas Vehicle Registration Certificate for the vehicle should list the residence within the Entertainment District. The Parking Division may accept other reliable documentation of ownership or occupancy of a residence within the Zone to justify issuance of a residential parking permit for a resident's vehicle.

Resident means a natural person residing within a dwelling that the resident owns, leases or rents within the Entertainment District Parking Zone.

Residential parking permit means the currently valid permit issued by Parking Division which allows the resident to park the permitted resident's vehicle in an authorized on-street parking zone pursuant to the terms of this section.

(C) *Restricted Parking Periods:* ~~From 2:00 p.m. on Sundays and 10:00 a.m. Monday through Saturday until 2:00 a.m. every day.~~ The Mayor or Mayor's designee shall have the authority to set the timeframes by which designated on-street parking spaces within the Entertainment District Parking Zone North and South shall be restricted to properly permitted vehicles. The owner of any vehicle improperly parked during this period shall be subject to the penalties set forth in §72.99.

(D) *On-street Parking Restrictions for Most Vehicles in the Entertainment District Parking Zone:* As authorized by the Mayor or Mayor's designee and w~~here designated by signs and as shown on the exhibits,~~ only residents of the Entertainment District Parking Zone North shall be permitted to park their properly permitted vehicles in the designated on-street parking areas of the Residential Parking Zone North of Dickson Street during the restricted parking period. ~~Where designated by signs and as shown on the exhibits, and~~ only residents of the Entertainment District Parking Zone South shall be permitted to park their properly permitted vehicles in the designated on-street parking areas of the Residential Parking Zone South of Dickson Street during the restricted parking period.

(E) *Special Regulations for Oversized Vehicles, Motorcycles, Motor Scooters and Bicycles:* No vehicle that cannot fit within a standard on-street parking space may be parked on-street in the Entertainment District Parking Zone unless its owner or operator has obtained a special limited time and location permit pursuant to (1).

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- (1) An operator or owner of a moving van or other oversized vehicle that needs to park on-street in a designated area for a limited time to serve a residence, business or office within the Entertainment District Parking Zone may be issued a special, limited time and location parking permit by the Parking Division.
 - (2) A resident of the Entertainment District Parking Zone who owns a motorcycle or motor scooter with over 70 cubic centimeters displacement may be issued a residential permit which shall allow free parking only in specially designed motorcycle/motor scooter on-street parking spaces and is prohibited from parking in standard on-street parking spaces reserved for residents' cars. Operators of motorcycles and motor scooters may park in paid parking spaces at the standard parking rate. No motorcycle nor any motor scooters may be parked on a sidewalk.
 - (3) Operators of fuel efficient scooters and bicycles may park for free in specially designated parking spaces, but must pay the standard parking rate if parked in a normal paid parking space. No bicycle may be parked on a sidewalk unless it is utilizing a permanently installed and permitted bicycle rack.
- (F) *Mixed Use ~~On-Street Parking~~. On-street parking spaces on Spring Street from Block Avenue to West Avenue, on School Avenue from Center Street to Spring Street, on Locust Avenue from Spring Street to Center Street, on Church Avenue from Dickson Street to Meadow Street, on Lafayette Street from West Avenue to Forest Avenue, and on Vandeventer Avenue from Lafayette Street to Maple Street*~~The mayor or designee shall have the authority to establish mixed-use parking spaces and locations which~~ shall be available to the public for paid parking and to residents of the corresponding Entertainment District Parking Zone for properly permitted vehicles ~~free of charge~~.
- (G) ~~Free Public Use of Paid On-street Parking. From 2:00 a.m. until 2:00 p.m. every day, all on-street paid parking spaces within the Entertainment District Parking Zone shall be free of charge and available to the public.~~ Permit Fees. The Parking Division is authorized to assess permit fees to cover the actual costs of administration of its residential parking permit program.
- (H) *Temporary Guest Passes:* An Entertainment District Parking Zone resident may request the city to issue temporary guest passes for visitors to their residence. The Mayor or designee shall administer a guest pass program with the goal of accommodating the needs of both residents and businesses within the Entertainment District Parking Zone. Use of a guest pass in a manner not authorized by the guest pass program shall be a violation of this section for the vehicle's owner.
- (I) *Residential Parking Permits May Not Be Loaned, Transferred, Sold or Used Except on the Designated Registered Vehicle:* Any resident who attempts to or does loan, transfer, sell or give a residential parking permit to another person or entity, or who facilitates the use of the permit obtained for his registered vehicle on a nonregistered vehicle shall, in addition to the general penalty provisions in this chapter, immediately forfeit all permits issued to the resident and the right to apply for any future permits for three (3) years.
- (J) *Penalty:* The owner of any vehicle parked in violation of any term or requirement of this section shall be guilty of a violation and shall be subject to the penalties set forth in §72.99.

72.21 Residential Parking Permit Program For The Downtown Business District Parking Zone

(A) *Applicability.* This Downtown Business District Parking Permit Program shall be applicable at certain long-term parking areas as prescribed by the Parking Manager within the Downtown Business District Parking Zone as shown and described on Exhibit B attached to the enacting ordinance.

(B) *Definitions.*

Fuel efficient scooter or bicycle means bicycles, gas powered scooters not exceeding 70 cubic centimeters and electric powered bicycles and scooters.

Guest pass means the pass or authorization to park within the appropriate parking zone pursuant to this section.

Registered vehicle means a motorized, validly state licensed and insured vehicle kept at the residence owned or leased by the resident within the Downtown Business District Parking Zone. The Arkansas Vehicle Registration Certificate for the vehicle should list the residence within the Downtown Business District. The Parking Division may accept other reliable documentation of ownership or occupancy of a residence within the Zone to justify issuance of a residential parking permit for a resident's vehicle.

Residence means a legal residential address and shall exclude business addresses.

Resident means a natural person residing within a dwelling that the resident owns, leases or rents within the Downtown Business District Parking Zone.

Residential parking permit means the currently valid permit issued by Parking Division which allows the resident to park the permitted resident's vehicle in an authorized parking zone pursuant to the terms of this section.

(C) *Special Regulations for Oversized Vehicles, Motorcycles, Motor Scooters and Bicycles.* No vehicle that cannot fit within a standard parking space may be parked in the Downtown Business District Parking Zone unless its owner or operator has obtained a special limited time and location permit pursuant to (C)(1) below.

(1) An operator or owner of a moving van or other oversized vehicle that needs to park on-street or in a designated area for a limited time to serve a residence, business or office within the Downtown Business District Parking Zone may be issued a special, limited time and location parking permit by the Parking Division.

(2) A resident of the Downtown Business District Parking Zone who owns a motorcycle or motor scooter with over 70 cubic centimeters displacement may be issued a residential permit which shall allow free parking only in specially designed motorcycle/motor scooter parking spaces and is prohibited from parking in standard on-street parking spaces reserved for residents' cars. Operators of motorcycles and motor scooters may park in paid parking spaces at the standard parking rate. No motorcycle nor any motor scooters may be parked on a sidewalk.

(3) Operators of fuel-efficient scooters and bicycles may park for free in specially designated parking spaces but must pay the standard parking rate if parked in a normal paid parking space. No bicycle may be parked on a sidewalk unless it is utilizing a permanently installed and permitted bicycle rack.

(D) *Temporary Guest Passes.* A Downtown Business District Parking Zone resident may request the city to issue temporary guest passes for visitors to their residence. The Mayor or designee shall administer a guest pass program with the goal of accommodating the needs of both residents and businesses within the Downtown Business District Parking Zone. Use of a guest pass in a manner not authorized by the guest pass program shall be a violation of this section for the vehicle's owner.

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- (E) *Cost of Program.* The Parking Division is ~~hereby~~ authorized to ~~charge up to \$25.00 annually per resident~~ assess permit fees to cover the actual costs of administration of ~~to participate in~~ the Downtown Business District Parking program.
- (F) *Residential Parking Permits May Not Be Loaned, Transferred, Sold or Used Except on the Designated Registered Vehicle.* Any resident who attempts to or does loan, transfer, sell or give a residential parking permit to another person or entity, or who facilitates the use of the permit obtained for his registered vehicle on a nonregistered vehicle shall, in addition to the general penalty provisions in this chapter, immediately forfeit all permits issued to the resident and the right to apply for any future permits for three (3) years.
- (G) *Penalty.* The owner of any vehicle parked in violation of any term or requirement of this section shall be guilty of a violation and shall be subject to the penalties set forth in §72.99.

ARTICLE III PARKING METERS

72.50 Definitions

For the purpose of this article the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Downtown Business District Parking Zone. The area depicted on the map and described on Exhibit B attached to this enacting ordinance.

Electronic payment stations. A place where a person who has parked his or her vehicle in a Downtown Business District or Entertainment District Parking Zone paid parking space ~~or lot~~ may pay the appropriate fee for the paid parking space. Electronic payment stations may include physical payment stations, mobile applications, or other technologies used by the City as part of its parking management system.

Employee parking card. A card or code issued by the Parking Division for use only by employees of businesses operating in ~~the Entertainment District Parking Zone~~ an established parking district zone which may be discounted by the Mayor up to 90% of normal parking rates for certain paid parking spaces within the zone.

72.51 Presumption As To Unlawful Parking In Metered Space And Paid Parking Space Or Lot Serviced By An Electronic Payment Station.

The indication on the parking meter or within the Electronic Payment Station System that the paid for time has expired shall be presumptive evidence, as to the parked vehicle then found in the parking space or paid parking ~~facility~~ lot regulated by such parking meter or the Electronic Payment Station System, that the owner or driver has failed to pay for all the parking used in such space or ~~facility~~ lot which shall be presumptive evidence of the violation of unlawful parking.

(Code 1965, §19-152; Ord. No. 931, 2-23-48; Ord. No. 1083, 6-6-55; Code 1991, §72.51; Ord. No. 5324, 6-1-10)

72.52 Purpose Of Deposit Or Electronic Payment Requirement

The coins required to be deposited in parking meters or the electronic payment required to be made at electronic payment stations by this article are for the purpose of regulating parking, to cover part of the cost of such necessary regulation for the convenience and protection of the public, and to accumulate revenues to use for the

construction of additional parking facilities including parking decks, ~~and to provide operating revenue for the Walton Arts Center.~~

(Code 1965, §19-153; Ord. No. 931, 2-23-48; Ord. No. 1083, 6-6-55; Code 1991, §72.52; Ord. No. 5324, 6-1-10)

72.55 Collections From Meters And Electronic Payment Stations

The Parking Manager shall be responsible for the collection all deposits or electronic transactions from parking meters and electronic payment stations installed under this article and deliver them to the Accounting Department or as directed by the Mayor.

72.57 Parking Meter Zones

- (A) The Mayor, ~~or his duly authorized representative, or the Mayor's designee~~ is ~~hereby~~ authorized to describe, establish and alter parking meter zones.
- (B) Parking meters shall be installed not more than 2 feet from the curb nor more than 4 feet from the front line of the parking space. Spaces shall be marked out as individual parking meter spaces for vehicles and kept clearly marked at all times. No parking meter authorized herein shall be so installed or a parking space so established that it will obstruct the convenient egress and ingress to any property butting on any street.
- (C) Each parking meter installed under this section, shall be set to operate upon the deposit therein of the prescribed coin or coins payment for the period of time prescribed as parking time limits in subsection (F) below. Each of such meters shall be so arranged so as to show or display a signal, which shall clearly indicate whether the time limit during which parking in that space is permitted has expired.
- (D) Any person parking a vehicle within a parking meter zone established by this section shall park the same wholly within the lines of the parking space marked as provided in subsection (B), and it shall be unlawful for any person to park or leave a vehicle in any such zone, unless it is wholly within such space. Where the parking meters are placed in front of parking spaces, the radiator shall be as near as possible to the parking meter controlling the space; ~~and~~ where the parking meters are placed alongside the parking spaces, the front fender or front wheels of the vehicle shall be as near as possible to the parking meter controlling the space; and for back-in parking spaces, the rear license plate or rear bumper of the vehicle shall be as near as possible to the parking meter controlling the space.
- (E) *Regulated Hours for Parking Meters.*
 - (1) The Mayor or the Mayor's designee ~~mayor or designee is hereby~~ authorized to establish dates and times within established parking district zones ~~Within the Entertainment District Parking Zone between the hours of 2:00 p.m. until 2:00 a.m. every day, whereby~~ the owner or driver of a vehicle upon parking the vehicle in a parking meter space shall immediately deposit into the parking meter or electronic payment station sufficient money or other authorized payment ~~as required in §72.58(H).~~
 - ~~(2) Within the Downtown Business District Parking Zone between the hours of 8:00 a.m. until 6:00 p.m. from Monday through Friday (except city holidays), the owner or driver of a vehicle upon parking the vehicle in a parking meter space shall immediately deposit into the parking meter sufficient money as required in §72.58(G).~~
 - ~~(3)~~ (2) The Mayor or the Mayor's designee is ~~hereby~~ authorized to establish grace periods within the Entertainment and Downtown Business Parking Zones whereby the parking rate may be waived for a limited amount of time upon the arrival of a vehicle into a paid parking space.

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- (F) *Unlawful to Leave Vehicle Parked in Excess of Allowed Time.* Upon the expiration of the legal parking time paid for and allowed pursuant to this chapter during the period that paid parking is required, it is unlawful for the owner or driver to leave the vehicle in the parking space. Violation of such overtime parking shall be punished pursuant to §72.99.

(Code 1965, §§19-169—19-173; Ord. No. 931, 2-23-48; Ord. No. 1196, 4-6-59; Ord. No. 1775, 12-21-70; Ord. No. 2403, 12-6-77; Ord. No. 2410, 1-16-78; Ord. No. 2616, 4-1-80; Ord. No. 2769, 11-3-81; Ord. No. 4222, 2-15-00; Code 1991, §72.57; Ord. No. 5324, 6-1-10; Ord. No. 5598, 7-2-13; Ord. No. 6475, §3, 9-7-21)

72.58 Off-Street Parking Facilities; Rules And Rates

- (A) *Established.* The following named and described real estate lying within the corporate limits of the city is hereby established as and shall constitute ~~public off-street automobile parking facilities parking meter facilities~~ within the Downtown Business District Parking Zone.
- (1) Lots 8 to 15, inclusive, in Block 26 of the original plat of the city, including an alley 10 feet in width and running in an east and west direction and adjoining the southern boundary of Lots 12 to 15, inclusive, and the northern boundary of Lots 8 to 11 inclusive.
 - (2) Lots 8, 9, 10, 11, 12, 13, 14 and 15 of Block 30, in the town (now city), as designated upon the original plat of said town.
 - (3) Lot 9A and a part of Lot 10, in Block 29, of the original plat of the city.
 - (4) Part of the Northwest Quarter of the Southwest Quarter of Section 15, Township 16 North, Range 30 West, described as follows: Beginning at a point 84 feet south and 25 feet east of the northwest corner of the said 40-acre tract, and running thence south 178 feet; thence east 70.3 feet; thence north 178 feet; thence west 70.3 feet to the point of beginning.
 - (5) A part of Block 7, of the original plat of the city, more particularly described as beginning at a point 13 feet and two inches south of the northwest corner of said Block 7, running thence east 50 feet; thence south 267 feet to the point of beginning.
 - (6) Lots 7, 8, 9 and 10 of Block 17 in the town (now city) as designated upon the original plat of said town.
 - (7) Lots 8, 9 and 10 of Block 13 in the town (now city) as designated upon the original plat of said town.
 - (8) Lots 1, 2, Lot 3, less 52.53 feet of equal and uniform width off the south side thereof, and Lot 12, less 50 feet of equal and uniform width off the south side thereof of Block 13 in the town (now city) as designated upon the original plat of said town.
 - (9) Part of Block 25, in the town (now city) as designated upon the original plat of said town, and more particularly described as follows: Beginning at the northeast corner of Lot 1 in said Block 25, thence west 42 feet; thence south 49.3 feet; thence west 58 feet; thence south 58.7 feet to the center of a platted alley; thence east 100 feet; thence north 107 feet to the point of beginning.
 - (10) Part of Block 15, in the original plat of the city, described as follows: Beginning at a point 127 feet west of the northeast corner of Block 15 and running thence south 206 feet to the north line of a 12-foot alley; thence west 177 feet to the east line of an alley; thence north 90 feet; thence east 22 feet; thence north 116 feet to the south line of Meadow Street; thence east 17 feet; thence south 27 feet; thence east 20 feet; thence north 27 feet to the south line of Meadow Street; thence east 118 feet to the point of beginning.
 - (11) Lots numbered 12 and 13 in Block 30 of the original town (now city).
- (B) *Definitions.* For the purpose of this section "public off-street automobile parking facilities" are defined as accommodations procured or provided, or both, by public authority for the parking of motor vehicle off the

street or highway, and open to public use with or without charge. Parking facilities may consist of lots, garages, or other structures and accessories; they may be surfaced facilities or facilities above or below ground.

- (C) *Marking of Parking Spaces.* The Mayor ~~or the Mayor's designee~~ is ~~hereby~~ authorized to mark off individual parking spaces in the parking ~~meter~~ facilities established by this section, such parking spaces to be designated by lines painted or durably marked on the curbing or otherwise.
- (D) *Installation, Location, Mechanical Requirements, and Maintenance of Meters within the Downtown Business District Parking Zone.* In the parking ~~meter~~ facilities established by this article, the Mayor ~~or the Mayor's designee~~ shall be authorized to install parking meters. Where parking meters are installed, the Mayor or the Mayor's designee shall cause parking meters to be installed upon the curb immediately adjacent to the parking spaces marked in accord with subsection (C) above, such installation to be placed not more than two feet from the curb or concrete islands as provided, from the front line of the parking space as indicated, and the mayor shall be responsible for the regulation, control, operation, maintenance, and use of such parking meters. Each parking meter installed shall indicate by proper legend the legal parking time established by the city and, when operated, shall at all times indicate the balance of legal parking time, and at the expiration of such period shall indicate illegal or overtime parking.
- (E) *Vehicles to Be Parked Entirely Within Parking Spaces.* At each space marked off in accord with subsection (C) above, it shall be unlawful for any person to park any vehicle across any lines or markings of such space or in such position that the vehicle shall not be entirely within the area designated by such lines or markings.
- (F) *Payment Required.*
- (1) Except in a period of emergency determined by an officer of the Fire or Police Departments, or in compliance with the directions of a police officer or traffic control sign or signal, when any vehicle is parked in any parking space within a parking facility alongside or next where to which a parking meter or electronic payment station is located in accord with this section, the operator of such vehicle shall, upon entering the parking ~~meter~~ space, immediately make payment for the applicable parking rate. If paying by coin, the operator of such vehicle shall deposit or cause to be deposited in the meter such proper coin of the United States or other payment as is required for such parking meter or electronic payment station and is designated by proper directions on the meter or electronic payment station, and when required by the directions on the meter, the operator of such vehicle, after the deposit of the proper coin or coins or other payment, shall also set in operation the timing mechanism on such meter in accordance with directions properly appearing thereon. Failure to deposit such proper coin or other payment, and to set the timing mechanism in operation when so required, shall constitute a violation of this section. Upon proper payment (and the setting of the timing mechanism in operation when so required) the parking space may be lawfully occupied by such vehicle during the period of time which has been prescribed; provided that any person placing a vehicle in a parking meter space adjacent to a meter which indicates that unused time has been left in the meter by the previous occupant of the space shall not be required to deposit a coin so long as his occupancy of the space does not exceed the indicated unused parking time.
- (2) This section shall apply between the hours of 8:00 a.m. until 6:00 p.m. from Monday through Friday. The Mayor or the Mayor's designee (except city holidays) may suspend parking regulations within established parking district zones during city holidays.
- (G) *City Parking Lots and Parking Meters Within the Downtown Business District Parking Zone.* The Mayor or the Mayor's designee shall be authorized to set establish the parking fees fFor all the parking lots identified in subsection (A) and all parking meters. The ~~following established~~ parking fees are established and shall be required to be paid by the owner or operator of any vehicle parked in those spaces or parking ~~facilities~~ lots:
- (1) Long term spaces — \$.25 per hour.

~~(2) All other parking meters — \$.50 per hour.~~

~~(3) Gated lot (per space) — \$30.00 per month.~~

~~(4) Long term parking permits (hang tags) for use only at long term spaces — \$30.00 per month.~~

(51) Town Center Parking Deck — fees shall be set by the Fayetteville Advertising and Promotion Commission pursuant to the terms of its contract with the City of Fayetteville for the operation and maintenance of the Town Center Parking Deck. If the contract expires or is terminated, fees shall be set at not more than \$70.00 per month nor more than \$4.00 per day if space is available.

(62) *Discounted Parking rates for Employees (employee parking cards or coupons).* In order to assist employees working in the Downtown Business District Parking Zone, the Mayor is authorized to sell and issue employee parking cards or codes that can be used for certain more distant parking spaces at a highly discounted rate of up to 90% off the normal parking rate.

(H) *City Parking Lots, Parking Decks and Paid On-street Parking Spaces Within the Entertainment District Parking Zone.* ~~The Mayor or the Mayor's designee shall be authorized to establish the on-street and off-street locations within the Entertainment District Parking Zone whereby parking fees are required, to set the parking fees for such locations, and to set the dates and times.~~ For parking in the West Avenue Lot, South Lot, East Lot, North Lot, Spring Street Parking Deck and all paid on-street parking spaces within the Entertainment District Parking Zone, the following parking fees are established and shall be when payment shall be required to be paid by the owner or operator of any vehicle parked in those spaces or facilities. ~~lots.~~ The Mayor or Mayor's designee may suspend parking regulations within established parking district zones during city holidays

~~(1) Monday Through Friday:~~

~~(a) 2:00 p.m. until 5:00 p.m. — \$.50 per hour~~

~~(b) 5:00 p.m. until 2:00 a.m. the following day — \$1.00 per hour~~

~~(c) 2:00 a.m. until 2:00 p.m. — free parking~~

~~(d) 2:00 p.m. until 2:00 a.m. the following day — the owner or operator of any vehicle shall have the option to choose a maximum day rate of \$5.00~~

~~(2) Saturday and Sunday:~~

~~(a) 2:00 p.m. until 6:00 p.m. — \$.50 per hour~~

~~(b) 6:00 p.m. until 2:00 a.m. the following day — \$1.00 per hour~~

~~(c) 2:00 a.m. until 2:00 p.m. — free parking~~

~~(d) 2:00 p.m. until 2:00 a.m. the following day — the owner or operator of any vehicle shall have the option to choose a maximum day rate of \$5.00~~

(31) *Motorcycle and Motor Scooter Parking in Specially Designated Motorcycle/Motor Scooter Paid Parking Spaces.* ~~The above~~ parking rates for normal, passenger car sized paid parking spaces shall be reduced by 50% for all specially designated motorcycle/motor scooter paid parking spaces. All motorcycles and motor scooters will have to pay the normal full rate if parked within a normal, passenger car sized parking space.

(42) *Discounted Parking rates for Employees (employee parking cards or coupons).* In order to assist employees working in the Entertainment District Parking Zone, the Mayor is authorized to sell and issue employee parking cards or codes that can be used for certain more distant parking spaces at a highly discounted rate of up to 90% off the normal parking rate.

~~(5) Reserved.~~

~~(6) West Annex Parking Lot 53. For parking in the West Annex Parking Lot 53 located at 346 West Avenue, the parking rates shall apply as follows:~~

~~(a) Monday through Friday:~~

~~5:00 p.m. until 2:00 a.m. the following day — \$1.00 per hour — the owner or operator of any vehicle shall have the option to choose a maximum day rate of \$5.00.~~

~~2:00 a.m. until 7:00 a.m. — free parking~~

~~7:00 a.m. until 5:00 p.m. — University permit parking only (enforced by U of A)~~

~~(b) Saturday:~~

~~2:00 p.m. until 6:00 pm — \$.50 per hour~~

~~6:00 p.m. until 2:00 a.m. the following day — \$1.00 per hour~~

~~2:00 a.m. until 2:00 pm — free parking~~

~~2:00 p.m. until 2:00 a.m. the following day — the owner or operator of any vehicle shall have the option to choose a maximum day rate of \$5.00.~~

~~(c) Sunday:~~

~~2:00 p.m. until 6:00 p.m. — \$.50 per hour~~

~~6:00 p.m. until 2:00 a.m. the following day — \$1.00 per hour~~

~~2:00 a.m. until 7:00 a.m. Monday — free parking~~

~~2:00 p.m. until 2:00 am the following day — the owner or operator of any vehicle shall have the option to choose a maximum day rate of \$5.00.~~

(I) *Rates for Parking in City Parking Garages.*

(1) Parking garages shall be rented monthly at a market rate ~~as authorized by the mayor or designee determined by the Mayor or the Mayor's designee~~ not to exceed the amount of \$70.00 per month/per space.

~~(2) The single entry rate for the city parking garage on Meadow Street shall be set at a rate of \$3.00 per visit on the third level and \$4.00 per visit on the first level, if entry is not restricted.~~

~~(3)~~ It shall be unlawful for any person to cause, allow, permit or suffer any vehicle operated by him or registered in his name to be parked in any city parking garage without paying the parking fees prescribed above.

(J) *Overtime Parking.*

~~(1) If any vehicle remains parked in any metered parking space or within a paid parking facility lot beyond the period paid for such parking, the owner or operator of such vehicle shall be guilty of overtime parking and be subject to the punishment specified in §72.99.~~

~~(2) It is unlawful for any person to cause, allow or permit any vehicle owned or operated by said person to be parked in a gated city lot for more than twenty four (24) continuous hours. Any such illegally parked vehicle is subject to the provisions of §72.99 and to nonconsensual towing at the owner's expense who shall have post-deprivation hearing rights as set for in subsection (L).~~

(K) *One-way Traffic and Improperly Driving Through or Around Gates on City Parking Lots.*

(1) The Mayor is hereby authorized to determine and designate specific lanes upon the real estate described in subsection (A) above upon which vehicular traffic shall proceed in one direction only and

shall cause to be placed appropriate markings, signs, barriers, or other devices to give notice thereof. The Mayor shall cause to be erected signs temporarily designating lanes to be used by traffic moving in a particular direction, regardless of the centerline of the roadway.

- (2) When signs indicating the direction of traffic are erected and maintained in accord with subsection (1) above, vehicular traffic shall move only in the indicated direction, and it shall be unlawful for any person to operate any vehicle in violation of the markings, signs, barriers, or other devices placed in accordance with subsection (1) above.
- (3) No driver may attempt to leave a gated city parking lot without paying the amount of parking fees due pursuant to subsections (G) or (H) by driving around the gate, by improperly driving through a gated entry or exit or by damaging or improperly manipulating any part of the gate.

(L) *Immobilization of Illegally Parked Motor Vehicle.*

- (1) *Immobilization Authorized.* Employees of the Traffic-Parking Division and officers of the Police Department are ~~hereby~~ authorized to temporarily immobilize any vehicle which is parked in violation of any provision of this chapter and whose owner has been cited for violating these parking regulations at least twice in the preceding thirty days or has outstanding fines and costs from previous parking violations due and owing.
- (2) *Post-deprivation Hearing.* When any vehicle is immobilized under the provisions of this section, the owner or operator shall have the right to a post-deprivation administrative hearing by filing a written request for such a hearing with the Mayor.
- (3) *Conduct of Hearing.*
 - (a) A hearing shall be conducted before a hearing officer designated by the Mayor and shall be held within twenty-four (24) hours from receipt of a written demand therefor, unless the right to a speedy hearing is waived in writing. Saturdays, Sundays, and city holidays are to be excluded from calculating said twenty-four (24) hour period. The hearing officer shall not be the person who directed the impounding and storage of the vehicle. The sole issue before the hearing officer shall be whether there was probable cause to immobilize the vehicle in question.
 - (b) The hearing officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The person demanding the hearing shall carry the burden of establishing that such person has the right to possession of the vehicle. The city shall carry the burden of establishing that there was probable cause to immobilize the vehicle in question. At the conclusion of the hearing, the hearing officer shall prepare a written decision. A copy of such decision shall be provided to the person demanding the hearing and to the registered owner of the vehicle. The hearing officer's decision shall in no way affect any criminal proceeding in connection with the immobilization. The decision of the hearing officer shall be final. Failure to request a post-immobilization hearing within three (3) days from the date of immobilization, or failure to attend a scheduled post-immobilization hearing shall be deemed a waiver of the right to such hearing; and, the Police Department shall be authorized to have the vehicle towed to and stored at a safe place designated as an official police garage by the Chief of Police. The owner or operator of the vehicle shall be liable for all towing and storage fees.
- (4) *Decision of Hearing Officer.*
 - (a) The hearing officer shall only determine whether there was probable cause to immobilize the vehicle. If the hearing officer determines that there was no probable cause, the hearing officer shall prepare and date a certificate of no probable cause, a copy of which shall be given to the registered owner of the vehicle or his agent and to the Police Department and Traffic Division. Upon receipt of the owner's copy of such certificate, an employee of the traffic division or an officer of the Police Department shall remove the immobilization device from the vehicle.

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- (b) If the hearing officer determines that there was probable cause for immobilizing the vehicle, the registered owner, or his agent, may obtain removal of the immobilization device by posting a bond in a reasonable amount specified by the District Court. The amount of said bond shall be not less than a sum equivalent to the cumulative total of applicable fines, court costs, towing fees and storage fees. Upon presentation of a receipt evidencing the posting of said bond, an employee of the Traffic Division or an officer of the Police Department shall remove the immobilization device from the vehicle.
- (M) *Special Event Permits Needed to Use City Owned Parking Lots, Paid On-Street Parking Spaces, or to Close City Streets.*
- (1) *Events Needing the Use of City Owned Parking Lots or Paid Parking Spaces Along City Streets for up to Eight (8) Hours.* The Mayor is empowered by the issuance of a special event permit to assign any and all city owned paid parking lots and some or all on-street paid parking spaces for up to eight (8) consecutive hours, but not more than a total of sixteen (16) days per calendar year.
- (2) *Events Requesting the Use of City Owned Parking Lot or On-street Paid Parking Spaces or to Close City Streets for More Than Eight (8) Consecutive Hours.*
- (a) When an applicant for a special event permit proposes to use a city paid parking lot or close a city street for more than eight (8) consecutive hours, nearby residents shall be notified and be provided an opportunity to comment. Subject to the overall limit of sixteen (16) days per calendar year, the Mayor may propose to approve or to reject an expanded special event permit which would authorize the special event applicant to use city owned paid parking lots or on-street paid parking for more than eight (8) consecutive hours. The Mayor may also propose to approve or to reject the closure of city streets for more than eight (8) consecutive hours for a special event.
- (b) The Mayor by and through his staff shall notify the City Council Members by email or otherwise of the decision to grant or deny the special event permit and provide the City Council Members the results of the neighbor notification including comments by such citizens. If at least two (2) City Council Members notify the City Clerk's Office in writing within seven (7) days of the Mayor's notification of his or her decision that they wish to appeal such decision, then the issue will be presented on the next City Council meeting in which the Mayor's decision could reasonably be considered. The City Council would then be able to decide by Resolution whether to reverse the Mayor's decision and upon what condition (if any) the permit would be granted.
- (N) *Electric Vehicle Charging Stations.* The Mayor is authorized to designate Electric Vehicle Charging Station parking spaces in city parking facilities to prohibit all non-electric vehicles from parking in these spaces. The owner or operator of an electric vehicle shall only park in this space while charging the vehicle's battery and shall pay normal parking rates while parked in this space.
- (O) *Event Parking.* The Parking Division may implement event parking in city managed parking facilities as deemed necessary by the Mayor or ~~his~~ designee. Such event parking will require a person desiring to park a vehicle in a designated event parking facility to pay ~~a fee of \$5.00~~ the event parking fee as established by the Mayor or the Mayor's designee. The City of Fayetteville shall provide sufficient personnel to staff event parking.

(Code 1965, §§19-185—19-195; Ord. No. 1083, 6-6-55; Ord. No. 1197, 4-6-59; Ord. No. 1231, 1-25-60; Ord. No. 1242, 8-8-60; Ord. No. 1576, 11-6-67; Ord. No. 1802, 6-21-71; Ord. No. 1866, 6-5-72; Ord. No. 2613, 3-18-80; Ord. No. 2769, 11-3-81; Ord. No. 2815, 6-15-82; Ord. No. 2875, 11-23-82; Ord. No. 2914, 4-19-83; Ord. No. 2939, 9-12-83; Ord. No. 3995, §1, 9-17-96; Ord. No. 4222, 2-15-00; Code 1991, §72.58; Ord. No. 4889, 06-20-06; Ord. No. 5324, 6-1-10; Ord. No. 5340, 8-3-10; Ord. No. 5369, 12-7-10; Ord. No. 5407, 5-3-11; Ord. No. 5408, 5-3-11; Ord. No. 5597, 07-02-13; Ord. No. 5598, 7-2-13; Ord. No. 5604, 8-6-13; Ord. No. 5881, §1, 6-21-16; Ord. No. 5943, §1, 1-3-17; Ord. No. 5964, §1, 2, 4-4-2017; Ord. No. 6312, §1, 5-5-2020; Ord. No. 6475, §§ 4—6, 9-7-21)

72.59 ~~Dickson Street Entertainment District Annual Parking Pass Program~~ Establishment of Parking Permit Programs

~~The mayor or designee~~ Mayor or the Mayor's designee is hereby authorized to ~~establish~~ create parking permit programs within established parking districts, ~~to include~~ set the permit fees, and establish the locations, dates and times for where and when a permit may be valid. Permit fees may not be increased more than one time each calendar year.

72.60 Establishment and Adjustment of Paid Parking Rates within Parking District Zones

(A) The Mayor or the Mayor's designee is authorized to establish on-street and off-street locations within established parking district zones in which parking fees are required; to establish the parking rates for such locations; and to establish the days and times when payment shall be required to be paid by the owner or operator of any vehicle parked in those parking spaces or facilities. The Mayor or the Mayor's designee may suspend parking regulations within established parking district zones during city holidays.

(B) The Mayor or the Mayor's designee is authorized to adjust paid parking rates subject to the following limitations:

- (1) Paid parking rates shall not be increased within six months of the initial establishment of a parking district zone or within six months of any previous rate adjustment. Hourly rate adjustments shall not be increased by more than \$2.00 per hour per adjustment.
- (2) The Parking Division shall conduct a utilization assessment based on peak hours and days prior to any adjustment.
- (3) Rate and hour adjustments shall be based on deviation from ideal utilization rate between 75% and 85% of the paid parking spaces as determined by the Parking Division. The Mayor or the Mayor's designee may increase or decrease paid parking rates as necessary to achieve the goal of reaching the ideal utilization rate.
- (4) Adjustments to the paid parking rates or times shall be communicated through signage within the district for at least fourteen (14) days prior to the implementation of the adjustment.

~~Notwithstanding any other provision of this Code to the contrary, any person who desires to park a vehicle in the Dickson Street Entertainment District may do so by purchasing a Dickson Street Entertainment District Annual Parking Pass for the vehicle pursuant to the program created herein.~~

~~(A) — Validity and Usage.~~

- ~~(1) — An annual parking pass, valid for use only in the Dickson Street Entertainment District, shall permit the vehicle to which the pass has been issued to park in any valid paid parking space in the district, without the requirement of paying any pay station or meter.~~
- ~~(2) — The annual parking pass shall not be valid for parking in any public gated lots which require payment upon exit.~~

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- ~~(3) The annual parking pass shall not be valid for parking in any residential parking zone.~~
 - ~~(4) The annual parking pass shall not guarantee a parking space to a vehicle with an annual parking pass.~~
 - ~~(5) The annual parking pass shall not be valid for any parking space marked as "No Parking".~~
 - ~~(6) The annual parking pass shall visible from the exterior of the vehicle while it is parked in the district, and it shall display an identifying number.~~

~~(B) Issuance, Transfer and Costs.~~

- ~~(1) An annual parking pass, valid from August 1st through July 31st the following year and issued pursuant to this section, shall cost \$600.00. The total cost shall be reduced if purchased after August 1st but before June 1st the following year by an amount equal to the total annual cost divided by the total number of days remaining before the next August 1st. Any annual parking pass purchased on or after June 1st shall only become valid on the following August 1st.~~
- ~~(2) An annual parking pass is vehicle specific in that it shall be tied to only one vehicle license plate number, and not to any particular person.~~
- ~~(3) An annual parking pass may be transferred to another vehicle upon payment of a \$25.00 processing fee.~~
- ~~(4) No refunds shall be issued for any annual parking pass.~~

(Ord. No. 5371, 12-7-10)

72.60—72.69 Reserved

ARTICLE IV NONCONSENSUAL TOWING REGULATIONS

72.70 Application

- (A) These nonconsensual towing regulations shall apply within ~~the Entertainment District Parking Zone shown on Exhibit A~~established parking district zones for the nonconsensual towing of a vehicle subject to registration under the laws of Arkansas if it is found abandoned, parked without the consent of the property owner or the owners' agent, parked in violation of the time period or location agreed to by the owner or owner's agent, or for whatever reason the owner or owner's agent believes a vehicle, which is not the property of the owner or owner's agent, should be towed. These regulations do not apply to removal of vehicles from publicly owned or leased property, nor to police initiated tows. The sign requirements do not apply to residential driveways or parking lots designed for four or fewer vehicles. These regulations shall apply city-wide where indicated in §72.72.
- (B) ~~Private Pay to Park Lots within the Downtown Business District Parking Zone.~~ Owners/managers of private pay to park lots within ~~the Downtown Business District Parking Zone~~established parking district zones shall follow and obey all requirements set forth in §§ 72.71, 72.72, and 72.73 of the Parking Regulations Chapter. These regulations do not apply to removal of vehicles from publically owned or leased property, to police initiated tows, nor to other than private pay to park lots.

(Ord. No. 5322, 6-1-10; Ord. No. 5611, 9-3-13)

72.71 Requirements For Proper Signage Before Nonconsensual Towing From Private Parking Lots Is Permitted Within ~~The Entertainment District~~ Established Parking ~~District~~ Zones

- (A) *Exemption from the Sign Ordinance.* All signs required by this section shall be exempt from further regulation of the Sign Ordinance pursuant to §174.03(F).
- (B) *Location and Size of Nonconsensual Towing Warning Sign.* Every private parking lot with five (5) or more spaces must have an easily readable nonconsensual towing warning sign that is not more than 16 square feet, devoid of any advertising and prominently placed at each entrance to the parking lot.
- (C) *Contents of Sign for "Paid Parking Lot".* The nonconsensual towing warning sign shall contain only the following information in clearly legible letters at least one inch in height in the following order from the top of the sign for a private parking lot that allows paid parking.
- (1) The symbol for towing vehicles.
 - (2) "Private Parking Lot."
 - (3) Either "Pay to park at all hours" or "Pay to park during (posted) hours."
 - (4) At the owner's option, the sign may show the hourly rate and any maximum day or evening rate for parking in the lot.
 - (5) "Parking in violation of posted restrictions will result in towing of vehicle at owner's expense, up to \$60.00, plus storage of up to \$10.00 per day."
 - (6) Name, address (including physical address of storage lot), and telephone number of towing and storage firm authorized to tow vehicles from this private lot.
- (D) *Contents of sign for "Customers Only" or "Residents Only" Parking Lot.* The Nonconsensual Towing Warning Sign shall contain only the following information in clearly legible letters at least 1 inch in height in the following order from the top of the sign for a private parking lot that prohibits public parking and allows only residents or customers to park.
- (1) The symbol for towing vehicles.
 - (2) "Private Parking Lot."
 - (3) "Customers Only" or "Residents Only." The owner may denote the business or residential complex.
 - (4) "Parking of unauthorized vehicle will result in towing of vehicle at owner's expense, up to \$80.00, plus storage of up to \$10.00 per day."
 - (5) Name, address (including physical address of storage lot), and telephone number of towing and storage firm authorized to tow vehicles from this private lot.

(Ord. No. 5322, 6-1-10)

72.72 Regulations Of Towing And Storage Companies

- (A) *Valid Licenses Required.* Any towing and storage company operating anywhere in the City of Fayetteville must be in full compliance with all state and local license requirements, A.C.A. §27-50-1101, the Fayetteville Code, and be in good standing with the Arkansas Towing and Recovery Board.
- (B) *Allowed Charges for Nonconsensual Towing and Storage.* Within ~~the Entertainment District~~ established Parking ~~District~~ Zones, no Towing and Storage Company may charge a nonconsensually towed vehicle's

owner/driver more than \$60.00 if the vehicle is towed from a "Paid Parking Lot", \$80.00 if the vehicle is towed from a "Customers Only" or "Residents Only" Parking Lot, and \$100.00 if the vehicle is towed from private property not classified as a "Paid Parking Lot" or "Customers Only" or "Residents Only" Parking Lot. In addition, the towing and storage company may charge up to \$10.00 per day for storage beginning twelve (12) hours after the nonconsensually towed vehicle is placed in the storage lot and available to be reclaimed by its owner or driver. The maximum \$100.00 towing fee and \$10.00 per day storage fee for a nonconsensual tow from private property that is not police initiated is applicable everywhere within the entire city limits. The above fees are the total amount that can be charged to the owner/operator. No administrative, special equipment or other fee can be charged to the owner/operator of the vehicle.

- (C) *Payments by Owner/Operator for Towing and Storage Charges.* The towing and storage company must accept valid credit and debit cards for payment of towing and storage fees and may accept any other form of payment.
- (D) *Location of Storage Yard.* The towing and storage company may not charge mileage or transportation fees for towing the vehicle to its storage lot which must either be located within Fayetteville or not more than 8 miles from the place from which the vehicle was towed.
- (E) *Company Must Answer Telephone.* The towing and storage company shall answer every telephone call for the number displayed upon the nonconsensual towing warning sign during every twelve (12) hour period immediately after a vehicle has been towed if such vehicle remains in the towing and storage company's possession.

(Ord. No. 5322, 6-1-10)



MEETING OF MAY 16, 2023

TO: Mayor Jordan and City Council

THRU: Peter Nierengarten, Environmental Director
Susan Norton, Chief of Staff

FROM: Chris McNamara, Sustainability Project Manager

DATE:

SUBJECT: Dissolution of Energy Improvement District 1:

RECOMMENDATION:

Staff recommends the City Council Repeal Article XXVI ENERGY IMPROVEMENT DISTRICT NO. 1 in Chapter 33 Departments, Boards, Commissions and Authorities of the Fayetteville Code and abolish the Energy Improvement District No. 1.

BACKGROUND:

The purpose of Energy Improvement District 1 (EID 1) was to operate a Property Assessed Clean Energy (PACE) district in Fayetteville and Springdale that allows property owners to borrow money for weatherization, energy efficiency, renewable energy or water conservation improvements to their property.

PACE enabling legislation was passed by the Arkansas Legislature in the 2013 session and signed by the Governor in April 2013. That legislation allows Cities, Counties or the State to create Energy Improvement Districts within the State of Arkansas.

On October 15, 2013, the Fayetteville City Council passed Ordinance No. 5624, which created Energy Improvement District No. 1. pursuant to Ark. Code Ann. § 8-15-101 to manage PACE for the City of Fayetteville. In August 2015, the Energy Improvement District executed Arkansas' first and only PACE project in EID 1, which included weatherization and energy efficiency improvement on a Fayetteville Office Building.

On December 16, 2015, the City Council of the City of Springdale passed Ordinance No. 5001, authorizing Springdale to participate in Property Assessed Energy Improvement District No. 1. and on November 14, 2016, the City of Springdale joined EID 1.

DISCUSSION:

In the nine years since its inception in 2013, EID 1 has only advanced one project through the PACE program. Efforts were made throughout these years by the district administrators, board members and qualified contractors to advance projects through the district. However, economic forces, other incentive programs and limited buy-in from the community prevented potential projects from utilizing the PACE district.

In the summer of 2022, Springdale notified EID 1 that it would exit the district at the end of the year due to lack of activity in the district. On December 12th, 2022, the EID 1 board voted to dissolve the district. Board

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

members unanimously agreed that the limited success of the program along with the resources and time required from board members and city staff to maintain the district justified closure of the district.

Attachment - EID 1_Dissolution Resolution, is a signed resolution from the EID 1 board recommending dissolving the district.

BUDGET/STAFF IMPACT:

Energy Improvement District No. 1 is legally and financially independent of the City of Fayetteville and the City of Springdale and there is no budget impact associated with the closure of Energy Improvement District No. 1.

ATTACHMENTS: SRF - District Closure, EID 1_Dissolution Resolution



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2023-688

Dissolution of Energy Improvement District 1:

AN ORDINANCE TO REPEAL ARTICLE XXVI ENERGY IMPROVEMENT DISTRICT NO. 1 IN CHAPTER 33 DEPARTMENTS, BOARDS, COMMISSIONS, AND AUTHORITIES OF THE FAYETTEVILLE CITY CODE, AND TO APPROVE THE DISSOLUTION OF ENERGY IMPROVEMENT DISTRICT NO. 1

WHEREAS, Energy Improvement District No. 1 was created by the Fayetteville City Council on October 15, 2013, upon the enactment of Ordinance 5624; and

WHEREAS, on November 14, 2016, the City of Springdale joined Energy Improvement District No. 1; and

WHEREAS, the district has had limited success in advancing projects; it requires resources and time from board members and city staff to maintain the district; and other financial mechanisms and federal incentives are supporting the goals of the District; and

WHEREAS, on December 12, 2022 the Board of Directors of Energy Improvement District No. 1 voted to express its support to end its operations and to recommend that the Fayetteville City Council and Springdale City Council vote to dissolve the District; and

WHEREAS, the District has no projects pending or expected and the Fayetteville City Council believes dissolution of the District in in the best interest of the member cities and their residents at this time.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby repeals Article XXVI **Energy Improvement District No. 1** in Chapter 33 **Departments, Boards, Commissions, and Authorities** of the Fayetteville City Code.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Mayor to take any other necessary action that may be required to end the operation of and dissolve Energy Improvement District No. 1.

City of Fayetteville Staff Review Form

2023-688

Item ID

5/9/2023

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Chris McNamara

4/21/2023

SUSTAINABILITY/RESILIENCE (631)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends the City Council Repeal Article XXVI ENERGY IMPROVEMENT DISTRICT NO. 1 in Chapter 33 Departments, Boards, Commissions and Authorities of the Fayetteville Code and abolish the Energy Improvement District No. 1.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? No

Total Amended Budget

\$ -

Expenses (Actual+Encum)

\$ -

Available Budget

\$ -

Does item have a direct cost? No

Item Cost

\$ -

Is a Budget Adjustment attached? No

Budget Adjustment

\$ -

Remaining Budget

\$ -

Purchase Order Number:

Previous Ordinance or Resolution # V20221130 (Ord. 5624, 10-15-13)

Change Order Number:

Approval Date:

Original Contract Number:

Comments:

A RESOLUTION TO EXPRESS THE SUPPORT OF THE ENERGY IMPROVEMENT DISTRICT NO. 1 BOARD OF DIRECTORS TO END THE OPERATION OF AND DISSOLVE ENERGY IMPROVEMENT DISTRICT NO. 1

WHEREAS, Energy Improvement District No. 1 was created by the Fayetteville City Council on October 15, 2013, upon the enactment of Ordinance 5624; and

WHEREAS, on November 14, 2016, the City of Springdale joined Energy Improvement District No. 1; and

WHEREAS, the district has had limited success in advancing projects; it requires resources and time from board members and city staff to maintain the district, and other financial mechanisms and federal incentives are supporting the goals of the District; and

WHEREAS, on December 12, 2022 the Board of Directors of Energy Improvement District No. 1 voted to express its support to end its operations and to recommend that the Fayetteville City Council and Springdale City Council vote to dissolve the District; and

WHEREAS, the District has no projects pending or expected and the Board believes dissolution of the District is in the best interest of the member cities and their residents at this time.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF ENERGY IMPROVEMENT DISTRICT NO. 1:

Section 1: That the Board of Directors of Energy Improvement District No. 1 supports an end to the operation of the District.

Section 2: That the Board of Directors of Energy Improvement District No. 1 recommends that the City Councils of the City of Fayetteville and the City of Springdale take any necessary action to end the operation of and dissolve Energy Improvement District No. 1.

PASSED and APPROVED this 12th day of December, 2022.

APPROVED:

By: 
SLOAN SCROGGIN, Chair

ATTEST:

By: 
MIRANDA GAUTHIER, Vice Chair



MEETING OF MAY 16, 2023

TO: Mayor Jordan and City Council

THRU:

FROM: Kit Williams, City Attorney

DATE:

SUBJECT:

RECOMMENDATION:

See memo from City Attorney Kit Williams attached.

BACKGROUND:

DISCUSSION:

BUDGET/STAFF IMPACT:

ATTACHMENTS: City Attorney Memo re Amendment to 92.01



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2023-740

AN ORDINANCE TO AMEND § 92.04 (C) OF THE FAYETTEVILLE CODE TO CONFORM THIS SUBSECTION WITH THE JUST ENACTED ACT 730 OF THE 94TH GENERAL ASSEMBLY

WHEREAS, when the City Council passed Ordinance 6587 and enacted §92.04(C) last year to prohibit pet stores in Fayetteville from selling puppies produced by mass breeding operations that treat dogs like livestock rather than pets, no state law was contrary to or in conflict with this ordinance; and

WHEREAS, the sponsor of House Bill 1591 which has now been passed to become Act 730 of 2023 publicly acknowledged that he sponsored this bill to invalidate and preempt the City of Fayetteville ordinance which enacted §92.04 (C) of the *Fayetteville Code*; and

WHEREAS, since Act 730 of 2023 does indeed preempt and invalidate our City's former authority and power to regulate the sale of puppies obtained from mass breeding operations or puppy dealers which are regulated and in compliance with 7 U.S.C. §2132 and associated USDA regulations, the City of Fayetteville has no choice but to amend §92.04(C) to conform to the newly passed Act 730 of 2023.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby amends § 92.04(C) of the *Fayetteville Code* by repealing it in its entirety and enacting a replacement (C) as follows:

“(C) A retail pet store shall only be allowed to sell a puppy or kitten if it has been acquired from a cattery, kennel or dealer as defined in 7 U.S.C. §2132 and pursuant to the dictates of Act 730 of 2023 codified as A.C.A. §4-97-109 **Applicability to other laws – Preemption** and any later amendments thereto. A retail pet store may assist the Fayetteville and Washington County Animal Shelters and nonprofit dog and cat rescue organizations by displaying animals or their photos for adoption in the pet store.”



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Jodi Batker
Paralegal

TO: **Mayor Jordan**
City Council

CC: **Susan Norton**, Chief of Staff
Yolanda Fields, Community Resources Director
Justine Lentz, Animal Services Superintendent

FROM: **Kit Williams**, City Attorney

DATE: **April 25, 2023**

RE: **Act 730 of 2023 Will Preempt Fayetteville Ordinance 6587 Codified as §92.01(C) of the Fayetteville Code**

Act 730 of 2023 will become effective this summer. Its sponsor publicly stated that this law was drafted to invalidate Fayetteville's ordinance which sought to prevent pet stores in Fayetteville from being outlets for mass puppy breeding facilities and dealers. This Act significantly changed the existing provision in the Retail Pet Store Consumer Protection Act which currently states that that "Nothing in this chapter shall be construed to prevent or limit the application of any other law" (such as the *Fayetteville Code*) into a specific "Preemption" of Ordinance 6587 and §92.04(C).

Act 730 of 2023 also amended the current state law by adding:

"(b) A local government shall not pass an ordinance... that prohibits a retail pet store from

...

(2) selling an animal that is acquired from a cattery, kennel, or dealer as defined in 7 U.S.C. §2132....

(c) An ordinance ... of a local government shall be rendered invalid if it is found to be in conflict with the language set out within this section."

Petland sells puppies obtained from regulated puppy mass breeding operations in which the US Department of Agriculture through 7 U.S.C. §2132 allows the mother dogs to be kept in small wire cages almost all the time for their entire breeding life. As you were informed during consideration of the passage of Ordinance 6587, these man's best friends are treated (or mistreated) like livestock or just commodities, not pets. The witnesses told you these puppy mass breeding operations were "puppy mills" even with the USDA regulations.

We did our best to prevent Petland from being an outlet for what seems to be unacceptable, inhumane puppy mass breeding operations. I believe that the City would have prevailed if the Legislature had not changed the law explicitly to render Ordinance 6587 and any similar regulatory ordinance invalid and unenforceable.

However, now we must conform our *Fayetteville Code* to state law including Act 730 of 2023 by amending 92.04(C) so that it is not contrary to that Act when it becomes effective this summer. The Benton County Circuit Court has continued its injunction against our ordinance as this litigation has progressed so there will be no substantive change when our *Fayetteville Code* is changed to conform with this new law. Therefore, I believe that we need to voluntarily move forward and repeal our *Code* section to be replaced with language consistent with Act 730. Attached is my draft of such ordinance to accomplish this amendment.

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

HOUSE BILL 1591

By: Representatives Ray, Beaty Jr.
By: Senator J. Dotson

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS RETAIL PET STORE
CONSUMER PROTECTION ACT OF 1991; TO CLARIFY THE
APPLICABILITY OF THE ARKANSAS RETAIL PET STORE
CONSUMER PROTECTION ACT OF 1991; TO PREEMPT CERTAIN
LAWS CONCERNING RETAIL PET STORES; AND FOR OTHER
PURPOSES.

Subtitle

TO CLARIFY THE APPLICABILITY OF THE
ARKANSAS RETAIL PET STORE CONSUMER
PROTECTION ACT OF 1991; AND TO PREEMPT
CERTAIN LAWS CONCERNING RETAIL PET
STORES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 4-97-103, concerning the definitions used
under the Arkansas Retail Pet Store Consumer Protection Act of 1991, is
amended to add an additional subdivision to read as follows:

(12) "Local government" means a city of the first class, a city
of the second class, an incorporated town, or a county.

SECTION 2. Arkansas Code § 4-97-109 is amended to read as follows:

4-97-109. Applicability to other laws - Preemption.

(a) Nothing in Except as provided in subsection (b) of this section,
this chapter shall not be construed to prevent or limit the application of



1 any other law.

2 (b) A local government shall not pass an ordinance, resolution, or
3 regulation that prohibits a retail pet store from:

4 (1) Acquiring an animal from a:

5 (A) Cattery;

6 (B) Kennel; or

7 (C) Dealer as defined in 7 U.S.C. § 2132, as it existed on
8 January 1, 2023; or

9 (2) Selling an animal that is acquired from a cattery, kennel,
10 or dealer as defined in 7 U.S.C. § 2132, as it existed on January 1, 2023, to
11 a person.

12 (c) An ordinance, resolution, or regulation of a local government
13 shall be rendered invalid if it is found to be in conflict with the language
14 set out within this section.

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17 **APPROVED: 4/12/23**
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MEETING OF MAY 16, 2023

TO: Mayor Jordan and City Council

THRU: Alison Jumper, Director of Parks, Natural Resources and Cultural Affairs
Susan Norton, Chief of Staff

FROM: Joanna Bell, Arts and Culture Director—Parks, Natural Resources and Cultural Affairs

DATE:

SUBJECT: Vending in Parks Ordinance Update

RECOMMENDATION:

Staff recommends amending Chapter 97.086 Vending And Peddling to allow the Director of Parks, Natural Resources, and Cultural Affairs to appoint a market organizer to coordinate and oversee the administration of vendors approved to sell food, nonalcoholic beverages, and other approved items as a part of the Gulley Park Concert Series.

BACKGROUND:

As the City of Fayetteville Parks, Natural Resources and Cultural Affairs grows programming to involve more art activations, and as additional plans for more market activity in the Upper Ramble come closer, a series of activations with the local maker community have presented themselves as a potential pilot program adjacent to the Gulley Park Concert Series for the summer of 2023.

DISCUSSION:

The current vending and peddling chapter of the code allows for vending by sponsors and food trucks associated with the Gulley Park Concert Series. The proposed change would permit the Director of Parks, Natural Resources, and Cultural Affairs to seek assistance from an appointed individual or community organization to help manage artists, makers, and craftspeople to showcase and sell their work at the concert series.

Staff proposes amending the code with a sunset date of December 31, 2023, to allow for a pilot period. By piloting this during the summer concert series in 2023, staff will gain valuable insights into pairing markets and concerts as envisioned for the Upper Ramble. The lessons learned this summer will help inform future proposed changes that may be needed to Chapter 97.

Additionally, the department title throughout this subchapter of Article VI and at the beginning of Chapter 97 has been updated to reflect the department's name change, which took effect in 2022.

BUDGET/STAFF IMPACT:

None.

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

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ATTACHMENTS: EXHIBIT A - 97.086 - Vending And Peddling, Staff Review Form- Vending Ordinance Update, 97.086 - Vending And Peddling - REDLINE



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2023-715

Vending in Parks Ordinance Update

AN ORDINANCE TO AMEND THE TITLE OF CHAPTER 97 PARKS AND RECREATION TO PARKS, NATURAL RESOURCES, AND CULTURAL AFFAIRS, AND TO AMEND § 97.086 VENDING AND PEDDLING TO AUTHORIZE THE DIRECTOR OF PARKS, NATURAL RESOURCES, AND CULTURAL AFFAIRS TO APPOINT A MARKET ORGANIZER TO COORDINATE VENDORS AT THE GULLEY PARK CONCERT SERIES THROUGH DECEMBER 31, 2023

WHEREAS, § 97.086 of the Fayetteville City Code allows sponsors and food trucks associated with the Gulley Park Concert Series to sell food and other approved items; and

WHEREAS, the Director of Parks, Natural Resources, and Cultural Affairs recommends approval of an amendment that will allow an appointed individual or community organization to help manage artists, makers, and craftspeople to showcase and sell their work at the concert series.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby amends the title of Chapter 97 of the Fayetteville City Code from “Parks and Recreation” to “Parks, Natural Resources, and Cultural Affairs.”

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby repeals § 97.086 **Vending and Peddling** and enacts a replacement § 97.086 as shown in Exhibit A attached hereto.

EXHIBIT A

97.086 Vending And Peddling

(A) *General Prohibition of Selling in City Parks.* No person or business shall within a city park sell anything.

(B) *Exemptions.*

(1) The city's regularly licensed concessionaires acting pursuant to the authority and regulation of the city are exempt from subsection (A).

(2) Nonprofit organizations which have obtained a special events permit may sell nonalcoholic beverages, food and other approved items during an annual event.

(3) Sponsors of the Gulley Park Concert Series and other special events offered by the Department of Parks, Natural Resources, and Cultural Affairs may sell food, nonalcoholic beverages, and other approved items during the event when specifically approved by the Director of Parks, Natural Resources, and Cultural Affairs. Approved merchandise may be sold at special events by performers and hosts if approved in advance by the Director of Parks, Natural Resources, and Cultural Affairs.

(4) The Farmers' Market and its members may sell items allowed pursuant to §114.02 (C) of the Fayetteville Code on Sundays, Saturdays and one weekday within a portion of the Lake Fayetteville Park that is licensed to the Botanical Garden Society of the Ozarks (if approved by the society) as shown on Exhibit A.



(5) Organizations the city directly funds, event sponsors and the non-profit Friends of Fayetteville Parks are allowed at no charge to setup a table to distribute information at park events upon approval of the Director of Parks, Natural Resources, and Cultural Affairs.

(6) The Director of Parks, Natural Resources, and Cultural Affairs is authorized to appoint a market organizer to coordinate and oversee the administration of vendors to sell food, nonalcoholic beverages, and other approved items as a part of the Gulley Park Concert Series. The provisions of this subsection shall expire on December 31, 2023.

- (C) Food trucks permitted pursuant to §178.05 may operate in City Parks as described below:
 - (1) Food trucks may not locate in the same area that is actively being served by a contracted concessionaire as shown on Exhibit C during regular season Fayetteville Parks, Natural Resources, and Cultural Affairs leagues and tournaments.
 - (2) Food trucks may locate at Gulley Park during a Gulley Park Concert or special event in other parks such as tournaments, reserved park gatherings, etc. if approved by the Director of Parks, Natural Resources, and Cultural Affairs.
- (D) For special events, food trucks and sales of items other than food may be approved by the Director of Parks, Natural Resources, and Cultural Affairs through a special event permit

City of Fayetteville Staff Review Form

2023-715

Item ID

5/16/2023

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Joanna Bell

4/26/2023

PARKS & RECREATION (520)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends amending Chapter 97.086 Vending And Peddling to allow the Director of Parks, Natural Resources, and Cultural Affairs to appoint a market organizer to coordinate and oversee the administration of vendors approved to sell food, nonalcoholic beverages, and other approved items as a part of the Gulley Park Concert Series.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? No

Total Amended Budget

\$ -

Expenses (Actual+Encum)

\$ -

Available Budget

\$ -

Does item have a direct cost? No

Item Cost

\$ -

Is a Budget Adjustment attached? No

Budget Adjustment

\$ -

Remaining Budget

\$ -

V20221130

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:

97.086 Vending And Peddling

(A) *General Prohibition of Selling in City Parks.* No person or business shall within a city park sell anything.

(B) *Exemptions.*

(1) The city's regularly licensed concessionaires acting pursuant to the authority and regulation of the city are exempt from subsection (A).

(2) Nonprofit organizations which have obtained a special events permit may sell nonalcoholic beverages, food and other approved items during an annual event.

(3) Sponsors of the Gulley Park ~~concerts-Concert Series~~ and other special events offered by the the Department of Parks, Natural Resources, and Cultural Affairs Parks and Recreation Department may sell food, nonalcoholic beverages, and other approved items during the event when specifically approved by the Director of Parks, Natural Resources, and Cultural Affairs Parks and Recreation Department Director. Approved merchandise may be sold at special events by performers and hosts if approved in advance by the Director of Parks, Natural Resources, and Cultural Affairs the Parks and Recreation Director.

(4) The Farmers' Market and its members may sell items allowed pursuant to §114.02 (C) of the Fayetteville Code on Sundays, Saturdays and one weekday within a portion of the Lake Fayetteville Park that is licensed to the Botanical Garden Society of the Ozarks (if approved by the society) as shown on Exhibit A.

~~Organizations the city directly funds, event sponsors and the non-profit Friends of Fayetteville Parks are allowed at no charge to setup a table to distribute information at park events upon approval of the Parks and Recreation Director.~~



(5) Organizations the city directly funds, event sponsors and the non-profit Friends of Fayetteville Parks are allowed at no charge to setup a table to distribute information at park events upon approval of the Director of Parks, Natural Resources, and Cultural Affairs.

(6) The Director of Parks, Natural Resources, and Cultural Affairs is authorized to appoint a market organizer to coordinate and oversee the administration of vendors to sell food, nonalcoholic beverages, and other approved items as a part of the Gulley Park Concert Series. The provisions of this subsection shall expire on December 31, 2023.

- (C) Food trucks permitted pursuant to §178.05 may operate in City Parks as described below:
 - (1) Food trucks may not locate in the same area that is actively being served by a contracted concessionaire as shown on Exhibit C during regular season Fayetteville Parks, Natural Resources, and Cultural Affairs~~Parks and Recreation~~ leagues and tournaments.
 - (2) Food trucks may locate at Gulley Park during a Gulley Park Concert or special event in other parks such as tournaments, reserved park gatherings, etc. if approved by the Director of Parks, Natural Resources, and Cultural Affairs~~Parks and Recreation Director~~.
- (D) For special events, food trucks and sales of items other than food may be approved by the Director of Parks, Natural Resources, and Cultural Affairs~~Parks and Recreation Director~~ through a special event permit



MEETING OF MAY 16, 2023

TO: Mayor Jordan and City Council

THRU: Susan Norton, Chief of Staff
Jonathan Curth, Development Services Director
Jessica Masters, Development Review Manager

FROM: Ryan Umberger, Senior Planner

DATE:

SUBJECT: **Appeal: LSD-2023-0004: Large Scale Development (SOUTH OF N. SHILOH DR/THE JUNCTION AT SHILOH, 363): Submitted by CRAFTON TULL for property located SOUTH OF N. SHILOH DR in WARD 4. The property is split zoned RMF-24, RESIDENTIAL MULTI-FAMILY, TWENTY-FOUR UNITS PER ACRE and CS, COMMUNITY SERVICES and contains approximately 11.73 acres. The request is for a multi-family development with 177 units and associated parking.**

RECOMMENDATION:

City staff and the Planning Commission recommend approval of a request for a multi-family residential development as described and shown below.

BACKGROUND:

The subject property is located south of W. Mount Comfort Road and west of I-49, where N. Shiloh Drive dead-ends. The property is split-zoned RMF-24, Residential Multi-Family, Twenty-Four Units Per Acre and CS, Community Services. A portion of the site totaling 9.11 acres was rezoned from I-1, Heavy Commercial and Light Industrial to CS by the City Council on February 15, 2022. The undeveloped site totals approximately 11.73 acres and is covered by vegetation throughout. A branch of the Hamestring Creek runs through the center of the property and roughly 22% of the site lies within a floodplain.

Request: The applicant requests large scale development approval to develop the subject property with a 177-unit multi-family development. The proposed development is composed of four structures with studio, one-, two-, and three-bedroom units and associated parking. As a part of their street improvements, the applicant intends to build out a portion of N. Shiloh Drive which appears as a Planned Neighborhood Link Street on the 2040 Master Street Plan. Planning Commission determined street improvements including build-out of N. Shiloh Drive with a two-foot frontage zone, 12-foot trail and 10-foot greenspace on the east side of the street, two drive lanes totaling 19-feet in width, 1.5-foot curb and gutter, and a 12-foot greenspace along the west side of the street. Three variances to the Unified Development Code were requested and approved with the application. Each variance is described in detail alongside staff's recommendations in the attached Planning Commission staff report.

Public Comment: Staff has received public comment opposing the development. A neighbor spoke at the Subdivision Committee meeting on March 30th suggesting the development would exacerbate flooding and

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Fayetteville, AR 72701

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identified issues with proposed building heights, the singular access to the site through the proposed Shiloh Drive extension, and removal of wildlife habitat. They also requested a vegetative buffer be maintained for the residential properties to the west. Another member of the public commented in opposition to the requested variance to the Provisions for Flood Hazard Reduction. They oppose allowing increases in flood flows, heights, and/or channel velocities on adjacent properties because it would increase flood risk. The individual also complained that they had not received notification specific to the proposed changes to the base flood elevation. At the April 10th Planning Commission meeting, several members of the public spoke in opposition to the request. Comments are summarized in the Discussion section below.

DISCUSSION:

At the April 10, 2023 Planning Commission meeting, a vote to approve the item passed with a vote of 6-2-1; Commissioner Winston made the motion with Commissioner Brink seconding. Commissioners Sparkman, Brink, McGetrick, Madden, Holcomb, and Winston voted to approve the large scale development. Commissioners Garlock and Gulley voted to deny. Commissioner Payne recused. Commissioners discussed street and trail access to the site. Those in favor expressed concerns about the number of available housing units in northwest Arkansas and suggested the development would contribute toward meeting housing demand. Those in opposition were concerned about the impact the development would have on traffic, particularly because of its singular access onto N. Shiloh Drive. Several members of the public spoke during the meeting. Their concerns included the location of parking lots and structures, height of structures, ecological sensitivity of the Hamestring Creek riparian corridor, increased traffic volumes, existing condition of N. Shiloh Drive, and the impact the development would have on flooding in the area. The approval of the large scale development was appealed by neighbors on Thursday, April 20th. In the intervening time, the applicant has provided a traffic study which is included in this report as Exhibit C.

Conditions of Approval:

1. Planning Commission determination of right-of-way dedication. Staff recommends right-of-way dedication in the amount of 58 feet from the centerline of the proposed extension of N. Shiloh Drive.
2. Planning Commission determination of street improvements. Staff recommends N. Shiloh Drive is constructed with a 12-foot trail and 10-foot greenspace on the east side of the street, two drive lanes totaling 19-feet in width, 1.5-foot curb and gutter, and a 12-foot greenspace along the west side of the street;
3. Planning Commission determination of a variance to UDC §166.08(E)(b): Block Layout/Connectivity. Staff recommends approval of the variance for the reasons stated in the attached Planning Commission staff report;
4. Planning Commission determination of a variance to UDC §166.23(C): Site Development Standards. Staff recommends denial of the variance for the reasons stated in the attached Planning Commission staff report;
5. Planning Commission determination of a variance to UDC §168.10(U): Provisions For Flood Hazard Reduction. Staff recommends approval of the variance for the reasons stated in the attached Planning Commission staff report;
6. Vacation of an existing 25-foot utility easement is subject to separate application and approval. The easement shall be vacated prior to building permit approval.
7. Parkland dedication of 1.72 acres and fees in the amount of \$86,632 based on a total of 177 multi-family residential units;
8. Streetlights must be installed at intersections and at a linear spacing distance of no more than 300 feet;
9. A determination from the Zoning and Development Administrator must be on file prior to grading permit to exempt the project from the minimum buildable street frontage requirement in the CS zoning district; alternatively, a Board of Adjustment variance shall be granted;
10. Conditions of approval from Engineering and Urban Forestry are included in the official conditions of

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approval, attached hereto;

11. All comments from Planning staff must be addressed including:
 - a. Vacation of easements where structures and the pool are proposed is subject to separate approval. No portion of any building or pool shall be built within a public utility easement.
 - b. Parking table shall be revised to include 12 studio apartments into the overall bedroom calculation.
 - c. Please show the bay windows on the building footprints where they are proposed.
 - d. If the amenity area on the floor plan for Building 1 is intended to be used for commercial leasing purposes, it will be subject to UDC 166.24 & 166.25.
 - e. Revise the sidewalk parallel to southernmost driveway on the west side to be as close to the driveway as possible so that the amount of fill in the easement and over the 36" waterline is kept to the minimum necessary to achieve this crossing.

Standard Conditions of Approval:

1. Impact fees for fire, police, water, and sewer shall be paid in accordance with City ordinance;
2. Plat Review and Subdivision comments (to include written staff comments provided to the applicant or his representative, and all comments from utility representatives: Black Hills Energy, AT&T, Ozarks, SWEPCO, and Cox Communications);
3. All mechanical/utility equipment (roof and ground mounted) shall be screened using materials that are compatible with and incorporated into the structure. A note shall be clearly placed on the plat and all construction documents indicating this requirement;
4. Trash enclosures shall be screened on three sides with materials complimentary to and compatible with the principle structure. Containers may also be screened from view of the street by the principal structure or vegetation. Elevations of the proposed dumpster enclosure shall be submitted to the Planning and Solid Waste Divisions for review prior to building permit;
5. All existing utilities below 12kv shall be relocated underground. All proposed utilities shall be located underground;
6. Staff approval of final detailed plans, specifications and calculations (where applicable) for grading, drainage, water, sewer, fire protection, streets (public and private), sidewalks, parking lot(s) and tree preservation. The information submitted for the plat review process was reviewed for general concept only. All public improvements are subject to additional review and approval. All improvements shall comply with City's current requirements;
7. All exterior lights shall comply with the City lighting ordinance. Manufacturer's cut-sheets are required for review and approval prior to issuance of a building permit;
8. All freestanding and wall signs shall comply with ordinance specifications for location, size, type, number, etc. Any proposed signs shall be permitted by a separate sign permit application prior to installation. Freestanding pole signs and electronic message boards (direct lighting) are prohibited in the I-540 Design Overlay District;
9. Large scale development shall be valid for one calendar year;
10. Contact the City's Emergency 911 Address Coordinator for addressing prior to building permit;
11. Prior to building permit, a cost estimate for all required landscaping is to be submitted to the Landscape Administrator for review. Once approval is gained, a guarantee is to be issued (bond/letter of credit/cash) for 150% of the cost of the materials and installation of the plants. This guarantee will be held until the improvements are installed and inspected, at the time of Certificate of Occupancy; and
12. Prior to the issuance of a building permit the following is required:
 - a. Grading and drainage permits;
 - b. Separate easement plat for this project that shall include the tree preservation area and all utility and access easements;
 - c. Exterior lighting package must be provided to the Planning Division;
 - d. An on-site inspection by the Landscape Administrator of all tree protection measures prior to

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- any land disturbance;
- e. Project Disk with all final revisions; and
- f. Completion of all required improvements or the placement of a surety with the City (letter of credit, bond, escrow) as required by Section 158.01 "Guarantees in Lieu of Installed Improvements" to guarantee all incomplete improvements. Further, all improvements necessary to serve the site and protect public safety must be completed, not just guaranteed, prior to the issuance of a Certificate of Occupancy.

BUDGET/STAFF IMPACT:

N/A

ATTACHMENTS: Appeal Letter, Exhibit A, Exhibit B, Exhibit C, Planning Commission Staff Report

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2023-708

Appeal: LSD-2023-0004: Large Scale Development (SOUTH OF N. SHILOH DR/THE JUNCTION AT SHILOH, 363): Submitted by CRAFTON TULL for property located SOUTH OF N. SHILOH DR in WARD 4. The property is split zoned RMF-24, RESIDENTIAL MULTI-FAMILY, TWENTY-FOUR UNITS PER ACRE and CS, COMMUNITY SERVICES and contains approximately 11.73 acres. The request is for a multi-family development with 177 units and associated parking.

A RESOLUTION TO GRANT THE APPEAL OF CITY COUNCIL MEMBER TERESA TURK AND DENY LARGE SCALE DEVELOPMENT APPLICATION LSD-2023-004

WHEREAS, the Fayetteville Planning Commission voted to approve Large Scale Development application LSD-2023-004 on April 10, 2023; and

WHEREAS, City Council Member Teresa Turk timely appealed this approval by her email to City Clerk Kara Paxton on April 20, 2023.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby determines that Large Scale Development application LSD-2023-004 submitted by Crafton Tull for The Junction at Shiloh is denied.

Umberger, Ryan

To: Masters, Jessica; Pennington, Blake; Shelton, Jackson
Cc: Turk, Teresa; Williams, Kit; Paxton, Kara; Martha Clark; Curth, Jonathan
Subject: RE: Sponsoring Appeal of LSD-2023-004

From: Pennington, Blake <bpennington@fayetteville-ar.gov>
Sent: Thursday, April 20, 2023 10:13 AM
To: Shelton, Jackson <jshelton@fayetteville-ar.gov>
Cc: Turk, Teresa <teresa.turk@fayetteville-ar.gov>; Williams, Kit <kwilliams@fayetteville-ar.gov>; Paxton, Kara <kapaxton@fayetteville-ar.gov>; Martha Clark <m3clark@yahoo.com>; Curth, Jonathan <jcurth@fayetteville-ar.gov>; Masters, Jessica <jmasters@fayetteville-ar.gov>
Subject: Re: Sponsoring Appeal of LSD-2023-004

This appeal meets the form, time, and place requirements of Section 155.02 of the Unified Development Code. Staff will need time to prepare the agenda packet so I will defer to them on the meeting date.

Thanks,

Blake

Blake E. Pennington
Assistant City Attorney
113 W. Mountain St.
Fayetteville, AR 72701
Tele: (479) 575-8313
Fax: (479) 575-8315

Sent from my iPhone

On Apr 20, 2023, at 10:25 AM, Shelton, Jackson <jshelton@fayetteville-ar.gov> wrote:

Mr. Pennington,

When you have the availability could you verify that this appeal meets all requirements to move forward and be heard by City Council.

Thank you for your time and attention on this matter sir.

Jackson Shelton

Office of the City Clerk Treasurer

Senior Deputy Clerk

City of Fayetteville, Arkansas

113 West Mountain St

Fayetteville, AR 72701

jshelton@fayetteville-ar.gov

Office Phone – 479-575-8310

[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)



From: Turk, Teresa <teresa.turk@fayetteville-ar.gov>

Sent: Thursday, April 20, 2023 9:10 AM

To: Pennington, Blake <bpennington@fayetteville-ar.gov>; Williams, Kit <kwilliams@fayetteville-ar.gov>; CityClerk <cityclerk@fayetteville-ar.gov>

Cc: Martha Clark <m3clark@yahoo.com>

Subject: Sponsoring Appeal of LSD-2023-004

Good Morning Kara, Blake and Kit,

I am submitting on behalf of Ms. Martha Clark the following appeal of the Planning Commission's approval of LSD-2023-0004. Please let me know if you require additional information to comply with the requirements of the LSD appeal process.

Thank you very much,

Teresa Turk

Ward 4 Position 1, Fayetteville City Council

I am asking you, as a city council member, to sponsor our appeal to the Planning Commission's approval of LSD-2023-0004 Shiloh Junction.

We challenge approval of the project and it's allowed variances based on the following:

1. The proposed development would violate a city ordinance, state statute or a federal statute, specifically under UDC 168 - Flood Damage Prevention. The FEMA map info for the proposed area is 15 years old. Without a Flood Study made with this year's data, we feel the Planning Commission's approval to a variance from Section 168.10(U) was made prematurely. The impact of storm runoff from the new Fayetteville police station and improved intersection of Stephen Carr Blvd, Porter Road and Deane Street is yet to be determined. Stormwater from this newly developed area feeds the floodplain of the proposed LDS project and downstream residential property along the Middle Fork, as well as the

Hamestring Creek Trail corridor. A review of UDC 170 - Stormwater Management and Drainage could apply here as well. FEMA regulations regarding floodplain development may also come into play when updated maps become available from the agency possibly later this year.

2. The proposed development would create or compound a dangerous traffic condition. It was noted during the Planning Commission meeting in which approval to the project was given, that a Traffic Study was not done. This is needed in order to measure the potential impact that 177 residential units and their implied vehicles will have on the current Pine Valley neighborhood and warehouse/commercial traffic currently using the single entry/exit point at N. Shiloh and Mount Comfort Road. We feel that a reduction in the number of units, say down to 50 or less, would be advisable.
3. Additionally the project would greatly impact the eastern end of the Hamestring Creek Trail corridor. We would like this project designed around the points named in UDC 179.01 - Low Impact Development. The "wildness" nature of this end of the trail needs to be preserved for not only the enjoyment of the trail users, but for the wildlife who frequent this area.

Thank you for your time and consideration on behalf of the residents of Pine Valley.

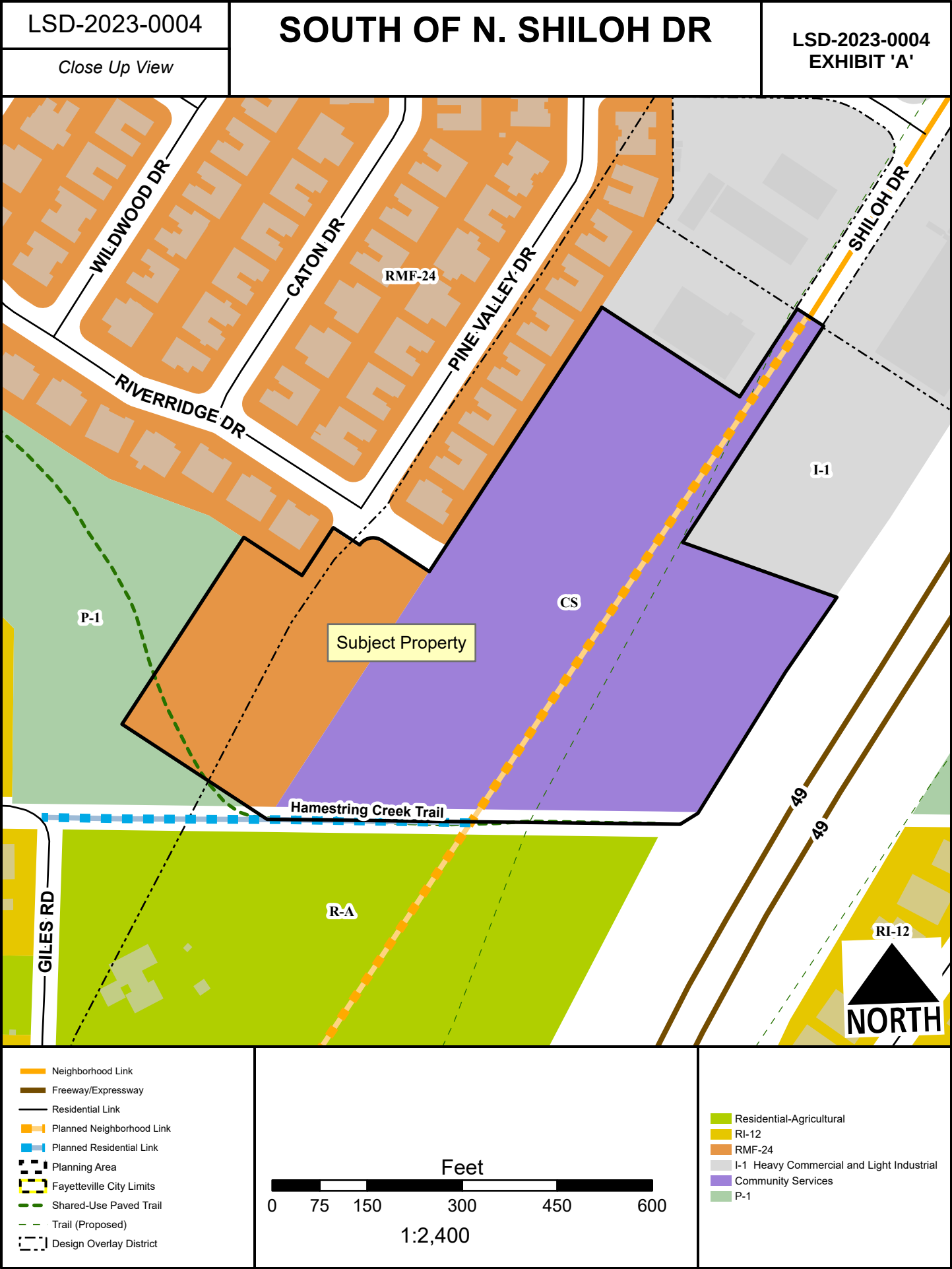
Sincerely,

Martha M.M. Clark

2843 W. Riverridge Dr.

479-422-0336

Teresa Turk
City Council Member
Ward 4 Position 1
Fayetteville, AR 72701
ward4_pos1@fayetteville-ar.gov
206.713.2265



 PROPERTY DESCRIPTION

BEING A PART OF LOT 1C FROM A LOT LINE ADJUSTMENT ACCORDING TO THE OFFICIAL PLAT THEREOF RECORDED AT FILE NUMBER 2020-00032485 IN THE RECORDS OF WASHINGTON COUNTY, ARKANSAS, BEING A REPLAT OF TRACT NUMBERS 1 AND 2 OF ALTA SURVEY IN THE CITY OF FAYETTEVILLE ACCORDING TO THE OFFICIAL PLAT THEREOF RECORDED AT FILE NUMBER 2018-00012620 IN THE RECORDS OF WASHINGTON COUNTY, ARKANSAS. BEING MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 1C; THENCE NORTH 54° 48' 28" WEST A DISTANCE OF 274.24 FEET; THENCE NORTH 35° 05' 57" EAST A DISTANCE OF 352.08 FEET; THENCE SOUTH 54° 54' 03" EAST A DISTANCE OF 110.00 FEET; THENCE NORTH 35° 05' 57" EAST A DISTANCE OF 90.00 FEET, THENCE SOUTH 54° 54' 03" EAST A DISTANCE OF 50.00 FEET TO A CURVE TO THE RIGHT; THENCE 39.28 FEET ALONG SAID CURVE HAVING A RADIUS OF 25 FEET AND BEING SUBTENDED BY A CHORD BEARING NORTH 80° 05' 56" EAST, 35.36 FEET; THENCE SOUTH 54° 52' 54" EAST A DISTANCE OF 90.00 FEET; THENCE NORTH 35° 08' 20" EAST A DISTANCE OF 498.07 FEET; THENCE SOUTH 55° 01' 12" EAST A DISTANCE OF 259.70 FEET; THENCE NORTH 35° 05' 57" EAST A DISTANCE OF 165.69 FEET; THENCE SOUTH 54° 59' 28" EAST A DISTANCE OF 50.00 FEET; THENCE SOUTH 35° 05' 57" WEST A DISTANCE OF 407.73 FEET; THENCE SOUTH 68° 25' 20" EAST A DISTANCE OF 258.62 FEET; THENCE 36° 33' 44" WEST A DISTANCE OF 143.49 FEET; THENCE SOUTH 33° 48' 37" WEST A DISTANCE OF 261.95 FEET; THENCE SOUTH 60° 10' 28" WEST A DISTANCE OF 32.99 FEET; THENCE NORTH 87° 19' 34" WEST A DISTANCE OF 651.78 FEET TO THE POINT OF BEGINNING CONTAINING 11.73 ACRES MORE OR LESS AND BEING SUBJECT TO ANY EASEMENTS OF RECORD OR FACT.



MEMORANDUM

April 27, 2023

TO: DDB Investments, LLC / Kimbel Mechanical Systems, Inc.

FROM: Nathan Becknell, P.E., PTOE, PTP

SUBJECT: Junction at Shiloh
Traffic Impact Review

LOCATION: Shiloh Drive
Fayetteville, Arkansas



Digitally signed by
Nathan Becknell
Date: 2023.04.27
10:24:36-05'00'

INTRODUCTION

Traffic Engineering Consultants, Inc. (TEC) was retained by DDB Investments, LLC / Kimbel Mechanical Systems, Inc. to conduct a traffic impact review on the proposed Junction at Shiloh. The proposed development is located south of Mt. Comfort Road at the existing terminus of Shiloh Drive in Fayetteville, Arkansas as shown in **Figure 1** in **Attachment A**.

The proposed residential development would include 177 multifamily units as shown in **Figure 2** in **Appendix A**. Access to the development is proposed via Shiloh Drive to Mt. Comfort Road. Shiloh Drive is a north/south neighborhood link with a posted speed limit of 30 mph. Mt. Comfort Road is a four-lane east/west regional link with a posted speed limit of 35 mph and has an approximate average daily traffic (ADT) of 21,000 vehicles per day (vpd). Historical ADT data is included in **Attachment B**.

SITE GENERATED TRAFFIC

To determine the effects a new development will have on an existing street system, the new or additional traffic must be projected. The latest edition of the *Trip Generation Manual*, published by the Institute of Transportation Engineers, was used to determine the amount of traffic the development is expected to generate. The report is a nationally accepted reference which provides trip rates for determining the traffic expected to be generated by different land use types.

Traffic Engineering Consultants, Inc.

6000 S. Western Avenue, Suite 300 | Oklahoma City, Oklahoma 73139 | Ph. 405-720-7721
6931 S. 66th E. Avenue, Suite 100 | Tulsa, Oklahoma 74133 | Ph. 918-481-8484
217 E. Dickson Street, Suite 106 | Fayetteville, Arkansas 72701 | Ph. 479-335-5636
Website: www.tecusa.com

Available information was utilized regarding the anticipated land use to determine the site generated traffic. The *Multifamily Housing (Low-Rise)* land use category was selected as the most applicable to determine the trip generation of the proposed development. The resulting traffic volumes projected to be generated by the proposed development once completed are indicated in **Table 1**.

TABLE 1
Projected Site Generated Trips

Building Type (Land Use)	ITE Land Use Code	Approximate Gross Floor Area or Other	Average Weekday Vehicle Trips			Average AM Peak Hour Directional Distribution		Average AM Peak Hour Directional Trips (vph)		Average PM Peak Hour Directional Distribution		Average PM Peak Hour Directional Trips (vph)		
			Per	Day	Per Peak Hour of Adjacent Street Traffic									
					One Hour Between 7am & 9am									One Hour Between 4pm & 6pm
			(vpd)	(vph)	(vph)	IN	OUT	IN	OUT	IN	OUT			
Trip Rate* Multifamily Housing (Low-Rise)	220	(Dwelling Units) 177	6.84 1.210	0.44 78	0.55 97	24%	76%	19	59	63%	37%	61	36	

The proposed development would be expected to generate 1,210 vehicle trips per day with 78 trips occurring during the a.m. peak hour and 97 trips occurring during the p.m. peak hour. Typically, a full traffic impact analysis is recommended for any development along a neighborhood link which generates 150 or more vehicles during a peak hour or a regional link which generates 200 or more vehicles during a peak hour. The proposed development would be expected to generate less than the minimum recommendation, therefore a full traffic impact analysis was not conducted.

SUMMARY

The proposed Junction at Shiloh would be expected to generate 97 additional trips during the typical weekday peak hour periods. The traffic generated by the proposed development would have negligible effects on the surrounding intersections and roadways during the weekday peak periods. Based on these factors, no additional traffic related issues are anticipated as a result of the proposed development.

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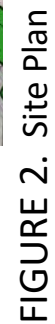
Website: www.tecusa.com

ATTACHMENT A

FIGURES



FIGURE 1. Project Location Map
Junction at Shiloh
Fayetteville, Arkansas



Junction at Shiloh

ATTACHMENT B

TRAFFIC DATA



2022 ADT—Junction at Shiloh
Fayetteville, Arkansas



TO: Fayetteville Planning Commission

THRU: Jessie Masters, Development Review Manager

FROM: Ryan Umberger, Senior Planner
Melissa Boyd, Staff Engineer
Melissa Evans, Urban Forester

MEETING: April 10, 2023 (Updated with Planning Commission Results)

SUBJECT: **LSD-2023-0004: Large Scale Development (SOUTH OF N. SHILOH DR/THE JUNCTION AT SHILOH, 363):** Submitted by CRAFTON TULL for property located SOUTH OF N. SHILOH DR. The property is split zoned RMF-24, RESIDENTIAL MULTI-FAMILY, TWENTY-FOUR UNITS PER ACRE and CS, COMMUNITY SERVICES and contains approximately 11.73 acres. The request is for a multi-family development with 177 units and associated parking.

RECOMMENDATION:

Staff recommends approval of **LSD-2023-0004** with conditions.

RECOMMENDED MOTION: *"I move to approve **LSD-2023-0004**, determining:*

- *In favor of recommended right-of-way dedication;*
- *In favor of recommended street improvements;*
- *In favor of a variance to §166.08(E)(b): Block Layout/Connectivity;*
- *Denial of a variance to §166.23(C): Site Development Standards;*
- *In favor of a variance to §168.10(U): Provisions For Flood Hazard Reduction; and*
- *All other conditions as recommended by staff."*

BACKGROUND:

The subject property is located south of W. Mount Comfort Road and west of I-49, where N. Shiloh Drive dead-ends. The property is split zoned RMF-24, Residential Multi-Family, Twenty-Four Units Per Acre and CS, Community Services. A portion of the site totaling 9.11 acres was rezoned from I-1, Heavy Commercial and Light Industrial to CS by City Council on February 15, 2022. The undeveloped site totals approximately 11.73 acres and is covered by vegetation throughout. A branch of the Hamestring Creek runs through the center of the property and roughly 22% of the site lies within a floodplain. Surrounding land uses and zoning are depicted in *Table 1*.

**Table 1:
Surrounding Land Use and Zoning**

Direction	Land Use	Zoning
North	Two-Family Dwellings/Offices	I-1, Heavy Commercial and Light Industrial; RMF-24, Residential Multi-Family – 24 Units per Acre
South	Natural Area	R-A, Residential-Agricultural
East	I-49	N/A
West	Duplexes/Natural Area	RMF-24, Residential Multi-Family – 24 Units per Acre

Proposal: The applicant requests Large Scale Development approval to develop the subject property with a 177-unit multi-family development. The proposed development is composed of four structures with studio, one-, two-, and three-bedroom units and associated parking. Three variances to the Unified Development Code were requested with the application as described below:

- **§166.08(E)(b): Block Layout/Connectivity.** The applicant has requested a variance from a requirement for street intersections every 1,320 feet along a Neighborhood Link Street.
 - *Staff recommendation: Staff is supportive of this variance, finding that topographical challenges and the presence of a tributary of the Hamestring Creek present a hardship inhibiting a feasible intersection to the east or west. The applicant proposes to extend N. Shiloh Drive roughly 950 feet to the south which would create an approximately 1,290-foot block length on the west side of the extension and over 3,000 feet on the east. A street connection would require an expansive crossing and realignment of the creek since the creek centerline does not cross perpendicular to the proposed street extension. The applicant also evaluated the site for pedestrian connectivity to demonstrate an intent to meet the spirit and intent of the ordinance and had similar findings. Staff finds the existing site condition constitutes a hardship justifying approval of the variance.*
- **§166.23(C)(4): Ground floor dwelling units adjacent to a public street shall have a primary pedestrian entry that is visible from the street. The entry shall connect unobstructed to the public sidewalk where it exists. The pedestrian connection to the street may run from the door along the façade of the building parallel to the street for a maximum of 12 feet before connecting directly to the public sidewalk.** The applicant has requested a variance from this requirement for proposed buildings 1, 2, and 4. The comment response letter suggests the variance request will keep the structures from encroaching into an existing utility easement and avoid locating pedestrian crossings across a 36-inch water main where grading and fill is generally not allowed.
 - *Staff recommendation: Staff recommends denial of the variance. In considering the request staff finds only the requirement for an entry on the principal façade will apply since a public sidewalk is not proposed along the west side of N. Shiloh Drive. Ground floor entrances along streets promote a welcoming and inviting atmosphere. When supplemented with pedestrian connections and prominent architectural features, entries create aesthetically pleasing street scenes which enhance public appearances and support economic vitality. Entries and public connections to the sidewalk also activate the use of the front yard area and put eyes on the street, creating better interaction between private and public spaces. Staff finds the absence of a doorway negates stated purposes of the ordinance to create appealing streetscapes and compose attractive residential facades. Staff acknowledges, though, the benefit of an entry is lessened given that no sidewalk is recommended or proposed along the west side of N. Shiloh Drive. The applicant*

instead proposes landscaping along the principal façades. On the balance of considerations, staff recommends denial of the variance.

- **§168.10(U): Provisions For Flood Hazard Reduction.** The applicant is requesting a variance to this section of code, which prohibits increases in flood flows, flood heights, and flood velocities, to allow for an increase in flood velocities in certain locations resulting from the construction of a planned extension to N. Shiloh Drive.
 - *Staff recommendation: Staff supports the variance. This request aligns with the provisions of UDC §168.12 which allows for stream crossings, including roadways, when the City Engineer determines there is no practical and feasible alternative. Increases to stormwater velocities are contained entirely on the subject property and the highest proposed velocity will remain below what is considered erosive. The City Engineer determined no feasible alternative has been requested to cross the Middle Fork of Hamestring Creek for the extension of N. Shiloh Drive, which is indicated as a planned Neighborhood Link Street on the 2040 Master Street Plan.*

Right-of-Way to be Dedicated: The subject property has frontage along a planned extension of N. Shiloh Drive which is classified as a Neighborhood Link Street. Neighborhood Link streets typically require 67 feet of right-of-way from the centerline of the road. Staff recommends right-of-way dedication in the amount of 58 feet from-centerline. The less than typical dedication of right-of-way is intended to accommodate recommended street improvements including a planned trail connection along the east side of the street while allowing for reduced grading and impervious footprint on the west. No right-of-way dedication is recommended along the W. Sycamore Street paper right-of-way near the south boundary.

Street Improvements: Staff recommends N. Shiloh Drive is constructed with a two-foot frontage zone, 12-foot trail and 10-foot greenspace on the east side of the street, two drive lanes totaling 19-feet in width, 1.5-foot curb and gutter, and a 12-foot greenspace along the west side of the street. The 12-foot greenspace is intended to accommodate space for a six-foot greenspace and six-foot sidewalk should it be built in the future.

Access Management/Connectivity: Staff determined that the project meets access and connectivity requirements, except for the requested variance for block length. Four driveways are proposed along N. Shiloh Drive. N. Shiloh Drive is classified as a Neighborhood Link Street which requires a separation distance of 100 feet. All driveways meet access management standards.

Design Standards: As a multi-family residential development, this proposal is subject to Unified Development Code §166.23, Urban Residential Design Standards. Staff determined that the project is in partial compliance with the regulations. The proposed development includes architectural features on the principal façade of structures, vehicular circulation, and screening. The applicant submitted a variance to relieve a requirement for ground floor entries facing the public street to have a primary pedestrian entry.

Water and Sewer System: Public water and sanitary sewer extensions are proposed throughout. Approximately 1,541 linear feet of eight-inch water mains, 247 linear feet of six-inch fire lines, and 614 linear feet of eight-inch sanitary sewer mains are proposed to serve the development. Included in the attachments is a memo from the Utilities Engineer regarding a 36-inch water main traversing the west side of the proposed extension to N. Shiloh Drive. Engineering Staff supports only the minimum necessary fill to connect two driveways over the associated easement.

Parkland dedication or fee in-lieu: This proposal was discussed by the Parks and Recreation Advisory Board (PRAB) at their September 7, 2022 meeting. PRAB recommended a combination of parkland dedication and fee in-lieu for this development. Dedication of 1.72 acres and fees in the amount of \$86,632 based on a total of 177 multi-family residential units is recommended. The final amount of dedication and fee in-lieu needed to satisfy parkland dedication requirements will be determined, and all fees must be paid, prior to the issuance of any building permits.

Tree Preservation:

Canopy minimum requirement: 20%

Existing canopy: 81.4%

Preserved canopy: 20.1%

Mitigation required: zero two-inch caliper trees

Public Comment: Staff has received public comment opposing the development. A neighbor spoke at the Subdivision Committee meeting on March 30th suggesting the development would exacerbate flooding and identified issues with proposed building heights, the singular access to the site, and removal of wildlife habitat. They also requested a vegetative buffer be maintained with the residential properties to the west. Another member of the public commented in opposition to the requested variance to the Provisions for Flood Hazard Reduction. They opposed allowing increases to flood flows, heights, and/or channel velocities on adjacent properties because it would increase flood risk. The individual also complained that they had not received notification specific to the proposed changes to the base flood elevation.

RECOMMENDATION: Staff recommends approval of **LSD-2023-0004** with the following conditions:

Conditions of Approval:

1. Planning Commission determination of right-of-way dedication. *Staff recommends right-of-way dedication in the amount of 58 feet from the centerline of the proposed extension of N. Shiloh Drive.*

Subdivision Committee recommended in favor of a previous recommendation of 65 feet from the centerline of the proposed extension of N. Shiloh Dr.

2. Planning Commission determination of street improvements. *Staff recommends N. Shiloh Drive is constructed with a 12-foot trail and 10-foot greenspace on the east side of the street, two drive lanes totaling 19-feet in width, 1.5-foot curb and gutter, and a 12-foot greenspace along the west side of the street;*

Subdivision Committee recommended in favor of a previous recommendation including 12-foot trail and 10-foot greenspace on the east side of the street, a 30-foot paved width, curb and gutter, and six-foot greenspace and sidewalk along the west side of the street.

3. **Subdivision Committee recommendation of a variance to UDC §166.08(E)(b): Block Layout/Connectivity.** *Staff recommends approval of the variance for the reasons stated above;*

Subdivision Committee recommended in favor.

4. **Subdivision Committee recommendation of a variance to UDC §166.23(C): Site Development Standards.** *Staff recommends denial of the variance for the reasons stated above;*

Subdivision Committee did not make a recommendation.

5. **Subdivision Committee recommendation of a variance to UDC §168.10(U): Provisions For Flood Hazard Reduction.** *Staff recommends approval of the variance for the reasons stated above;*

Subdivision Committee recommended in favor.

6. All comments from Planning staff must be addressed including:
- Vacation of easements where structures and the pool are proposed is subject to separate approval. No portion of any building or pool shall be built within a public utility easement.
 - Parking table shall be revised to include 12 studio apartments into the overall bedroom calculation.
 - Please show the bay windows on the building footprints where they are proposed.
 - If the amenity area on the floor plan for Building 1 is intended to be used for commercial leasing purposes, it will be subject to UDC 166.24 & 166.25.
 - Revise the sidewalk parallel to southernmost driveway on the west side to be as close to the driveway as possible so that the amount of fill in the easement and over the 36" waterline is kept to the minimum necessary to achieve this crossing.
7. Vacation of an existing 25-foot utility easement is subject to separate application and approval. The easement shall be vacated prior to building permit approval.
8. Parkland dedication of 1.72 acres and fees in the amount of \$86,632 based on a total of 177 multi-family residential units;
9. Streetlights must be installed at intersections and at a linear spacing distance of no more than 300 feet;
10. A determination from the Zoning and Development Administrator must be on file prior to grading permit to exempt the project from the minimum buildable street frontage requirement in the CS zoning district; alternatively, a Board of Adjustment variance shall be granted;
11. Conditions of approval from Engineering and Urban Forestry are included in the official conditions of approval, attached hereto;

Standard Conditions of Approval:

12. Impact fees for fire, police, water, and sewer shall be paid in accordance with City ordinance;
13. Plat Review and Subdivision comments (to include written staff comments provided to the applicant or his representative, and all comments from utility representatives: Black Hills Energy, AT&T, Ozarks, SWEPCO, and Cox Communications);

14. All mechanical/utility equipment (roof and ground mounted) shall be screened using materials that are compatible with and incorporated into the structure. A note shall be clearly placed on the plat and all construction documents indicating this requirement;
15. Trash enclosures shall be screened on three sides with materials complimentary to and compatible with the principle structure. Containers may also be screened from view of the street by the principal structure or vegetation. Elevations of the proposed dumpster enclosure shall be submitted to the Planning and Solid Waste Divisions for review prior to building permit;
16. All existing utilities below 12kv shall be relocated underground. All proposed utilities shall be located underground;
17. Staff approval of final detailed plans, specifications and calculations (where applicable) for grading, drainage, water, sewer, fire protection, streets (public and private), sidewalks, parking lot(s) and tree preservation. The information submitted for the plat review process was reviewed for general concept only. All public improvements are subject to additional review and approval. All improvements shall comply with City's current requirements;
18. All exterior lights shall comply with the City lighting ordinance. Manufacturer's cut-sheets are required for review and approval prior to issuance of a building permit;
19. All freestanding and wall signs shall comply with ordinance specifications for location, size, type, number, etc. Any proposed signs shall be permitted by a separate sign permit application prior to installation. Freestanding pole signs and electronic message boards (direct lighting) are prohibited in the I-540 Design Overlay District;
20. Large scale development shall be valid for one calendar year;
21. Contact the City's Emergency 911 Address Coordinator for addressing prior to building permit;
22. Prior to building permit, a cost estimate for all required landscaping is to be submitted to the Landscape Administrator for review. Once approval is gained, a guarantee is to be issued (bond/letter of credit/cash) for 150% of the cost of the materials and installation of the plants. This guarantee will be held until the improvements are installed and inspected, at the time of Certificate of Occupancy; and
23. Prior to the issuance of a building permit the following is required:
 - f. Grading and drainage permits;
 - g. Separate easement plat for this project that shall include the tree preservation area and all utility and access easements;
 - h. Exterior lighting package must be provided to the Planning Division;
 - i. An on-site inspection by the Landscape Administrator of all tree protection measures prior to any land disturbance;
 - j. Project Disk with all final revisions; and
 - k. Completion of all required improvements or the placement of a surety with the City (letter of credit, bond, escrow) as required by Section 158.01 "Guarantees in Lieu of Installed Improvements" to guarantee all incomplete improvements. Further, all improvements necessary to serve the site and protect public safety must be completed, not just guaranteed, prior to the issuance of a Certificate of Occupancy.

PLANNING COMMISSION ACTION: Required <u>YES</u>			
Date: <u>April 10, 2023</u>	☐ Tabled	☒ Forwarded	☐ Denied
Motion: Winston			
Second: Brink		In favor of all requested variances and all other conditions as recommended by staff.	
Vote: 6-2-0		Payne recused.	

BUDGET/STAFF IMPACT:

None

ATTACHMENTS:

- Engineering Comments
- Water/Sewer/Meter Comments
- Urban Forestry Comments
- Request Letter
- Variance Request Letter
- Site Plan
- Elevations
- Public Comment
- One Mile Map
- Close-Up Map
- Current Land Use Map



TO: Ryan Umberger, Senior Planner

FROM: Melissa Boyd, Staff Engineer

DATE: April 5, 2023

SUBJECT: Planning Commission Engineering Comments for
LSD-2023-0004 JUNCTION AT SHILOH

Water: Approximately 1,541 LF of 8" water main and 247 LF of 6" fire line extensions are proposed with this development.

Sewer: Approximately 614 LF of 8" sanitary sewer main extension is proposed with this development.

Natural Features: The Middle Fork of Hamestring Creek, a protected stream, runs east west through the site. This area, as well as the southwest corner of the site lies within a FEMA Zone AE floodplain.

A variance is being requested to UDC §168.10(U)(1) to allow for increases in stream velocities. Engineering staff supports this variance pending a revised flood study as long as the velocity increases will still be contained entirely on the subject property and the proposed velocities remain below what is considered erosive (6 fps).

A City Engineer no feasible alternative determination has been requested to cross the Middle Fork of Hamestring Creek for the extension of N. Shiloh Drive, which is indicated as a planned Neighborhood Link street on the current Master Street Plan. This request is in line with the provisions of UDC §168.12, allowing for stream crossings, including roadways, when the City Engineer determines there is no practical and feasible alternative.

GIS indicates the presence of hydric soils on this site. The applicant has provided a wetland delineation study outlining areas on site that are likely regulatory and jurisdictional to the U.S. Army Corps of Engineers. Two potential wetland areas were identified but were concluded in the report's findings to not meet hydric soil indicators and are likely not jurisdictional. 1,707 LF of tributaries were found and determined to be jurisdictional under Section 404 of the Clean Water Act. Any required permits for all work within jurisdictional areas are required to be obtained from the U.S. Army Corps of Engineers prior to the grading permit being issued.

Drainage: This development is required to meet the four Minimum Standards of the Drainage Criteria Manual. Water quality requirements are proposed to be met using permeable paver systems in the three parking lots on site. Channel protection requirements do not apply as the flows leaving all ponds are less than 2.0 cfs. Overbank flood protection and extreme flood protection requirements will be met by decreasing peak flows post-development below the existing peak flows.

Plan Comments:

1. Update pipe table to reflect linear footages that are currently proposed for water, fire, and sewer lines.
2. Revise sidewalk parallel to southernmost driveway on the east side to be as close to the driveway as possible so that the amount of fill in the easement and over the 36" waterline is kept to the minimum necessary to achieve this crossing.

Standard Comments:

1. All designs are subject to the City's latest design criteria (water, sewer, streets and drainage). Review for plat approval is not approval of public improvements, and all proposed improvements are subject to further review at the time construction plans are submitted.
2. Any damage to the existing public street due to construction shall be repaired/replaced at the owner/developers expense
3. All public sidewalks, curb ramps, curb & gutter, and driveway aprons along this project frontage must meet ADA guidelines and be free of damage. Any existing infrastructure that does not conform to ADA guidelines or is otherwise damaged must be removed and replaced to correct the issue. Coordinate with the engineering department for inspection of existing facilities to determine compliance.
4. Water and sewer impact fees will apply for the additional impact to the system. The fees will be based on the proposed meter size and will be charged at the time of meter set.
5. Note, the following portions of all projects will typically not be reviewed by the Engineering Division until time of construction-level review (unless specifically requested at plat review):
 - Storm Sewer pipe/inlet sizing, gutter spread, profiles, or utility conflicts
 - Sanitary Sewer pipe sizing, profiles, or utility conflicts
 - Waterline fittings, callouts, or utility conflicts
 - Street profiles
 - Fine grading/spot elevations



TO: Melissa Boyd, Staff Engineer

FROM: Corey Granderson, Utilities Engineer

DATE: April 4, 2023

SUBJECT: Junction at Shiloh Proposed Development, Impacts to 36-inch Diameter Water Transmission Main

Melissa,

Thank you for including me in the review of this development. As you know one of our largest diameter critical water mains traverses through this site, namely a 36-inch diameter pre-stressed concrete cylinder pipe constructed in the mid-1990's.

When these lines have leaks or catastrophic failures, our crews must respond quickly in order to isolate and shut off water to the line, then excavate and dewater the area to replace a section of this line. We have performed this repair in several locations over the years and have learned from experience that the deeper the line is, the more difficult, time-consuming, and unsafe the repair becomes.

Addition of fill over utility easements is prohibited by the City's Unified Development Code, as outlined in Section 169.06. However, the City routinely approves cut and fill over both water and sewer lines throughout Fayetteville to accommodate growth and development. With every project, detailed reviews are performed to ensure the cut or fill is appropriate regarding integrity of the utility as well as future maintenance implications.

As line diameter increases, the impacts of fill over a line also increase greatly. For this reason, the Utility Department does not support any fill over the easement of this 36-inch waterline except for the minimum necessary to connect two driveways as shown in the most recent plans. This will allow the property to be developed while having the least possible impact on our ability to maintain this critical waterline.

Corey W. Granderson, P.E.
Utilities Engineer
City of Fayetteville, Arkansas
cgranderson@fayetteville-ar.gov
479.444.3452



URBAN FORESTRY TREE PRESERVATION COMMENTS

To: Elizabeth Topping, E.I., Crafton Tull

From: Melissa M. Evans, Urban Forestry

CC: Ryan Umberger, Senior Planner

Meeting Date: April 10, 2023

Subject: LSD-2023-0004: The Junction at Shiloh: South of N. Shiloh Dr., 363

1. Submittal Requirements	Yes	No	N/A
Initial Review with the Urban Forester		X	
Site Analysis Map Submitted (if justification is needed)			X
Site Analysis Written Report Submitted (justification is needed)			X
Complete Tree Preservation Plan Submitted	X		
Tree Mitigation Table on Plans	X		
Tree Preservation Wavier Submitted (only use if no trees onsite or near P/L)			X

2. Tree Preservation Calculations

Tree Preservation Calculations Square Feet		
	Square Feet	Percent of site
Total Site Area *Minus Right of Way and Easements	331,607	100%
Zoning Designation * Select Below with drop down arrow		
CS, Community Services	66,321	20%
HHOD * Select Below with Drop Down Arrow		
No	0	0%
Total Canopy for Minimum Preservation Requirements	66,321	20.0%
Existing Tree Canopy * Minus Right of Way and Easements	269,982	81.4%
Tree Canopy Preserved	66,552	20.1%
Tree Canopy Removed *On Site	203,430	61.3%
Tree Canopy Removed *Off Site	0	
Tree Canopy Removed Total	203,430	61.3%
Removed Below Minimum	0	
Mitigation Requirements	0	

3. Mitigation Requirements	Canopy below requirement	Number of 2" caliper trees to be planted
High Priority		
Low Priority		
Total Mitigation Trees Required	0	0

4. Mitigation Type	Yes	No	N/A
On-Site Mitigation			X
Off-Site Mitigation			X
Tree Escrow (See Conditions of Approval)			X

5. Tree Preservation Plan Checklist <i>UDC Chapter 167.04H1</i>	Tech Plat	Subdivision Committee	Planning Commission
a. 5 year Aerial Check on Existing Trees	Yes	Yes	Yes
b. Property Boundary	Yes	Yes	Yes
c. Natural Features (100ft beyond limits of disturbance)	Yes	Yes	Yes
d. Existing Topography and Proposed Grading	Yes	Yes	Yes
e. Soil Types	Yes	Yes	Yes
f. Significant Trees	Yes	Yes	Yes
g. Groupings of Trees	Yes	Yes	Yes
h. Table Inventory List (species, size, health, priority)	Yes	Yes	Yes
i. All Existing and Proposed Utilities	Yes	Yes	Yes
j. All Existing and Proposed Utility Easements and ROW's	Yes	Yes	Yes
k. All Streams (with approximate center line)	No	Yes	Yes
l. Floodplains and floodways	No	Yes	Yes
m. Existing Street, Sidewalk or Bike Path ROW	Yes	Yes	Yes
n. Submitted Site Analysis Plan (if required)	N/A	N/A	N/A
o. Shows ALL Proposed Site Improvements	Yes	Yes	Yes
p. Delineates trees/canopy to be preserved and removed	Yes	Yes	Yes

Tree Protection Methods

a. Tree Protection Fencing	Yes	Yes	Yes
b. Limits of Root Pruning	Yes	Yes	Yes
c. Traffic flow on work site	No	Yes	Yes
d. Location of material storage	No	Yes	Yes
e. Location of concrete wash out	No	Yes	Yes
f. Location of construction entrance/exit	Yes	Yes	Yes

6. Site Analysis Report (if required)		Yes	No	N/A
UDC Chapter 167.04H4				
a.	Provide graphic examples of multiple options used to minimize removal of existing canopy			X
b.	Submitted Analysis Statement – Note the process, iterations, and approaches to preserve canopy.			X
7. Review Status		Tech Plat	Subdivision Committee	Planning Commission
	Conditionally Approved	03-13-23	3-30-23	04-04-23
	Approved			
	Tabled	02-28-23		
	Denied			

Appeal Process: A final administrative determination by the Urban Forester may be appealed in accordance with Chapter 155 of the Unified Development Code.

Comments	
1.	Address items above marked “No” and all Redlines provided.
2.	Can you change the building wall to a stem wall at the SW corner of the site to preserve Tree #825 which is a large Oak tree?
3.	Please remove all the Pear trees possible. They will have to be mitigated, but at the low priority.
4.	Thank you for providing Tree Preservation Easement/s for the preserved tree areas per Ch. 167.



URBAN FORESTRY LANDSCAPE PLAN COMMENTS

To: Elizabeth Topping, E.I., Crafton Tull

From: Melissa M. Evans, Urban Forestry

CC: Ryan Umberger, Senior Planner

Meeting Date: April 10, 2023

Subject: LSD-2023-0004: The Junction at Shiloh: South of N. Shiloh Dr., 363

1. General Landscape Plan Checklist		Yes	No	N/A
a.	Irrigation (notes either automatic or hose bib 100' o.c.) <i>UDC Chapter 177.03C7g, 177.04B3a</i>	X		
b.	Species of plant material identified <i>UDC Chapter 177.03C7d,e</i>	X		
c.	Size of plant material (minimum size 2" caliper for trees and 3 gal. shrubs) <i>UDC Chapter 177.03C7b,c</i>	X		
d.	Soil amendments notes include that soil is amended and sod removed <i>UDC Chapter 177.03C6b</i>	X		
e.	Mulch notes indicate organic mulching around trees and within landscape beds <i>UDC Chapter 177.03C6c,d</i>	X		
f.	LSD, LSIP, and Subdivisions (PPL & FPL) plans stamped by a licensed Landscape Architect, others by Landscape Designer <i>UDC Chapter 177.03B</i>		X	
g.	Planting bed contained by edging <i>UDC Chapter 177.03C6f</i>	X		
h.	Planting details according to Fayetteville's Landscape Manual <i>UDC Chapter 177.03C6g</i>	X		
i.	Provide information about 3-Year Maintenance plan. The owner shall deposit with the City of Fayetteville a surety for approved landscape estimate. <i>UDC Chapter 177.05 A2g</i>	X		
2. Parking Lot Requirements		Yes	No	N/A
1 Tree : 12 Parking Spaces				
a.	Wheel Stops/Curbs <i>UDC Chapter 177.04B1</i>	X		
b.	Narrow Tree Lawn (8' min. width, 37.5' length) <i>UDC Chapter 177.04C</i>			X

c.	Tree Island (8' min. width, 18.7' min length OR 150 square feet) <i>UDC Chapter 177.04C</i>		X	
d.	Placement of Trees (either side at entrances and exits) <i>UDC Chapter 177.04C2</i>		X	
3. Perimeter Landscaping Requirements		Yes	No	N/A
a.	Front Property Line (15' wide landscape) and five on sides. <i>UDC Chapter 177.04D2a</i>	X		
b.	Side and Rear Property Lines (5' Wide Landscape Area) <i>UDC Chapter 177D1</i>	Yes		
c.	Shade trees planted on south and west sides of parking lots <i>UDC Chapter 177.04D2e</i>	X		
d.	Screening of parking lot from adjacent residential properties and the street.	X		
4. Street Tree Planting Requirements		Yes	No	N/A
a.	Residential Subdivisions 1 Large Shade Species Tree per Lot <i>UDC Chapter 177.05B1a</i>			X
b.	Non-Residential Subdivisions 1 Large Species Shade Tree every 30' (planted in greenspace) <i>UDC Chapter 177.05B2a</i>			X
c.	Urban Tree Well – Urban Streetscapes Trees every 30' (8' sidewalk) <i>UDC Chapter 177.05B3a-f</i>			X
d.	Structured Soil – Urban Tree Wells Include a note and/or detail of structural soil on Landscape Plan <i>UDC Chapter 177.05B3a-f</i>			X
e.	Residential Subdivisions Timing of planting indicated on plans <i>UDC Chapter 177.05A4</i>			X
f.	Residential Subdivisions Written description for method of tracking planting <i>UDC Chapter 177.05A4e</i>			X

5. Landscape Requirement Totals	Amount
Mitigation Trees	0 required
Parking Lot Trees	20
Street Trees	30
Detention Pond – Large Trees (1 Tree/3,000 square feet)	0
Detention Pond – Small Tree/Large Shrub (4 small trees or large shrubs/3,000 square feet)	0
Detention Pond – Small Shrubs/Large Grasses (6 shrubs or grasses (1 gallon)/3,000 square feet)	0

6. Review Status (See Comments)	Tech Plat	Subdivision Committee	Planning Commission
Conditionally Approved	03-13-23	03-30-23	04-04-23
Approved			
Tabled	02-28-23		
Denied			

Appeal Process: A final administrative determination by the Urban Forester may be appealed in accordance with Chapter 155 of the Unified Development Code.

Comments
1. Address items above marked “No” and all Redlines provided.
2. The plan must be stamped, signed and dated by the design landscape architect.



March 3, 2023

City of Fayetteville Planning Department
125 W. Mountain Street
Fayetteville, AR 72701

RE: The Junction at Shiloh – Large Scale Development Plan
CTA Project #22101501

Planning Staff,

Please find attached our application for a Large Scale Development Plan for a new multi-family development located along N. Shiloh Drive and Sycamore Street.

Our proposal is the development of 4 apartment buildings with a total of 177 units on an 11.7 acre site. The current zoning of this tract is C-S, Community Services and RMF-24, Residential Multi-Family (24 units/acre). Within our proposed development we have various parking options provided with a total stall count of 233 vehicular spaces, 9 motorcycle/scooter spaces, and 8 bike racks. The Parks and Recreation Advisory Board approved the dedication of 1.7 acres of parkland in combination of a fee-in-lieu for the remaining required land on September 7, 2022.

Within the package you will find our application, the plan set, drainage report, architectural elevations, fire review sheets, and the application fee. Please let us know if you need any additional information. We look forward to the review and response from the City of Fayetteville.

Sincerely,

Elizabeth Topping, E.I.
Project Engineer



March 21, 2023

City of Fayetteville
Planning Staff
125 W. Mountain Street
Fayetteville, AR 72701

RE: The Junction at Shiloh
CTA Job No. 22101501

To whom it may concern,

We are submitting a large-scale development plan south of N. Shiloh Drive for your consideration. The Junction at Shiloh is a multi-family development with four buildings with associated parking and other infrastructure. N. Shiloh Drive will be extended over the Middle Fork of Hamestring Creek with this project. We are requesting three variances from the City of Fayetteville's Unified Development Code.

1. Variance from Section 166.08 that requires an intersection on both sides of a neighborhood link every 1,320 feet.

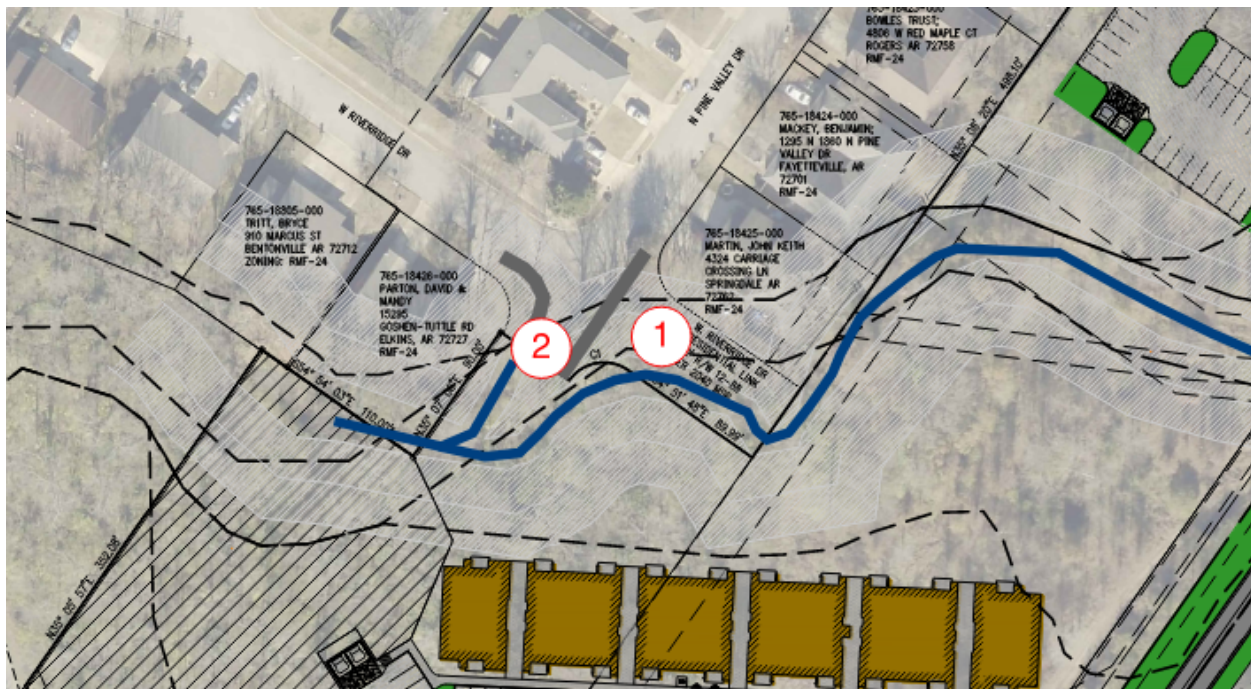
Our project is proposing to build N. Shiloh Drive south 950' from the existing stubout to the edge of the subject property. The Hamestring Trail is at the south end of the property and currently dead ends at the R/W for I-49. The extension of N. Shiloh Drive will include a 12' trail section that will allow for pedestrian connectivity from the existing trail through the property and north to adjacent developments. This connection and continuation of the trail aligns with the spirit of the connectivity requirements. Right of way has been dedicated for Sycamore Street to be built in the future to connect to N. Shiloh Drive in this area. Further street intersections are not feasible within the subject property due to being bordered by an interstate and the expansive floodplain/streamside protection zones. We are asking for a variance from having a street intersection to the east due to the neighboring roadway being I-49. A single street cannot connect to I-49 without a larger interchange. The Porter Rd interchange is just under 1000' to the north and a second interchange would not be permitted with another that close. This makes a street connection to the east of our property unachievable.

The west side of Shiloh Drive intersects with Point West Drive 1,290 feet north of the property line, so we are meeting this requirement for the west side of the street. At the Tech Plat Meeting on March 1, 2023, we received comments from staff that requested a pedestrian or roadway connection to W. Riverridge Drive adjacent to our site. Unfortunately, any kind of infrastructure connection to the west is not feasible due to the geometry of Middle Fork of Hamestring Creek and its resulting hydraulic nature and streamside protection zones. The existing subdivision to the west has two stub streets for possible connections (#1 and #2 in the image below). A street or pedestrian



connection here would require not only an expansive crossing but a realignment of the creek since the creek centerline does not cross perpendicular to the street but rather runs parallel with the alignment of the future street (see the blue line in the image below). This would be very costly, require a Nationwide Corps Permit and would impact the existing streamside protection zones.

Apart from the hardships previously outlined, there are existing residences directly adjacent to these street stubouts. A connection would cause an increase in base flood elevations and adversely impact flooding concerns. A street intersection west of N. Shiloh Drive is unfeasible due to the winding nature of the Middle Fork of Hamestring Creek and its proximity to adjacent residences.



2. Variance from Section 166.23 that requires ground floor units adjacent to a public street to have primary pedestrian entry that is visible from the street. The entry shall connect unobstructed to the public sidewalk where it exists. The pedestrian connection to the street may run from the door along the façade of the building parallel to the street for a maximum of 12 feet before connecting directly to the public sidewalk.

There are a couple factors that contribute to the need for a variance for the buildings on the west side of Shiloh Drive. First, there is an existing 36" water transmission line within an easement along the west side of Shiloh Drive. The Utility Director has confirmed that fill cannot be placed over the waterline or even within the easement to protect the utility and any future maintenance efforts. Any sidewalk connections to these sides of the building per the ordinance would place fill in the easement/over the waterline. Second, the typical street section recommended by staff does not show a sidewalk on the west



side of Shiloh Drive. The recommended typical section was designed to eliminate fill over the waterline/easement as previously discussed. Therefore, any pedestrian entry directly adjacent to the street would not have a public sidewalk to connect to. A primary pedestrian entry without connection to sidewalk is not functional and does not promote a pedestrian friendly corridor. In lieu of providing the pedestrian entries, we have shown additional architectural features and additional landscaping on the street sides of Buildings 1, 2, and 4. We believe these added items, both on the building and adjacent to the entrances of the development, enhance the view from the street and activate the pedestrian friendly routes from the right-of-way meeting the intent of the code.



3. Variance from Section 168.10(U) that states any development in a flood hazard area should “not increase flood flows, flood heights, or flood channel velocities on the subject property or any property upstream or downstream”.

The City of Fayetteville’s Master Street Plan shows an extension of N. Shiloh Drive south from the existing stubout over Middle Fork of Hamestring Creek. The HECRAS model of N. Shiloh Drive shows an increase in velocities. The velocities are increased by 0.04 fps, 0.16 fps, 0.62 fps, 0.01 fps, and 0.02 fps at cross sections within the development. The highest velocity onsite is 3.88 fps, which is not considered erosive (6 fps). The slight increases in velocity will not cause adverse impacts to the streambanks or floodplain. The bottomless culvert and overflow culvert crossing has been designed to reduce impacts to the existing channel and adjacent streamside protection zones. The entire area is low lying with little slope and dense vegetation. This vegetation will remain throughout and after construction and will aid in keeping the same flow conditions along the banks and floodplain regardless of the slight increase in velocity.



Crafton Tull

901 N 47th Street, Suite 400
Rogers, AR 72756

479.636.4838 (ph)
479.631.6224 (fax)

Should you have any questions, or require any additional information, please contact us at your convenience.

Sincerely,

Ali Karr, P.E.
Project Manager



NOTE:
THIS CHARACTER ELEVATION IMAGE IS
PROVIDED FOR DESIGN INSPIRATION
REFERENCE ONLY, AND SERVES AS A
GENERAL EXAMPLE OF MATERIAL PALETTE
DESIGN INTENT.

MATERIAL LEGEND			
	ARCHITECTURAL SHINGLE ROOF		SIDING 4
	SIDING 1		ENGINEERED LAP SIDING
	SIDING 2		SIDING 5
	SIDING 3		ENGINEERED VERTICAL BOARD AND BATTEN SIDING
	BRICK VENEER MASONRY		ENGINEERED TRIM
	ENGINEERED LAP SIDING		11-1/4\"/>
			9-1/2\"/>



2 36 UNIT BUILDING - NORTH EXTERIOR ELEVATION AT BUILDING #2
332' = 1'-0'



1 36 UNIT BUILDING - SOUTH EXTERIOR ELEVATION AT BUILDING #2
332' = 1'-0'

MATERIAL LEGEND			
	ARCHITECTURAL SHINGLE ROOF		SIDING 4
	SIDING 1		SIDING 5
	SIDING 2		SIDING 3
	SIDING 3		SIDING 4
	SIDING 5		SIDING 6
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	SIDING 7		SIDING 8
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	SIDING 99		SIDING 100



2 EAST EXTERIOR ELEVATION AT BUILDING #2 (36 UNIT)
1/8" = 1'-0"



1 WEST EXTERIOR ELEVATION AT BUILDING #2 (36 UNIT)
1/8" = 1'-0"

MATERIAL LEGEND			
	ARCHITECTURAL SHINGLE ROOF		SIDING 4 ENGINEERED LAP SIDING
	SIDING 1 ENGINEERED PANEL SIDING W/ REVEAL JOINTS		SIDING 5 ENGINEERED VERTICAL BOARD AND BATTEN SIDING
	SIDING 2 ENGINEERED PANEL SIDING W/ REVEAL JOINTS		BRICK VENEER MASONRY
	SIDING 3 ENGINEERED LAP SIDING		ENGINEERED TRIM 1 1/4" AT BANDING 3 1/2" VERTICAL OUTSIDE TRIM

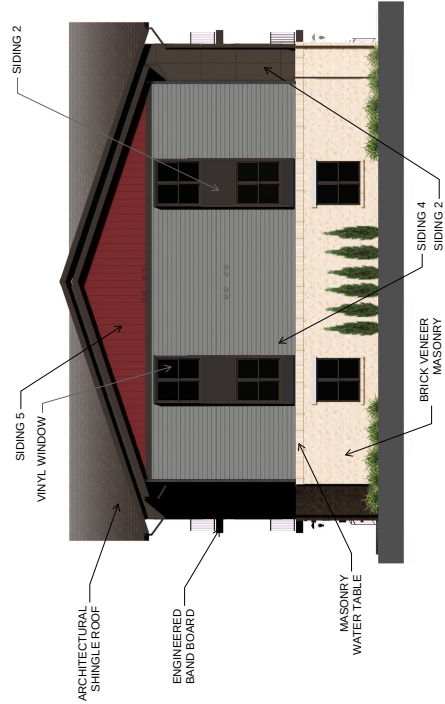


2 36 UNIT BUILDING - SOUTHWEST EXTERIOR ELEVATION AT BUILDING #4
332' ± 1'-0"

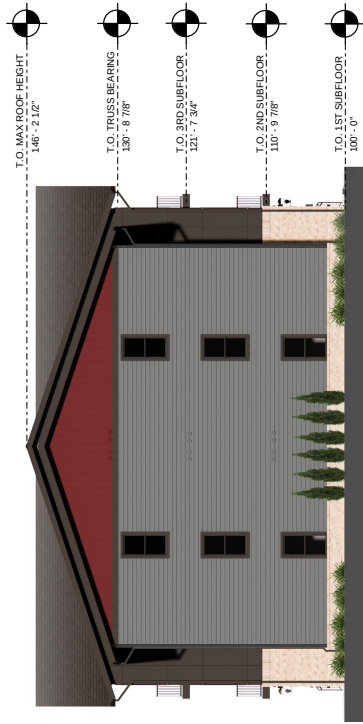


1 36 UNIT BUILDING - NORTHEAST EXTERIOR ELEVATION AT BUILDING #4
332' ± 1'-0"

MATERIAL LEGEND			
	ARCHITECTURAL SHINGLE ROOF		SIDING 4 ENGINEERED LAP SIDING
	SIDING 1 ENGINEERED PANEL SIDING w/ REVEAL JOINTS		SIDING 5 ENGINEERED VERTICAL BOARD AND BATTEN SIDING
	SIDING 2 ENGINEERED PANEL SIDING w/ REVEAL JOINTS		BRICK VENEER MASONRY
	SIDING 3 ENGINEERED LAP SIDING		ENGINEERED TRIM
			11'-10 1/4" AT BANDING
			9'-1 1/2" VERTICAL OUTSIDE/INSIDE TRIM



2 SOUTHEAST EXTERIOR ELEVATION AT BUILDING #4 (36 UNIT)
1/8" = 1'-0"



1 NORTHWEST EXTERIOR ELEVATION AT BUILDING #4 (36 UNIT)
1/8" = 1'-0"

MATERIAL LEGEND			
	ARCHITECTURAL SHINGLE ROOF		SIDING 4 ENGINEERED LAP SIDING
	SIDING 1 ENGINEERED PANEL SIDING W/ REVEAL JOINTS		SIDING 5 ENGINEERED PANEL SIDING BOARD AND BATTEN SIDING
	SIDING 2 ENGINEERED PANEL SIDING W/ REVEAL JOINTS		BRICK VENEER MASONRY
	SIDING 3 ENGINEERED LAP SIDING		ENGINEERED TRIM 1 1/4" AT BANDING 3 1/2" VERTICAL OUTSIDE TRIM



2 48 UNIT BUILDING - NORTHWEST EXTERIOR ELEVATION AT BUILDING #3
3/32" = 1'-0"

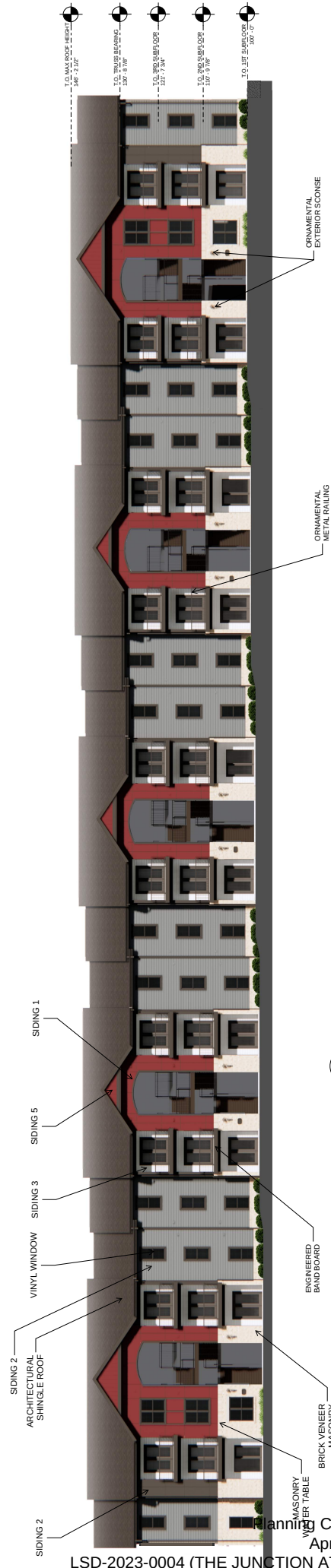


1 48 UNIT BUILDING - SOUTHEAST EXTERIOR ELEVATION AT BUILDING #3
3/32" = 1'-0"

MATERIAL LEGEND			
	ARCHITECTURAL SHINGLE ROOF		SIDING 4
	SIDING 1		ENGINEERED LAP SIDING
	SIDING 2		ENGINEERED PANEL SIDING W/ REVEAL JOINTS
	SIDING 3		BRICK VENEER MASONRY
	ENGINEERED LAP SIDING		ENGINEERED TRIM
			11-1/4\"/>
			9-1/2\"/>

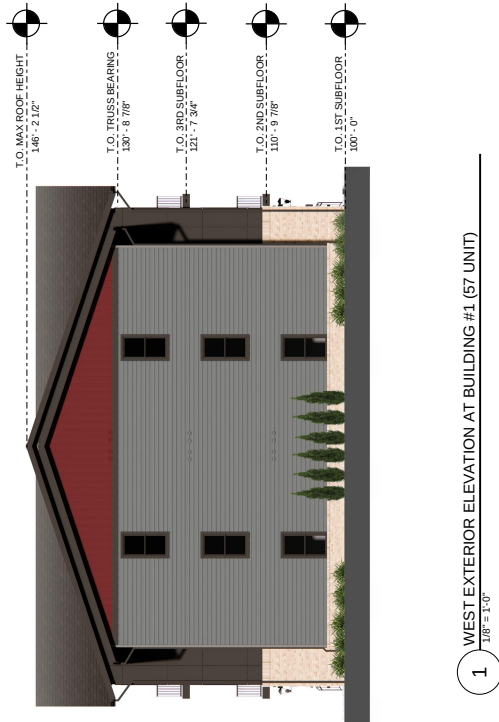
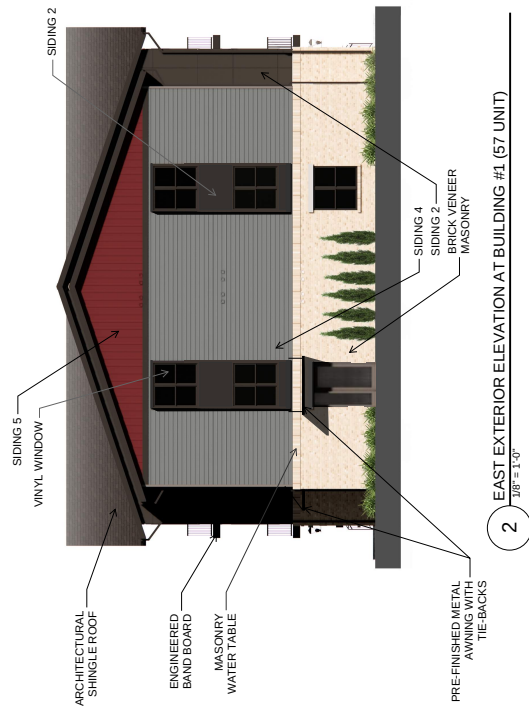


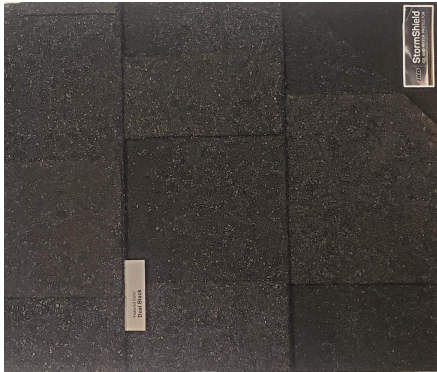
2 57 UNIT BUILDING - SOUTH EXTERIOR ELEVATION AT BUILDING #1
332' = 1'-0"



1 57 UNIT BUILDING - NORTH EXTERIOR ELEVATION AT BUILDING #1
332' = 1'-0"

MATERIAL LEGEND			
	ARCHITECTURAL SHINGLE ROOF		SIDING 4 ENGINEERED LAP SIDING
	SIDING 1 ENGINEERED PANEL SIDING W/ REVEAL JOINTS		SIDING 5 ENGINEERED VERTICAL BOARD AND BATTEN SIDING
	SIDING 2 ENGINEERED PANEL SIDING W/ REVEAL JOINTS		BRICK VENEER MASONRY
	SIDING 3 ENGINEERED LAP SIDING		ENGINEERED TRIM 1 1/4" AT BANDING 3/4" VERTICAL OUTSIDE/INSIDE TRIM





ARCHITECTURAL SHINGLE ROOF



ORNAMENTAL RAILING

MATERIAL LEGEND			
	ARCHITECTURAL SHINGLE ROOF		SIDING 2 ENGINEERED LAP SIDING
	SIDING 1 ENGINEERED PANEL SIDING W/ REVEAL JOINTS		SIDING 5 ENGINEERED VERTICAL BOARD AND BATTEN SIDING
	SIDING 2 ENGINEERED PANEL SIDING W/ REVEAL JOINTS		BRICK VENEER MASONRY
	SIDING 3 ENGINEERED LAP SIDING		ENGINEERED TRIM 11-1/4" AT BANDING 9-1/2" VERTICAL OUTSIDE/INSIDE TRIM



GUTTERS & METAL COIL



SIDING 3



MASONRY



BAND BOARD & TRIM



SIDING 2



SIDING 4



SIDING 1 & 5

Umberger, Ryan

From: Bryce Tritt <brycetritt@gmail.com>
Sent: Monday, April 3, 2023 9:39 AM
To: Planning Shared
Cc: Umberger, Ryan
Subject: Re: DDB Investments 1911 N Shiloh Development
Attachments: IMG_4153.jpg

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank, Mirinda,

Dear Planning Commission Members,

I am writing to express my deep concerns regarding the request for variance from Section 168.10(U) for the proposed development in the flood hazard area. As an adjacent property owner, I have not been notified or consulted about the potential increase in flood risk that this development could bring to my property.

In particular, I am alarmed by the possibility of the proposed development increasing flood flows, flood heights, or flood channel velocities on my property or any property upstream or downstream, as prohibited by Section 168.10(U). In the 8 years that I have owned 2843/2845 W Riverridge Drive, Hamestring Creek has reached the 100-year flood mark twice. Please see the attached picture for reference from the April 2017 event. I fear that narrowing the creek, removing the low-lying area and dense vegetation, and increasing the velocity will further exacerbate the flood risk and potentially beach my duplex in the next flood event.

I urge the Planning Commission to carefully consider the potential impact of this development on the surrounding area, including the increased flood risk that could harm adjacent property owners like me. I also request that I be notified of any upcoming meetings or public hearings related to this proposal.

Thank you for your attention to this matter.

Best,

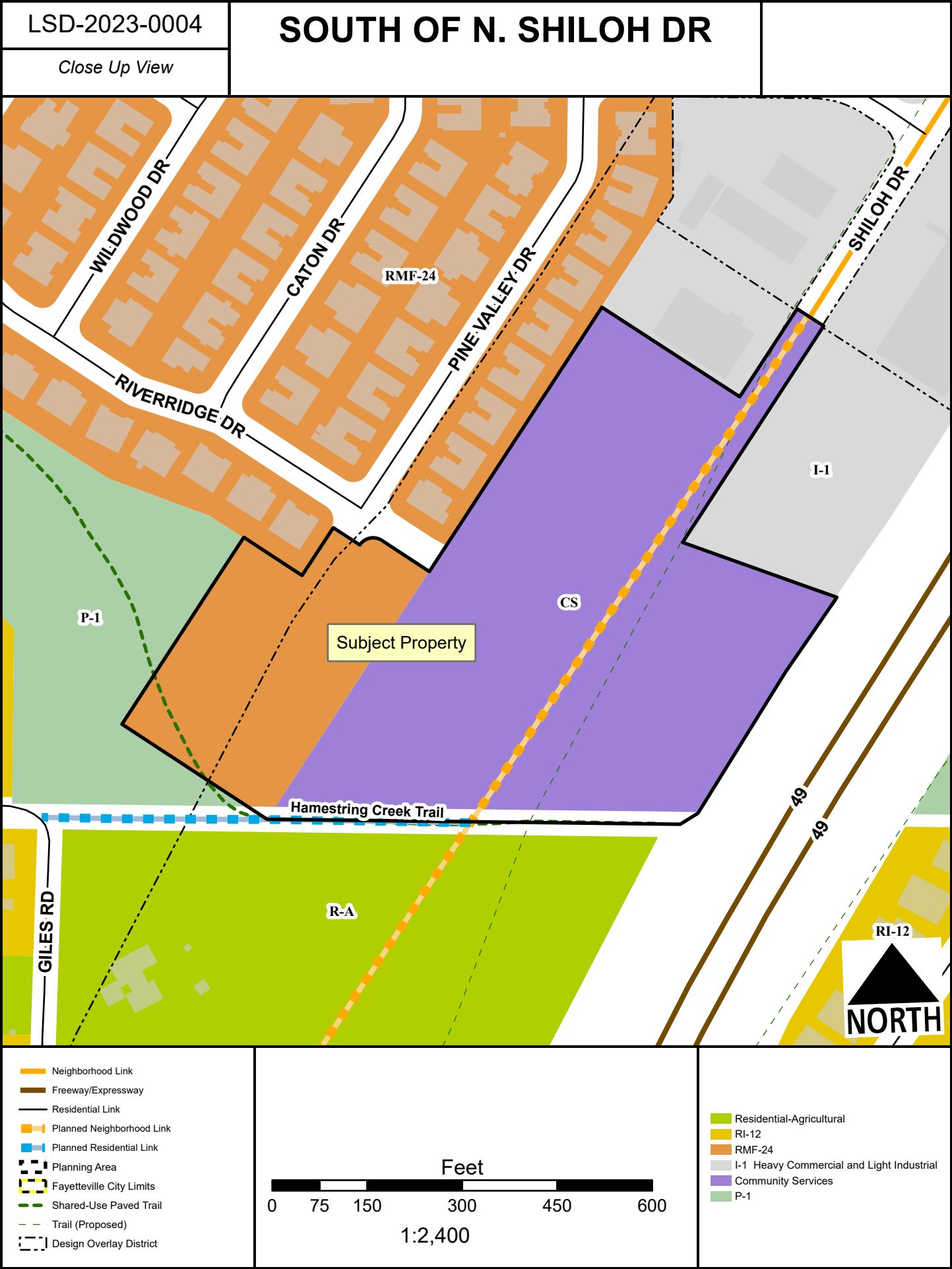
Bryce Tritt

2843/2845 W Riverridge Drive

On Mon, Apr 3, 2023 at 8:45 AM Planning Shared <planning@fayetteville-ar.gov> wrote:

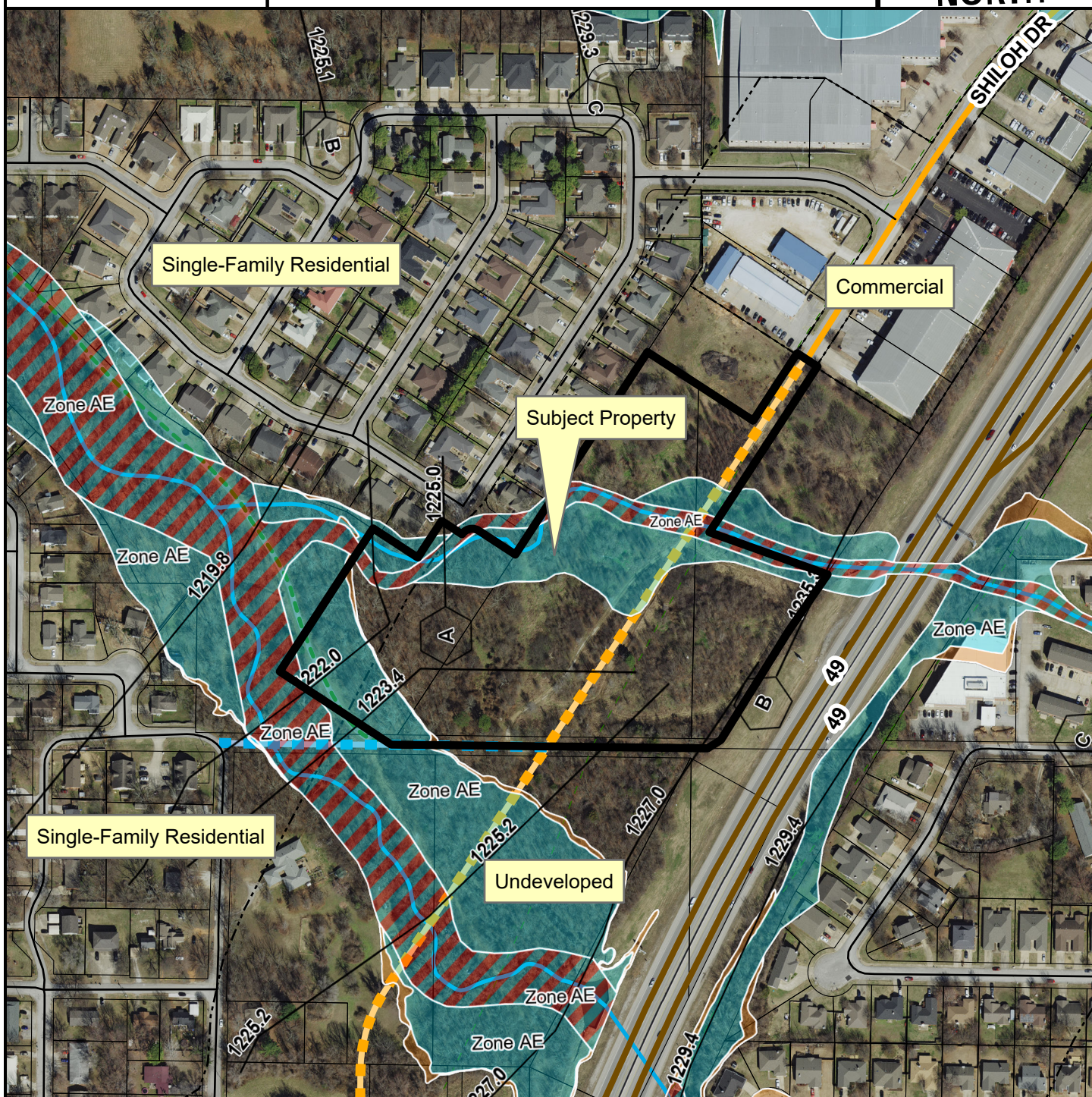
Attached is the letter of intent. Let me know if you have any questions or need anything else.

Thank you





Current Land Use



-  Neighborhood Link
-  Freeway/Expressway
-  Residential Link
-  Planned Neighborhood Link
-  Planned Residential Link
-  Trail (Proposed)
-  Planning Area
-  Fayetteville City Limits
-  Design Overlay District

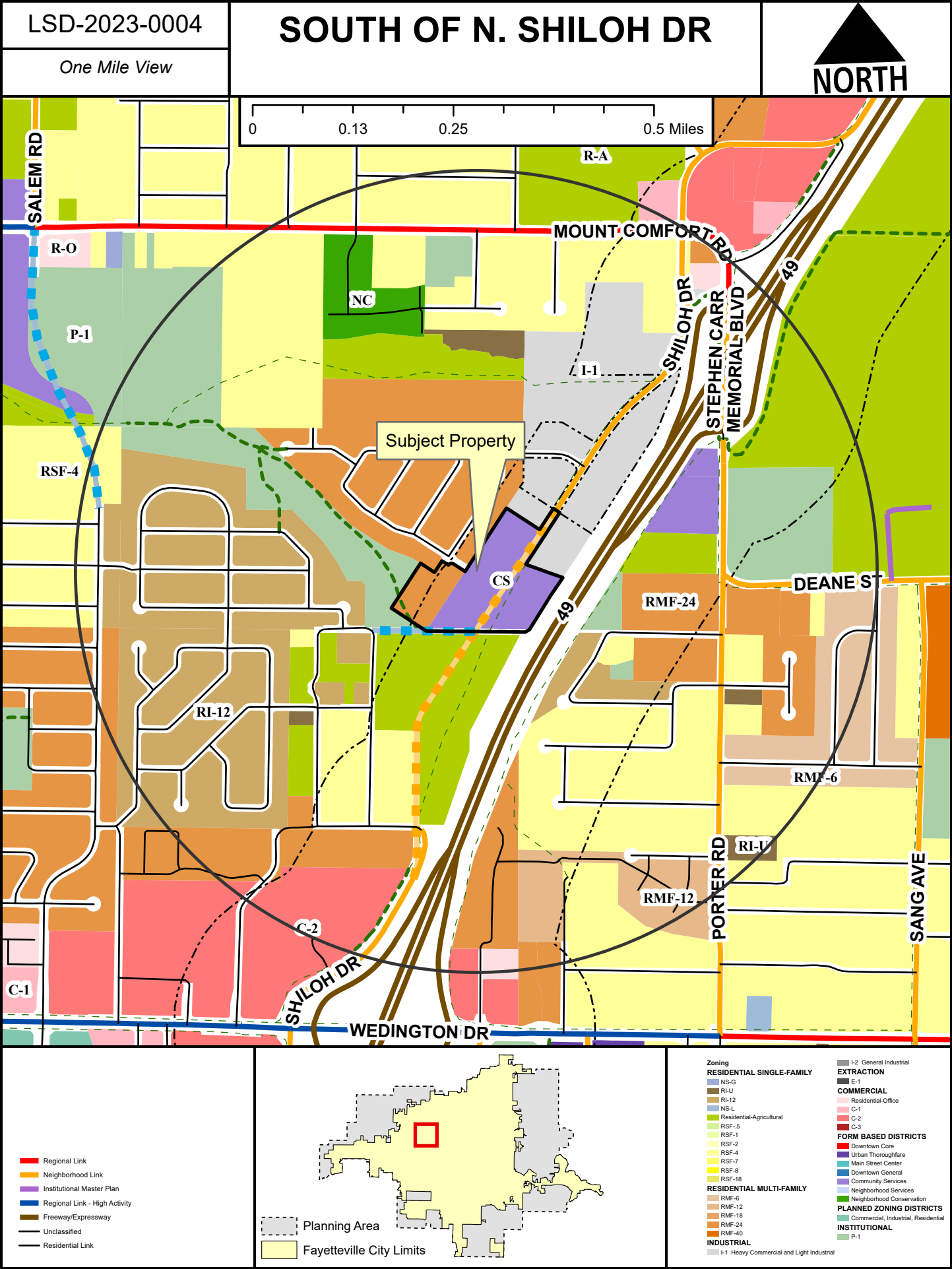
FEMA Flood Hazard Data

-  100-Year Floodplain
 Floodway

Feet

0	112.5	225	450	675	900
---	-------	-----	-----	-----	-----

1:3,600



Mirinda Hopkins

Development Coordinator

Planning Division

City of Fayetteville

479-575-8267

[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)



From: Bryce Tritt <brycetrutt@gmail.com>
Sent: Saturday, April 1, 2023 10:49 AM
To: Planning Shared <planning@fayetteville-ar.gov>
Subject: DDB Investments 1911 N Shiloh Development

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi,

I received a notification in the mail about a proposed zoning change near a property I own, 2845 W Riverridge Dr. Can you direct me to the proposal materials?

Thanks,

Bryce

--

Bryce T. Tritt
479.970.7100 c

--

Bryce T. Tritt
479.970.7100 c



MEETING OF MAY 16, 2023

TO: Mayor Jordan and City Council

THRU: Susan Norton, Chief of Staff
Jonathan Curth, Development Services Director
Jessica Masters, Development Review Manager

FROM: Donna Wonsower, Planner

DATE:

SUBJECT: **RZN-2023-0010: Rezoning (1746 N. OLD WIRE RD. / PERRY, 369): Submitted by BUFFINGTON HOMES for property located at 1746 N. OLD WIRE RD in WARD 3. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and contains approximately 1.06 acres. The request is to rezone the property to NC, NEIGHBORHOOD CONSERVATION.**

RECOMMENDATION:

City Planning staff and the Planning Commission recommend approval of a request to rezone the subject property as described and shown in the attached Exhibits 'A' and 'B'.

BACKGROUND:

The subject property is in east Fayetteville, approximately 1/3 of a mile northeast of the intersection of N. Old Wire Rd. and N. Mission Blvd. The parcel is currently built out with a 1,703 square foot single family residence constructed in 1979 per the Washington County Assessor. FEMA floodplain/floodway covers roughly the western half of the parcel, including portions of the existing home. The estimated Niokaska Creek streamside protection zone covers a portion of the northwest corner adjacent to the existing driveway.

Request: The request is to rezone the parcel from RSF-4, Residential Single-Family, 4 Units per Acre zoning district to NC, Neighborhood Conservation.

Public Comment: No public comments were received prior to planning commission. One member of the public spoke at the meeting, a summary of which is included below.

Land Use Compatibility: Staff finds the request to be compatible with the surrounding context. Neighboring properties are of a variety of sizes but generally follow a mix of lot-and-block and cul-de-sac development patterns. The RSF-4 and NC districts have similar allowed uses. When compared to RSF-4, rezoning to NC will decrease the required lot area of single and two-family uses from 8,000 square feet and 12,000 square feet, respectively, to 4,000 square feet. In addition, NC would have a build-to zone of 25 feet rather than a front setback of 15 feet, and a rear setback of 5 feet rather than 15 feet.

The subject property contains 1.06 acres. Under current entitlements, RSF-4 would allow a maximum of four (4) units, while NC would increase the allowable density to eleven (11) units. That said, staff notes that almost

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

0.5 acres are subject to FEMA regulations, substantially limiting the developable area of the parcel and that any future development would be further limited by minimum parking requirements, tree preservation, drainage, and access management standards. NC requires a 40-foot lot width minimum while RSF-4 requires a 70-foot lot width minimum for single-family dwellings and an 80-foot lot width minimum for two-family dwellings. Conversely, both NC and RSF-4 include up to a three-story height limit.

Land Use Plan Analysis: Staff finds the proposal is consistent with the goals in City Plan 2040 and the future land use designation for this location. Rezoning from RSF-4 to NC serves to contribute towards the following City Plan 2040 goals:

- #1 “We will make appropriate infill and revitalization our highest priority,”
- #2 “We will discourage suburban sprawl,”
- #3 “We will make compact, complete, and connected development the standard,” and
- #6 “We will create opportunities for attainable housing.”

The Future Land Use Map designates the site as split between “Residential Neighborhood” - a designation which supports a wide variety of housing types of appropriate scale and context including single-family, duplexes, rowhouses, multifamily and accessory dwelling units, and “Natural Area” - a designation which promotes conservation of open space and areas of significant riparian benefit. Staff finds that promotion of infill and density as designated by the “Residential Neighborhood” designation is likely best facilitated by the flexible regulations in NC zoning and is justified given the property’s proximity to city services including schools, parks, and trails and the existing NC residential development. Allowing development adjacent to the existing neighborhood in an infill location minimizes the need for the construction of additional municipal infrastructure such as water, sewer, and roads, which could aid in lowering the overall development cost and improving housing affordability. Adding housing near the city center rather than the edges further reduces strain on city services and discourages sprawl development patterns.

CITY PLAN 2040 INFILL MATRIX: City Plan 2040’s Infill Matrix indicates a score of **5-6** for this site. The following elements of the matrix contribute to the score:

- Adequate Fire Response (Station #5, 2979 N Old Wire Rd.)
- Near Sewer Main (8” sewer main, E Adelaide Ln.)
- Near Water Main (8” water main, N. Old Wire Rd.)
- Near Public School (Root Elementary School)
- Near City Park (Clarence Craft Park)
- Near Paved Trail (N. Old Wire Rd. Side Path)

DISCUSSION:

At the April 24, 2023 Planning Commission meeting, a vote of 8-0-1 forwarded the request to City Council with a recommendation of approval. Commissioner Brink made the motion and Commissioner Winston seconded. Commissioner McGetrick recused for this item. Commissioners in favor of the rezoning found the proposed district to be compatible with the surrounding neighborhoods. One member of the public spoke during the meeting, citing anticipated compatibility with the existing Buffington neighborhood and the recent POA decision by 75% of residents to expand the POA to encompass additional homes.

BUDGET/STAFF IMPACT:

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

NA

ATTACHMENTS: SRF, Exhibit A, Exhibit B, Planning Commission Staff Report



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2023-711

RZN-2023-0010: Rezoning (1746 N. OLD WIRE RD. / PERRY, 369): Submitted by BUFFINGTON HOMES for property located at 1746 N. OLD WIRE RD in WARD 3. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and contains approximately 1.06 acres. The request is to rezone the property to NC, NEIGHBORHOOD CONSERVATION.

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN-2023-010 LOCATED AT 1746 NORTH OLD WIRE ROAD IN WARD 3 FOR APPROXIMATELY 1.06 ACRES FROM RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE TO NC, NEIGHBORHOOD CONSERVATION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby changes the zone classification of the property shown on the map (Exhibit A) and the legal description (Exhibit B) both attached to the Planning Department's Agenda Memo from RSF-4, Residential Single-Family, Four Units Per Acre to NC, Neighborhood Conservation.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby amends the official zoning map of the City of Fayetteville to reflect the zoning change provided in Section 1.

City of Fayetteville Staff Review Form

2023-711

Item ID

5/16/2023

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Jonathan Curth

4/28/2023

DEVELOPMENT REVIEW (630)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

RZN-2023-0010: Rezoning (1746 N. OLD WIRE RD. / PERRY, 369): Submitted by BUFFINGTON HOMES for property located at 1746 N. OLD WIRE RD in WARD 3. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and contains approximately 1.06 acres. The request is to rezone the property to NC, NEIGHBORHOOD CONSERVATION.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? No

Total Amended Budget

\$ -

Expenses (Actual+Encum)

\$ -

Available Budget

\$ -

Does item have a direct cost? No

Item Cost

\$ -

Is a Budget Adjustment attached? No

Budget Adjustment

\$ -

Remaining Budget

\$ -

V20221130

Purchase Order Number:

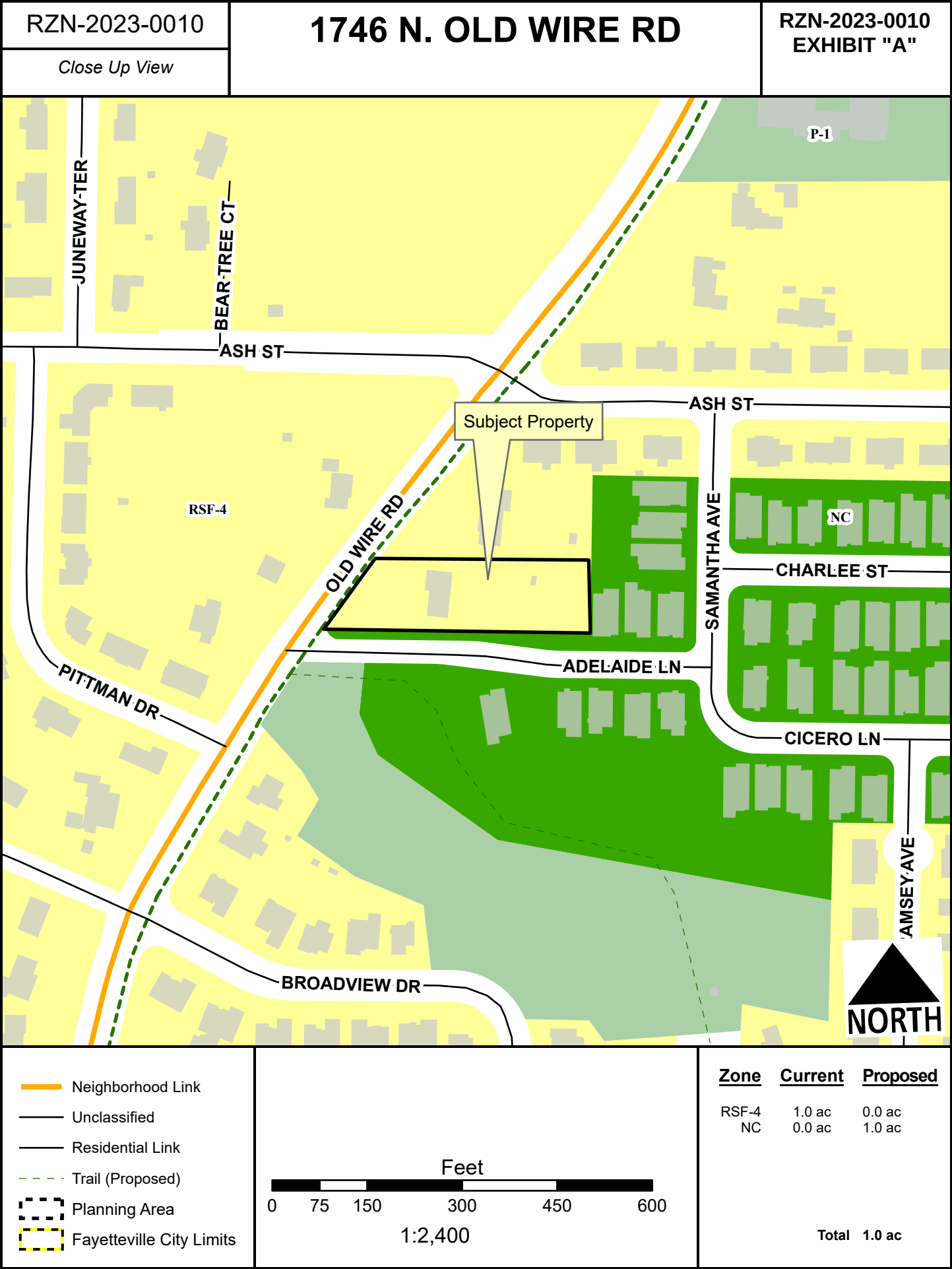
Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:



RZN-2023-0010
EXHIBIT "B"

PREVIOUS PARCEL #765-13429-000:

A PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER AND A PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 16 NORTH, RANGE 30 WEST, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A POINT WHICH IS N87°13'23"W 1049.85' AND N02°57'11"E 292.00' FROM THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SOUTHEAST QUARTER AND RUNNING THENCE N87°12'16"W 418.20' TO THE EAST RIGHT-OF-WAY OF NORTH OLD WIRE ROAD, THENCE ALONG SAID RIGHT-OF-WAY N39°07'28"E 155.16', THENCE LEAVING SAID RIGHT-OF-WAY S87°12'16"E 326.63' TO THE WEST LINE OF COTTAGES AT OLD WIRE SUBDIVISION, AS PER THE FINAL PLAT THEREOF FILED IN BOOK 24A AT PAGE 38, THENCE ALONG SAID WEST SUBDIVISION LINE S02°57'11"W 125.00' TO THE POINT OF BEGINNING, CONTAINING 1.06 ACRES, MORE OR LESS, SUBJECT TO THAT PORTION IN NORTH OLD WIRE ROAD MASTER STREET PLAN RIGHT-OF-WAY ON THE WEST SIDE OF HEREIN DESCRIBED TRACT AND SUBJECT TO ALL OTHER EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

ADJUSTED PARCEL #765-13429-000:

A PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER AND A PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 16 NORTH, RANGE 30 WEST, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SOUTHEAST QUARTER AND RUNNING THENCE N87°13'23"W 1049.85', THENCE N02°57'11"E 292.00', THENCE N87°12'16"W 10.00' TO THE TRUE POINT OF BEGINNING AND RUNNING THENCE N87°12'16"W 408.20' TO THE EAST RIGHT-OF-WAY OF NORTH OLD WIRE ROAD, THENCE ALONG SAID RIGHT-OF-WAY N39°07'28"E 155.16', THENCE LEAVING SAID RIGHT-OF-WAY S87°12'16"E 316.63', THENCE S02°57'11"W 125.00' TO THE POINT OF BEGINNING, CONTAINING 1.04 ACRES, MORE OR LESS, SUBJECT TO THAT PORTION IN NORTH OLD WIRE ROAD MASTER STREET PLAN RIGHT-OF-WAY ON THE WEST SIDE OF HEREIN DESCRIBED TRACT AND SUBJECT TO ALL OTHER EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

PREVIOUS PARCEL #759-29570-000:

LOT 35, COTTAGES AT OLD WIRE, A SUBDIVISION TO THE CITY OF FAYETTEVILLE, ARKANSAS, AS PER PLAT ON FILE IN THE OFFICE OF THE CIRCUIT CLERK AND EX-OFFICIO OF WASHINGTON COUNTY, ARKANSAS. SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

ADJUSTED PARCEL #759-29570-000:

ALL OF LOT 35, COTTAGES AT OLD WIRE, A SUBDIVISION TO THE CITY OF FAYETTEVILLE, ARKANSAS, AND ALSO A PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 16 NORTH, RANGE 30 WEST, WASHINGTON COUNTY, ARKANSAS, ALL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT AN EXISTING REBAR MARKING THE SOUTHWEST CORNER OF SAID LOT 35, SAID POINT BEING N87°13'23"W 1049.85' AND N02°57'11"E 264.07' FROM THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SOUTHEAST QUARTER AND RUNNING THENCE N02°57'11"E 27.93', THENCE N87°12'16"W 10.00', THENCE N02°57'11"E 125.00', THENCE S87°12'16"E 10.00', THENCE S02°57'11"W 25.55' TO AN EXISTING REBAR, THENCE S87°07'34"E 50.11' TO AN EXISTING REBAR, THENCE S03°08'45"W 127.01' TO THE NORTH RIGHT-OF-WAY OF EAST ADELAIDE LANE, THENCE ALONG SAID RIGHT-OF-WAY N87°33'15"W 49.68' TO THE POINT OF BEGINNING, CONTAINING 0.17 ACRES, MORE OR LESS, SUBJECT TO THAT PORTION IN EAST ADELAIDE LANE MASTER STREET PLAN RIGHT-OF-WAY ON THE SOUTH SIDE OF HEREIN DESCRIBED TRACT AND SUBJECT TO ALL OTHER EASEMENTS AND RIGHTS-OF-WAY OF RECORD.



TO: Fayetteville Planning Commission

THRU: Jessie Masters, Development Review Manager

FROM: Donna Wonsower, Planner

MEETING DATE: April 24, 2023 **(Updated with results from Planning Commission)**

SUBJECT: **RZN-2023-0010: Rezoning (1746 N. OLD WIRE RD. / PERRY, 369):**
Submitted by BUFFINGTON HOMES for property located at 1746 N. OLD WIRE RD. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and contains approximately 1.06 acres. The request is to rezone the property to NC, NEIGHBORHOOD CONSERVATION.

RECOMMENDATION:

Staff recommends forwarding **RZN-2023-0010** to City Council with a recommendation of approval.

RECOMMENDED MOTION:

"I move to forward **RZN-2023-0010** to City Council with a recommendation of approval."

BACKGROUND:

The subject property is in east Fayetteville, approximately 1/3 of a mile northwest of the intersection of N. Old Wire Rd. and N. Mission Blvd. The parcel is currently developed with a 1,703 square foot single family residence constructed in 1979 per the Washington County Assessor. FEMA floodplain/floodway covers roughly the western half of the parcel, including portions of the existing home. The Niokaska Creek streamside protection zone covers a portion of the northwest corner adjacent to the existing driveway. Surrounding land uses and zoning is depicted in *Table 1*.

Table 1
Surrounding Land Use and Zoning

Direction	Land Use	Zoning
North	Single-Family Residential	RSF-4, Residential Single-Family, 4 Units per Acre
South	Single-Family Residential / Park	NC, Neighborhood Conservation / P-1, Institutional
East	Single-Family Residential	NC, Neighborhood Conservation
West	Single-Family Residential	RSF-4, Residential Single-Family, 4 Units per Acre

Request: The request is to rezone the parcel from RSF-4, Residential Single-Family, 4 Units per Acre zoning district to NC, Neighborhood Conservation.

Public Comment: Staff has not received any public comment on the proposed rezoning.

INFRASTRUCTURE AND ENVIRONMENTAL REVIEW

- Streets:** The subject area has frontage along N. Old Wire Rd. N. Old Wire Rd. is a fully improved neighborhood link street with asphalt paving, sidewalk, curb and gutter. Any street improvements required in these areas would be determined at the time of development proposal. Any additional improvements or requirements for drainage will be determined at time of development.
- Water:** Public water is available to the subject area. An existing 8-inch water main is present on the west side of N. Old Wire Rd.
- Sewer:** Sanitary Sewer is available to the subject area. An existing 15-inch sewer main is present on the east side of N. Old Wire Rd.
- Fire:** Station 5, located at 2979 N. Crossover Rd., protects this site. The property is located approximately 2.1 miles from the fire station with an anticipated drive time of approximately 4 minutes using existing streets. The anticipated response time would be approximately 6.2 minutes. Fire Department response time is calculated based on the drive time plus 1 minute for dispatch and 1.2 minutes for turn-out time. Within the City Limits, the Fayetteville Fire Department has a response time goal of 6 minutes for an engine and 8 minutes for a ladder truck.
- Police:** The Police Department expressed no concerns with this request.
- Drainage:** No portion of the property lies within the Hillside-Hilltop Overlay District.

A portion of the property lies within a FEMA floodplain. A floodplain development review will be required at the time of permit or plan submittal. This will restrict the type of development and impact in flood zones; and may require additional documentation such as flood studies or elevation certificates depending on the type of development. If a development impacts a floodplain, those impacts may require review and approval from FEMA.

A portion of the property lies within a streamside protection zone. Streamside Protection Zones generally consists of a protected area on each side of a stream or creek. This "protected area" is meant to preserve woody vegetation and natural areas along stream corridors to improve/protect stream health. At a minimum, it will be 50ft wide as measured from the top of bank but depending on the shape and extents of the floodway, it could be substantially more. Certain construction activities such as trails and some utilities are allowed in these zones, but in general, improvements such as parking lots or buildings are prohibited.

A portion of the property contains hydric soils, a known indicator of wetlands. However, for an area to be classified as wetlands, it may also need other characteristics such as hydrophytes (plants that grow in water), and shallow water during parts of the year. Hydric Soils can be found across many areas of Fayetteville, including valleys, floodplains, and open prairies. It's important to identify these natural resources during development, so when these soils are identified on a property, further environmental studies will be required at the time of development. Before permits will be issued for the property a statement/report from an environmental professional must be provided summarizing the existence

of wetlands on the property. If this statement/report indicates that wetlands may be present on site, a USACE Determination of Jurisdictional Wetlands will be required at the time of development submittal.

Tree Preservation:

The proposed zoning district of NC, Neighborhood Conservation requires **20% minimum canopy preservation**. The current zoning district of RSF-4, Residential Single-Family, Four Units Per Acre requires **25% minimum canopy preservation**.

CITY PLAN 2040 FUTURE LAND USE PLAN: City Plan 2040 Future Land Use Plan designates the property within the proposed rezone as split between **Residential Neighborhood** and **Natural Area**.

Residential Neighborhood Areas are primarily residential in nature and support a wide variety of housing types of appropriate scale and context: single-family, duplexes, rowhouses, multifamily and accessory dwelling units. Residential Neighborhood encourages highly connected, compact blocks with gridded street patterns and reduced building setbacks. It also encourages traditional neighborhood development that incorporates low-intensity non-residential uses intended to serve the surrounding neighborhoods, such as retail and offices, on corners and along connecting corridors. This designation recognizes existing conventional subdivision developments which may have large blocks with conventional setbacks and development patterns that respond to features of the natural environment. Building setbacks may vary depending on the context of the existing neighborhood.

Natural Areas consist of lands approximating or reverting to a wilderness conditions, including those with limited development potential due to topography, hydrology, vegetation or value as an environmental resource. These resources can include stream and wildlife corridors, as well as natural hubs and cores, many of which are identified in the generalized enduring green network. A Natural Area designation would encourage a development pattern that requires conservation and preservation, prevents degradation of these areas, and would utilize the principles of low impact development stormwater infrastructure for all developments. Natural Areas are prime candidates for conservation subdivision design and/or clustered development patterns.

CITY PLAN 2040 INFILL MATRIX: City Plan 2040's Infill Matrix indicates a score of **5-6** for this site, with a weighted score of **6** at the highest. The following elements of the matrix contribute to the score:

- Adequate Fire Response (Station #5, 2979 N Old Wire Rd.)
- Near Sewer Main (15" sewer main, N Old Wire Rd.)
- Near Water Main (8" water main, N. Old Wire Rd.)
- Near Public School (Root Elementary School)
- Near City Park (Clarence Craft Park)
- Near Paved Trail (N. Old Wire Rd. Side Path)

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: **Land Use Compatibility:** Staff finds the request to be compatible with the surrounding context. Neighboring properties are of a variety of sizes but

generally follow a cul-de-sac development pattern, except for the adjacent NC neighborhood to the east and south which follows a more traditional block pattern. The RSF-4 and NC districts have similar allowed uses. NC includes urban form build-to-lines rather than traditional setbacks. When compared to RSF-4, rezoning to NC will decrease the buildable area of the lot for single and two-family uses from 8,000 sf and 12,000 sf respectively to 4,000 sf. In addition, NC would have a build-to zone of 25' rather than a front setback of 15', and a rear setback of 5' rather than 15'.

The subject property contains roughly 1.1 acres. Under current entitlements RSF-4 would allow a maximum of four (4) units, while NC would increase the allowable density to eleven (11) units. That said, staff notes that almost 0.5 acres is subject to FEMA regulations, substantially limiting the developable area of the parcel and that any future development would be further limited by minimum parking requirements, tree preservation, drainage, and access management standards. NC requires a 40-foot lot width minimum while RSF-4 requires a 70-ft lot width minimum for single-family dwellings and 80-ft lot width minimum for two-family dwellings. Conversely, both NC and RSF-4 include up to a three-story height limit.

Land Use Plan Analysis: Staff finds the proposal is consistent with the goals in City Plan 2040 and the future land use designation for this location. Rezoning from RSF-4 to NC serves to contribute towards the following City Plan 2040 Goals:

- #1 “We will make appropriate infill and revitalization our highest priority,”
- #2 “We will discourage suburban sprawl,”
- #3 “We will make compact, complete, and connected development the standard,” and
- #6 “We will create opportunities for attainable housing.”

The Future Land Use Map designates the site as split between “Residential Neighborhood Area” – a designation which supports support a wide variety of housing types of appropriate scale and context including single-family, duplexes, rowhouses, multifamily and accessory dwelling units, and Natural Area- a designation which promotes conservation of open space and areas of significant riparian benefit. Staff finds that promotion of infill and density as designated by the “Residential Neighborhood” designation is likely best facilitated by the flexible regulations in NC zoning and is justified given the property’s proximity to city services and existing NC residential development. The site scores moderately on the Infill Scoring Matrix due to water/sewer access, public parks and trails, and the proximity of the nearby fire station.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: Staff finds that a rezoning to NC is justified. Rezoning may be less restrictive in allowing the property to develop under proportional regulations. Because rezoning will better support infill redevelopment on the property, staff finds

the proposed zoning to be consistent with the City's future land use goals and therefore needed at this time.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: Rezoning to NC has an associated potential to increase traffic at this location. NC permits development at 10 units per acre where it is currently limited to 4 units per acre. Staff finds potential to increase the number of residential units above what is currently allowed by right subject to constraints such as Floodway/Floodplain, tree preservation requirements, and other design requirements. Staff finds the increase in density is unlikely to result in increased traffic danger or congestion. The subject property has access to N. Old Wire Rd., an improved neighborhood link, and E. Adelaide Ln., an improved residential link. Future development would be required to meet the City's applicable access management and parking standards.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: Rezoning the property to NC may increase the load on public services, but the impact is not expected to be detrimental. The size of the property and access to existing water and sewer infrastructure means future development will likely avoid the need for costly extensions to services, and the extensive Floodway/Floodplain will likely limit development capacity of the site. Fayetteville Public Schools did not comment on this request.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:
 - a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
 - b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: N/A

RECOMMENDATION: Planning staff recommends approval of RZN-2023-0010.

PLANNING COMMISSION ACTION: Required <u>YES</u>			
Date: <u>April 24, 2023</u>	☐ Tabled	☒ Forwarded	☐ Denied
Motion: BRINK	FORWARD TO CITY COUNCIL WITH RECOMMENDATION OF APPROVAL		
Second: WINSTON			
Vote: 8-0-1 (MCGETRICK RECUSED)			

BUDGET/STAFF IMPACT:

None

Attachments:

- Unified Development Code:
 - §161.07 District RSF-4, Residential Single-Family, Four Units per Acre
 - §161.29 District NC, Neighborhood Conservation
- Applicant Request Letter
- One Mile Map
- Close-up Map
- Current Land Use Map
- Future Land Use Map

161.07 District RSF-4, Residential Single-Family - Four (4) Units Per Acre

(A) *Purpose.* The RSF-4 Residential District is designed to permit and encourage the development of low density detached dwellings in suitable environments, as well as to protect existing development of these types.

(B) *Uses.*

(1) *Permitted Uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings
Unit 41	Accessory dwellings
Unit 46	Short-term rentals

(2) *Conditional Uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 9	Two-family dwellings
Unit 12a	Limited business
Unit 24	Home occupations
Unit 36	Wireless communications facilities
Unit 44	Cluster Housing Development

(C) *Density.*

	Single-family dwellings	Two (2) family dwellings
Units per acre	4 or less	7 or less

(D) *Bulk and Area Regulations.*

	Single-family dwellings	Two (2) family dwellings
Lot minimum width	70 feet	80 feet
Lot area minimum	8,000 square feet	12,000 square feet
Land area per dwelling unit	8,000 square feet	6,000 square feet
Hillside Overlay District Lot minimum width	60 feet	70 feet
Hillside Overlay District Lot area minimum	8,000 square feet	12,000 square feet
Land area per dwelling unit	8,000 square feet	6,000 square feet

(E) *Setback Requirements.*

Front	Side	Rear
15 feet	5 feet	15 feet

(F) *Building Height Regulations.*

Building Height Maximum	3 stories
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(G) *Building Area.* On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot. Accessory ground mounted solar energy systems shall not be considered buildings.

(Code 1991, §160.031; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. No. 4858, 4-18-06; Ord. No. 5028, 6-19-07; Ord. No. 5128, 4-15-08; Ord. No. 5224, 3-3-09; Ord. No. 5312, 4-20-10; Ord. No. 5462, 12-6-11; Ord. No. 5921, §1, 11-1-16; Ord. No. 5945, §8, 1-17-17; Ord. No. 6015, §1(Exh. A), 11-21-17; Ord. No. 6245, §2, 10-15-19; Ord. No. 6427, §§1(Exh. C), 2, 4-20-21)

Ord. No. 6427, § 2, adopted April 20, 2021, "determines that this ordinance and all amendments to Code sections ordained or enacted by this ordinance shall automatically sunset, be repealed, terminated, and become void twenty (20) months after the passage and approval of this ordinance, unless prior to that date, the City Council amends this ordinance to repeal this sunset, repeal and termination section."

161.29 Neighborhood Conservation

(A) *Purpose.* The Neighborhood Conservation zone has the least activity and a lower density than the other zones. Although Neighborhood Conservation is the most purely residential zone, it can have some mix of uses, such as civic buildings. Neighborhood Conservation serves to promote and protect neighborhood character. For the purposes of Chapter 96: Noise Control, the Neighborhood Conservation district is a residential zone.

(B) *Uses.*

(1) *Permitted Uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings
Unit 41	Accessory dwellings
Unit 46	Short-term rentals

(2) *Conditional Uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 9	Two (2) family dwellings
Unit 10	Three (3) and four (4) family dwellings
Unit 12a	Limited business*
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 28	Center for collecting recyclable materials
Unit 36	Wireless communication facilities
Unit 44	Cluster Housing Development

(C) *Density*. Ten (10) Units Per Acre.

(D) *Bulk and Area Regulations*.

(1) *Lot Width Minimum*.

All dwelling types	40 feet
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(2) *Lot Area Minimum*. 4,000 square feet

(E) *Setback Regulations*.

Front	A build-to zone that is located between the front property line and a line 25 feet from the front property line.
Side	5 feet
Rear	5 feet
Rear, from center line of an alley	12 feet

(F) *Building Height Regulations*.

Building Height Maximum	3 stories
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(Ord. No. 5128, 4-15-08; Ord. No. 5312, 4-20-10; Ord. No. 5462, 12-6-11; Ord. No. 5592, 6-18-13; Ord. No. 5664, 2-18-14; Ord. No. 5800 , §1(Exh. A), 10-6-15>; Ord. No. 5921 , §1, 11-1-16; Ord. No. 5945 , §§5, 7—9, 1-17-17; Ord. No. 6015 , §1(Exh. A), 11-21-17; Ord. No. 6211 , §1, 8-6-19; Ord. No. 6427 , §§1(Exh. C), 2, 4-20-21)

Ord. No. 6427 , § 2, adopted April 20, 2021, "determines that this ordinance and all amendments to Code sections ordained or enacted by this ordinance shall automatically sunset, be repealed, terminated, and become void twenty (20) months after the passage and approval of this ordinance, unless prior to that date, the City Council amends this ordinance to repeal this sunset, repeal and termination section."

**LETTER OF INTENT
APPLICATION FOR REZONING**

Buffington Homes (the “Applicant”) on behalf of the Perry's (the “Owners”) requests a Rezoning of the approximately 1.1 acres located at 1746 N Old Wire Road (Parcel Identification Number 765-13429-000) (the Property) from the RS-4 to NC to modify the conditions of zoning pertaining to the property to allow for construction of two homes on the property.

The adjacent neighborhood, Cottages at Old Wire has long been developed as a Neighborhood Conservation subdivision. The subject property was an outlying parcel not included in the original development of the adjacent subdivision. The property owner is ready to sell his property and it incorporates well into the adjacent neighborhood as it is on the same street. Our request is to simply bring this parcel into the existing neighborhood and assign it the same zoning as the surrounding parcel. Given the shortage of housing in the City of Fayetteville we feel the highest and best use of the property is to create additional housing that will fit seamlessly into the surrounding neighborhood and be constructed in the same style and of a similar size.

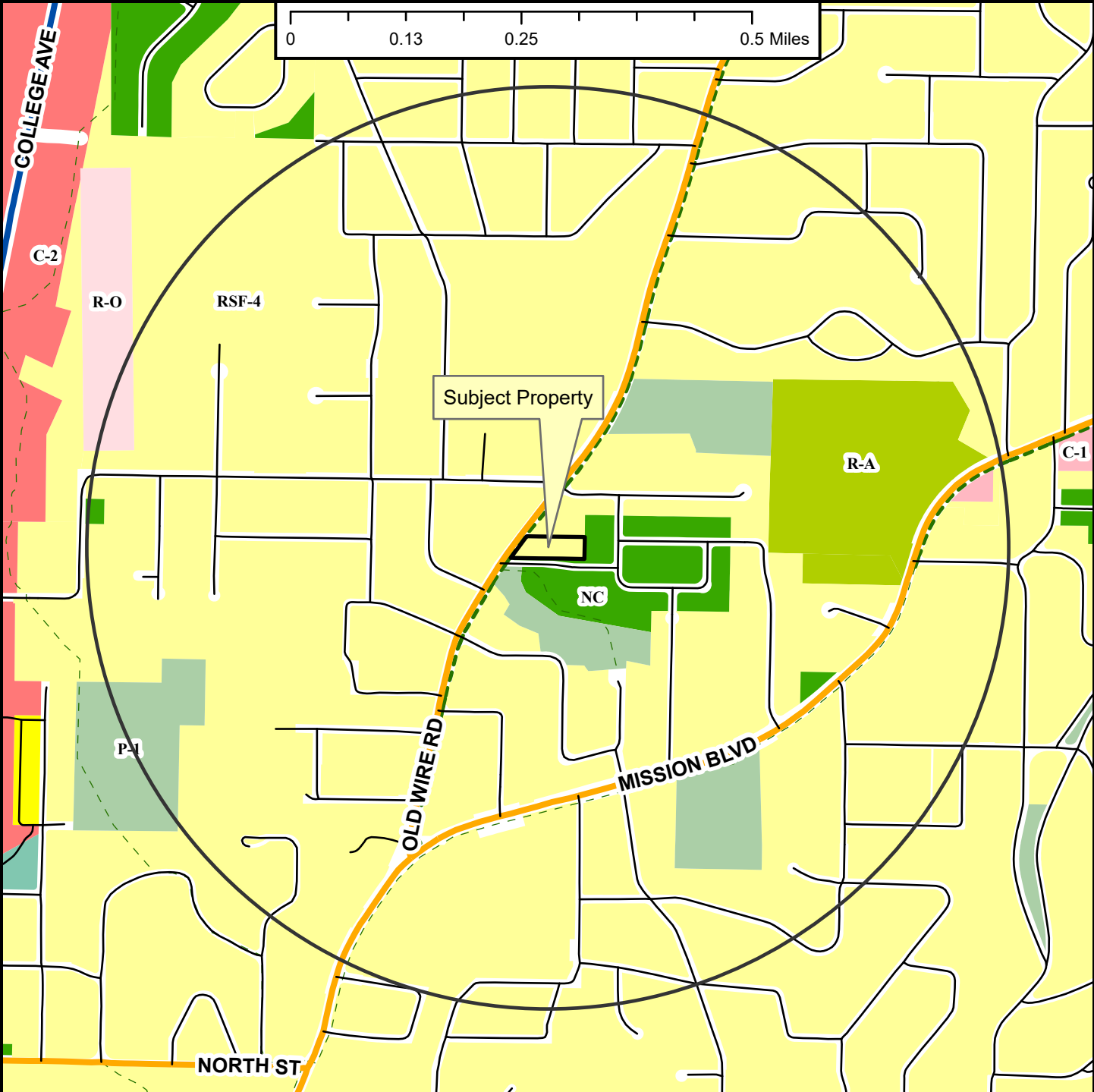
For these reasons and because the requested Rezoning is consistent with the surrounding land uses the Applicant respectfully asks Planning Commission to approve the Rezoning as requested.

Mary McGetrick

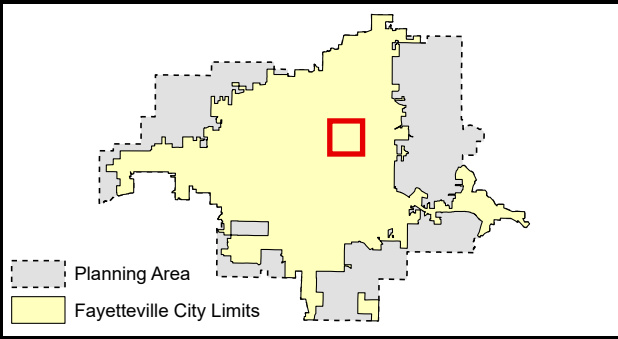
Mary McGetrick, Director of Land Development, Buffington Homes

RZN-2023-0010
<i>One Mile View</i>

1746 N. OLD WIRE RD



-  Neighborhood Link
-  Regional Link - High Activity
-  Unclassified
-  Residential Link
-  Shared-Use Paved Trail
-  Trail (Proposed)
-  Fayetteville City Limits
-  Planning Area

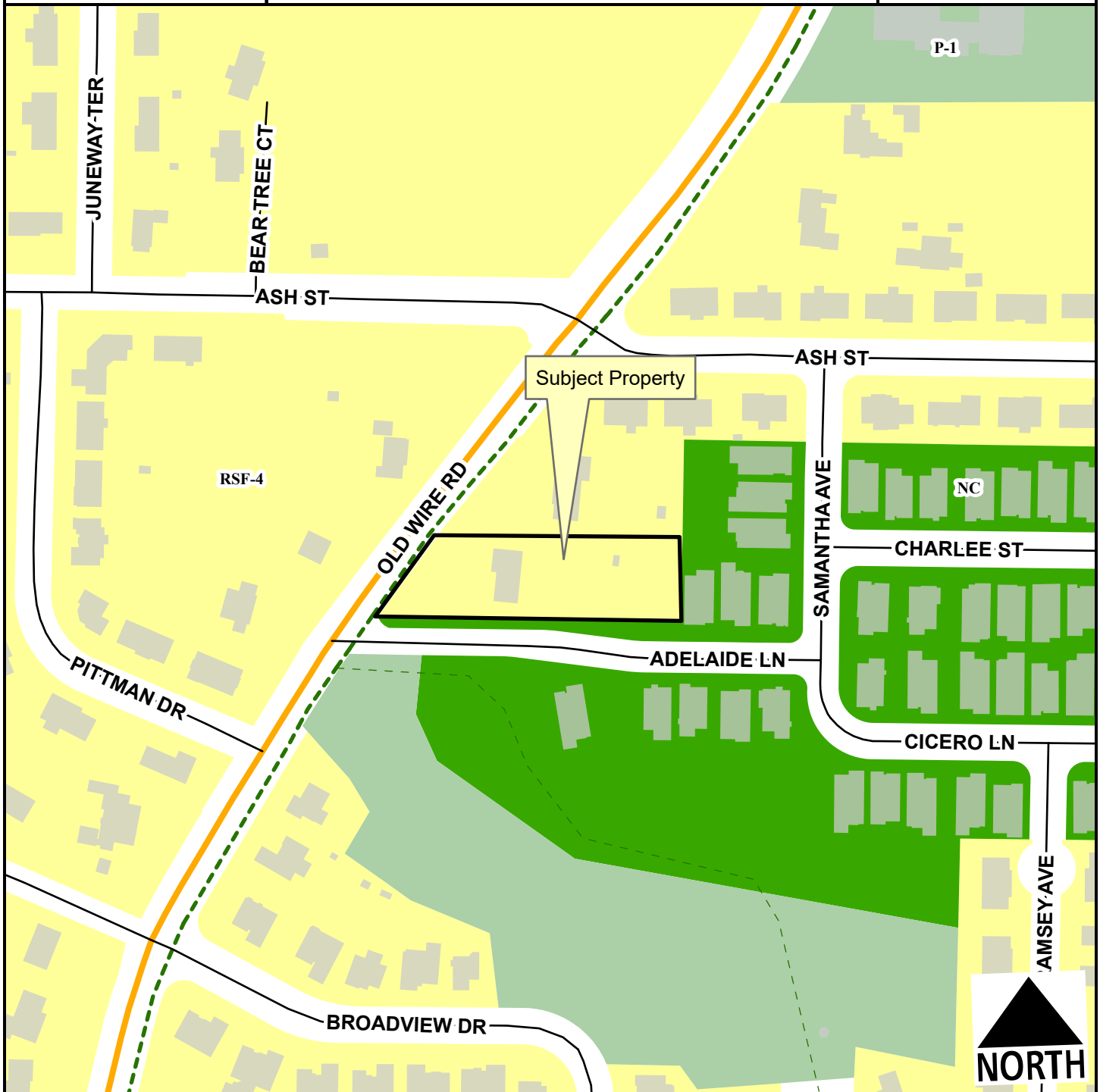


-
- Zoning**
- RESIDENTIAL SINGLE-FAMILY**
- NS-G
 - RI-U
 - RI-12
 - NS-L
 - Residential-Agricultural
 - RSF-5
 - RSF-1
 - RSF-2
 - RSF-4
 - RSF-7
 - RSF-8
 - RSF-18
- RESIDENTIAL MULTI-FAMILY**
- RMF-6
 - RMF-12
 - RMF-18
 - RMF-24
 - RMF-40
- INDUSTRIAL**
- I-1 Heavy Commercial and Light Industrial
- EXTRACTION**
- I-2 General Industrial
 - E-1
- COMMERCIAL**
- Residential-Office
 - C-1
 - C-2
 - C-3
- FORM BASED DISTRICTS**
- Downtown Core
 - Urban Thoroughfare
 - Main Street Center
 - Downtown General
 - Community Services
 - Neighborhood Services
 - Neighborhood Conservation
- PLANNED ZONING DISTRICTS**
- Commercial, Industrial, Residential
- INSTITUTIONAL**
- P-1

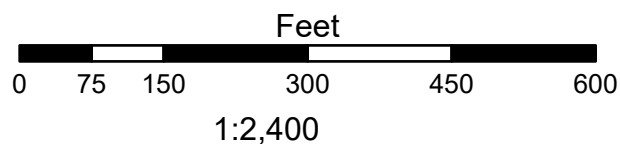
RZN-2023-0010

1746 N. OLD WIRE RD

Close Up View



- Neighborhood Link
- Unclassified
- Residential Link
- - - Trail (Proposed)
- Planning Area
- Fayetteville City Limits



Zone	Current	Proposed
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RSF-4	1.0 ac	0.0 ac
NC	0.0 ac	1.0 ac

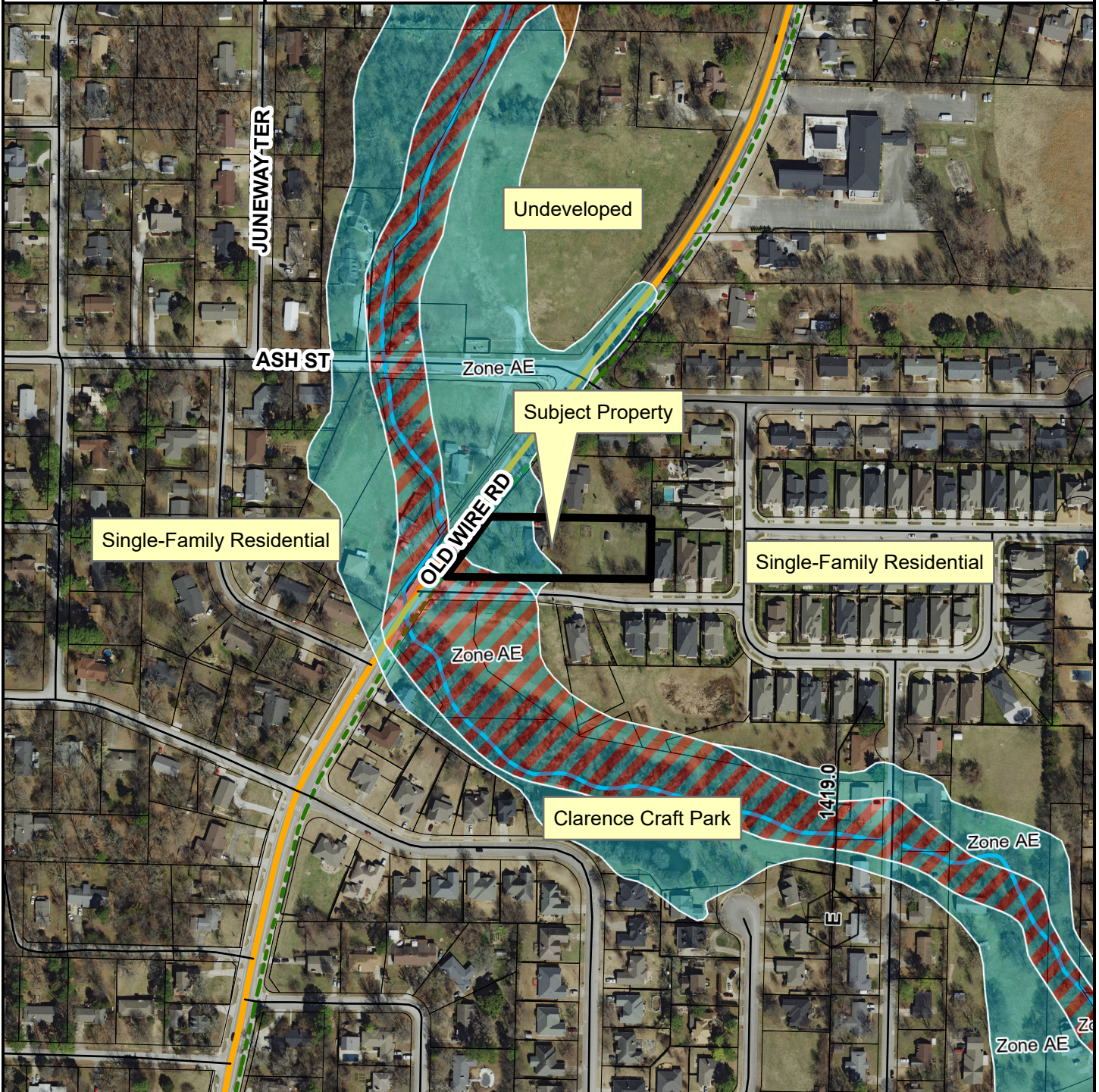
Total	1.0 ac
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RZN-2023-0010

1746 N. OLD WIRE RD

Current Land Use



- Neighborhood Link
- Unclassified
- Residential Link
- Trail (Proposed)
- Planning Area
- Fayetteville City Limits



FEMA Flood Hazard Data

- 100-Year Floodplain
- Floodway



MEETING OF MAY 16, 2023

TO: Mayor Jordan and City Council

THRU: Susan Norton, Chief of Staff
Jonathan Curth, Development Services Director
Jessica Masters, Development Review Manager

FROM: Ryan Umberger, Senior Planner

DATE:

SUBJECT: **RZN-2023-0011: Rezoning (239 & 245 N. FLETCHER AVE/HAMBRICE, 485): Submitted by HAMBRICE HOMES for property located at 239 & 245 N. FLETCHER AVE in WARD 1. The property is zoned RMF-24, RESIDENTIAL MULTI-FAMILY, TWENTY-FOUR UNITS PER ACRE, and contains approximately 0.20 acres. The request is to rezone the property to RI-U, RESIDENTIAL INTERMEDIATE-URBAN.**

RECOMMENDATION:

City Planning staff and the Planning Commission recommend approval of a request to rezone the subject property as described and shown in the attached Exhibits 'A' and 'B'.

BACKGROUND:

The subject property is on the west slope of Mt. Sequoyah, east of downtown, and on the west side of N. Fletcher Avenue. It's on the mid-block between E. Dickson Street to the north and E. Spring Street to the south. The property contains roughly 0.20 acres and is zoned RMF-24, Residential Multi-Family, 24 Units per Acre. Two detached, single-family homes occupy the site; both were built in 2020. The entirety of the site falls within the Hillside Hilltop Overlay District.

Request: The request is to rezone the property from RMF-24, Residential Multi-Family, 24 Units per Acre to RI-U, Residential Intermediate-Urban.

Public Comment: Staff have received inquiries from members of the public on the item but no specific comments in opposition or in favor. One member of the public discussed concern about the unlimited density associated with RI-U zoning and suggested a bill of assurance may be appropriate to limit the number of units that could be developed.

Land Use Compatibility: Staff finds the request to be compatible with the surrounding context. Neighboring properties are residential in nature and contain a variety of structure types and sizes. Both the existing and proposed zoning designations are high-density residential districts with urban form setbacks that are congruent with the existing pattern in the neighborhood. When compared to RMF-24, RI-U would increase the permitted buildable area from 50% to 60% of the lot's overall area. Since the subject property contains roughly 0.20 acres, a maximum of four units are permitted under current entitlements; rezoning to RI-U would remove the density limitation. Any future development would be subject to, and limited by, minimum parking requirements,

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

tree preservation, drainage, and access management standards. RMF-24 zoning allows multi-family dwellings by-right where multi-family is only allowed as a conditional use in RI-U. Rezoning to RI-U would reduce side and rear setbacks for three- and four-family dwellings, increasing the buildable area on site. RMF-24 also prescribes bulk and area regulations for lot width and area based on the specific use of the property where RI-U merely requires an 18-foot lot width minimum and no lot area minimum for residential uses. Conversely, RMF-24 includes a five-story height limit, compared with the smaller single-, 2-, 3-, and 4-family buildings allowed under RI-U with a maximum three-story height limit.

Land Use Plan Analysis: Staff finds that the request is consistent with adopted land use policies, the Future Land Use Map designation, and goals of City Plan 2040. The property has an infill score of 8. A high infill score indicates that the area can likely support additional density if it is feasible under the proposed zoning entitlements. The request meets Goals 1 and 6 of City Plan 2040, by providing infill development, as well as by providing a potential for a variety of housing types, which could help fulfill a goal towards the provision of more attainable housing.

CITY PLAN 2040 INFILL MATRIX: City Plan 2040's Infill Matrix indicates eight attributes for this site that may contribute to appropriate infill. The following elements of the matrix contribute to the score:

- Adequate Fire Response (Station #1, 303 W. Center St.)
- Near Sewer Main (N. Fletcher Avenue)
- Near Water Main (N. Fletcher Avenue)
- Near Grocery Store (Ozark Natural Foods, 380 N. College Ave.)
- Near City Park (Mt. Sequoyah Gardens)
- Near ORT Bus Stop (Route 10)
- Near Razorback Bus Stop (Route 13 Detour Peak; Route 17 Detour Peak)
- Sufficient Intersection Density (Greater than 140 intersections/square mile)

DISCUSSION:

At the April 24, 2023 Planning Commission meeting, a vote of 9-0-0 forwarded the request to City Council with a recommendation of approval. Commissioner Madden made the motion and Commissioner McGetrick seconded. There was limited discussion, though Commissioner Winston suggested the Commission may be unlikely to support a conditional use permit for a short-term rental in the area given the concentration of nearby rentals. No members of the public spoke during the meeting.

BUDGET/STAFF IMPACT:

N/A

ATTACHMENTS: SRF, Exhibit A, Exhibit B, Planning Commission Staff Report

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2023-709

RZN-2023-0011: Rezoning (239 & 245 N. FLETCHER AVE/HAMBRICE, 485): Submitted by HAMBRICE HOMES for property located at 239 & 245 N. FLETCHER AVE in WARD 1. The property is zoned RMF-24, RESIDENTIAL MULTI-FAMILY, TWENTY-FOUR UNITS PER ACRE, and contains approximately 0.20 acres. The request is to rezone the property to RI-U, RESIDENTIAL INTERMEDIATE-URBAN.

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN-2023-011 LOCATED AT 239 AND 245 NORTH FLETCHER AVENUE IN WARD 1 FOR APPROXIMATELY 0.20 ACRES FROM RMF-24, RESIDENTIAL MULTI-FAMILY, TWENTY-FOUR UNITS PER ACRE TO RI-U, RESIDENTIAL INTERMEDIATE-URBAN

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby changes the zone classification of the property shown on the map (Exhibit A) and the legal description (Exhibit B) both attached to the Planning Department's Agenda Memo from RMF-24, Residential Multi-Family, 24 Units per Acre to RI-U, Residential Intermediate-Urban.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby amends the official zoning map of the City of Fayetteville to reflect the zoning change provided in Section 1.

City of Fayetteville Staff Review Form

2023-709

Item ID

5/16/2023

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Jonathan Curth

4/28/2023

DEVELOPMENT REVIEW (630)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

RZN-2023-0011: Rezoning (239 & 245 N. FLETCHER AVE/HAMBRICE, 485): Submitted by HAMBRICE HOMES for property located at 239 & 245 N. FLETCHER AVE in WARD 1. The property is zoned RMF-24, RESIDENTIAL MULTI-FAMILY, TWENTY-FOUR UNITS PER ACRE, and contains approximately 0.20 acres. The request is to rezone the property to RI-U, RESIDENTIAL INTERMEDIATE-URBAN.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? No

Total Amended Budget

\$ -

Expenses (Actual+Encum)

\$ -

Available Budget

\$ -

Does item have a direct cost? No

Item Cost

\$ -

Is a Budget Adjustment attached? No

Budget Adjustment

\$ -

Remaining Budget

\$ -

V20221130

Purchase Order Number:

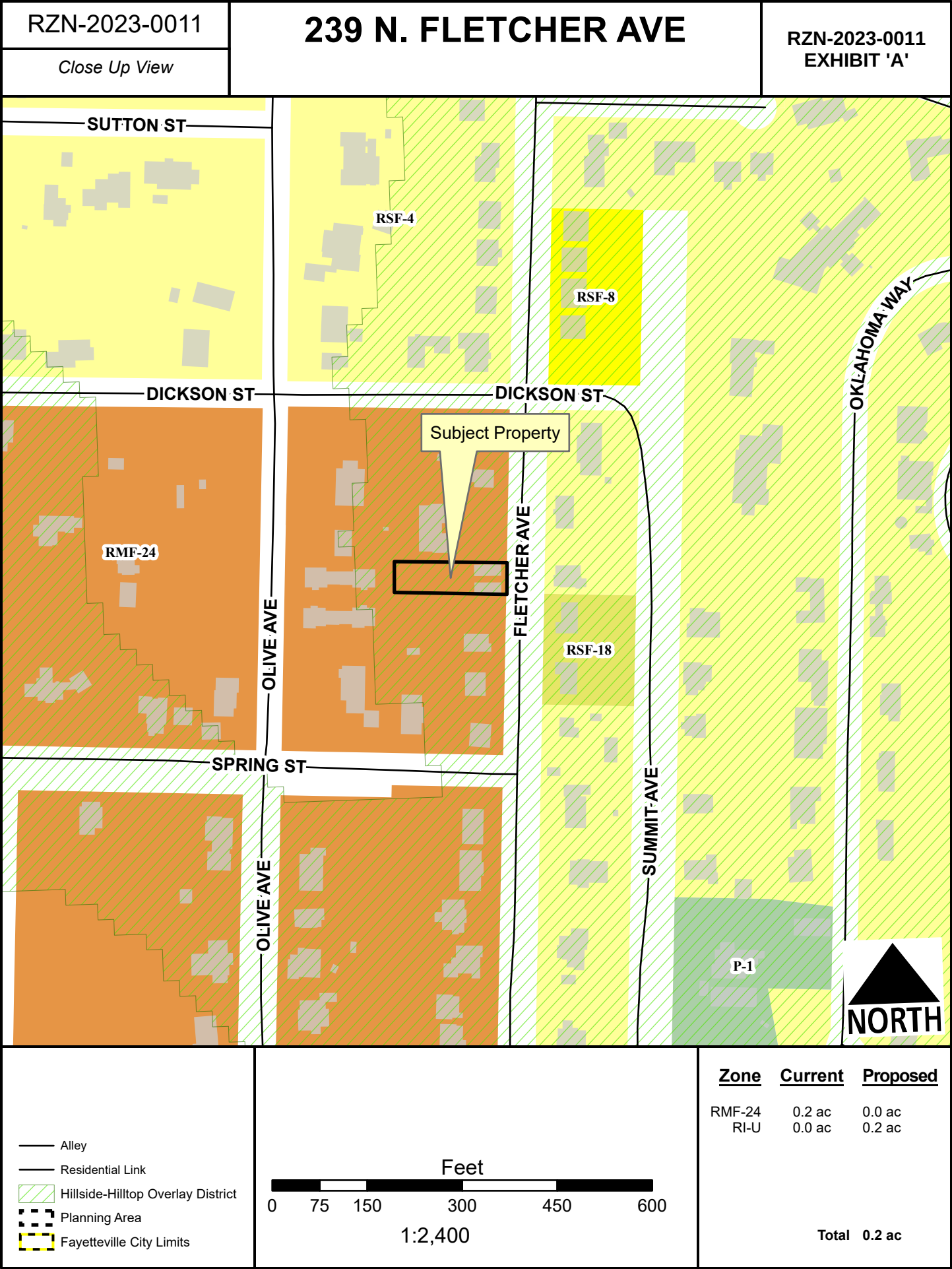
Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:



Legal Description
239 N. Fletcher Ave.
Fayetteville, AR 72701

PART OF THE NORTH HALF (N1/2) OF THE NORTHWEST QUARTER (NW1/4) OF SECTION FIFTEEN (15) IN TOWNSHIP SIXTEEN (16) NORTH OF RANGE THIRTY (30) WEST, WASHINGTON COUNTY, ARKANSAS, AND BEING THE PROPERTY PURCHASED BY J.M. POORE AND CALLIE POORE, HIS WIFE, FROM A.L. TRENT, TRUSTEE ON FEBRUARY 25TH, 1909, AS DEED FOR SAID PURCHASE IS FILED FOR RECORD IN LAND RECORD BOOK 126 AT PAGE 407 AMONG THE LAND RECORDS OF WASHINGTON COUNTY, ARKANSAS, AND DESCRIBED AS BEGINNING AT A SAND STONE MARKED "X" ON THE SOUTH SIDE OF SPRING STREET AT SAID SPRING STREET'S CROSSING WITH WILLOW STREET AS SAID POINT OF CROSSING EXISTED IN 1909, IN THE TOWN (NOW CITY) OF FAYETTEVILLE, ARKANSAS, THENCE N55°E 142 FEET TO A SAND STONE, THENCE EAST 1129 FEET, MORE OR LESS, TO THE WEST SIDE OF FLETCHER AVENUE, AS IT EXISTED IN 1909 AND WHERE THREE BRASS CLOCK WHEELS ARE BURIED, THENCE NORTH WITH SAID WEST SIDE OF FLETCHER AVENUE AS IT EXISTED IN 1909, 339 FEET TO WHERE THREE PIECES OF CROCKERY ARE BURIED FOR A STARTING POINT, AND RUNNING THENCE WEST 174 FEET; THENCE SOUTH 53.25 FEET; THENCE EAST 174 FEET; THENCE NORTH 53.25 FEET TO THE PLACE OF BEGINNING. **PER SURVEY DATED OCTOBER 19, 2017 BY ALAN REID & ASSOCIATES, THE ABOVE PROPERTY IS ALSO DESCRIBED AS FOLLOWS:**

A PARCEL OF LAND DESCRIBED AS BEGINNING AT A SAND STONE MARKED "X" ON THE SOUTH SIDE OF SPRING STREET AT CROSSING OF WILLOW STREET IN THE TOWN OF FAYETTEVILLE, ARKANSAS, AND RUNNING THENCE N55°E 142 FEET TO A SAND STONE; THENCE EAST 1129 FEET TO THE WEST SIDE OF FLETCHER AVENUE IN SAID TOWN WHERE THREE BRASS CLOCK WHEELS ARE BURIED; THENCE NORTH WITH WEST SIDE OF FLETCHER AVENUE 339 FEET TO WHERE THREE PIECES OF CROCKERY ARE BURIED FOR A STARTING POINT AND RUNNING THENCE WEST 174 FEET; THENCE SOUTH 53.25 FEET; THENCE EAST 174 FEET; THENCE NORTH 53.25 FEET TO THE PLACE OF BEGINNING, BEING PART OF THE N1/2 OF THE NW1/4 OF SECTION 15, TOWNSHIP 16 NORTH, RANGE 30 WEST, AND BEING THE PROPERTY PURCHASED FROM A.L. TRENT TRUSTEE ON FEBRUARY 25TH, 1909, AS PER DEED RECORDED IN BOOK 126 AT PAGE 407, AND ALSO BEING DESCRIBED AS FOLLOWS: COMMENCING AT THE SE CORNER OF LOT 1, BLOCK 11 OF THE MASONIC ADDITION TO THE CITY OF FAYETTEVILLE, ARKANSAS; THENCE S 89°32'36" W 425.00 FEET ALONG THE SOUTH LINE OF SAID LOT 1, BLOCK 11 TO AN EXISTING IRON ON THE WEST RIGHT-OF-WAY LINE OF FLETCHER AVENUE FOR THE TRUE POINT OF BEGINNING; THENCE S 89°32'36" W 165.00 FEET TO AN EXISTING IRON ON THE EAST LINE OF A 20 FOOT WIDE ALLEY; THENCE S 00°10'17" W 53.25 FEET ALONG THE EAST LINE OF SAID ALLEY TO AN EXISTING IRON; THENCE N 89°32'36" E 165.00 FEET TO AN EXISTING IRON ON THE WEST RIGHT-OF-WAY LINE OF FLETCHER AVENUE; THENCE N 00°10'17" E 53.25 FEET TO THE POINT OF BEGINNING.



TO: Fayetteville Planning Commission

THRU: Jessie Masters, Development Review Manager

FROM: Ryan Umberger, Senior Planner

MEETING DATE: April 24, 2023 (Updated with Planning Commission Results)

SUBJECT: **RZN-2023-0011: Rezoning (239 & 245 N. FLETCHER AVE/HAMBRICE, 485):** Submitted by HAMBRICE HOMES for property located at 239 & 245 N. FLETCHER AVE. The property is zoned RMF-24, RESIDENTIAL MULTI-FAMILY, TWENTY-FOUR UNITS PER ACRE, and contains approximately 0.20 acres. The request is to rezone the property to RI-U, RESIDENTIAL INTERMEDIATE-URBAN.

RECOMMENDATION:

Staff recommends forwarding **RZN-2023-0011** to City Council with a recommendation of approval.

RECOMMENDED MOTION:

"I move to forward **RZN-2023-0011** to City Council with a recommendation of approval."

BACKGROUND:

The subject property is on the west slope of Mt. Sequoyah, east of downtown, and on the west side of N. Fletcher Avenue. It's on the mid-block between E. Dickson Street to the north and E. Spring Street to the south. The property contains roughly 0.20 acres and zoned RMF-24, Residential Multi-Family, 24 Units per Acre. Two single-family homes occupy the site; both were built in 2020. The entirety of the site falls within the Hillside Hilltop Overlay District. Surrounding land uses and zoning is depicted in *Table 1*.

Table 1
Surrounding Land Use and Zoning

Direction	Land Use	Zoning
North	Multi-Family Residential	RMF-24, Residential Multi-Family, 24 Units per Acre
South	Single-Family Residential	RMF-24, Residential Multi-Family, 24 Units per Acre
East	Single-Family Residential	RSF-4, Residential Single-Family, 4 Units per Acre; RSF-18, Residential Single-Family, 18 Units per Acre
West	Mixed-Density Residential	RMF-24, Residential Multi-Family, 24 Units per Acre

Request: The request is to rezone the property from RMF-24, Residential Multi-Family, 24 Units per Acre to RI-U, Residential Intermediate-Urban.

Public Comment: Staff have received inquiries from members of the public on the item but no specific comments in opposition or in favor. One member of the public discussed concern about the unlimited density associated with RI-U zoning and suggested a bill of assurance may be appropriate to limit the number of units that could be developed.

INFRASTRUCTURE AND ENVIRONMENTAL REVIEW

Streets: The subject area has frontage along N. Fletcher Avenue. N. Fletcher Avenue is a partially improved Residential Link Street with asphalt paving and open ditches. Any street improvements required in these areas would be determined at the time of a development proposal.

Water: Public water is available to the subject area. An existing 10-inch water main is present on the east side of the N. Fletcher Avenue right-of-way. A second 2.25-inch water main is present on the east side of N. Fletcher Avenue.

Sewer: Sanitary Sewer is available to the subject area. An existing 8-inch sanitary sewer main is present in the center of N. Fletcher Avenue. Another 8-inch sanitary sewer main is present on the west side of the subject property.

Fire: Station 1, located at 303 W. Center Street protects this site. The property is located approximately 0.9 miles from the fire station with an anticipated drive time of approximately four minutes using existing streets. The anticipated response time would be approximately 6.2 minutes. Fire Department response time is calculated based on the drive time plus 1 minute for dispatch and 1.2 minutes for turn-out time. Within the City Limits, the Fayetteville Fire Department has a response time goal of 6 minutes for an engine and 8 minutes for a ladder truck. Fire apparatus access and fire protection water supplies will be reviewed for compliance with the Arkansas Fire Prevention Code at the time of development.

Police: The Police Department expressed no concerns with this request.

Drainage: No portion of the property is within a FEMA floodplain, has hydric soils, nor is a protected stream present in the area.

The site is entirely within the Hillside-Hilltop Overlay District. Additional restrictions will apply at the time of development. Engineered footing designs will be required at the time of building permit submittal, as well as grading, erosion control and abbreviated tree preservation plans.

Tree Preservation:

The proposed zoning district of RI-U, Residential Intermediate-Urban requires **15% minimum canopy preservation**. The current zoning district of RMF-24, Residential Multi-Family, 24 Units per Acre requires **20% minimum canopy preservation**.

CITY PLAN 2040 FUTURE LAND USE PLAN: City Plan 2040 Future Land Use Plan designates the property within the proposed rezone as **Residential Neighborhood Area**.

Residential Neighborhood Areas are primarily residential in nature and support a wide variety of housing types of appropriate scale and context: single-family, duplexes, rowhouses, multifamily and accessory dwelling units. Residential Neighborhood encourages highly connected, compact blocks with gridded street patterns and reduced building setbacks. It also encourages traditional neighborhood development that incorporates low-intensity non-residential uses intended to serve the surrounding neighborhoods, such as retail and offices, on corners and along connecting

corridors. This designation recognizes existing conventional subdivision developments which may have large blocks with conventional setbacks and development patterns that respond to features of the natural environment. Building setbacks may vary depending on the context of the existing neighborhood.

CITY PLAN 2040 INFILL MATRIX: City Plan 2040's Infill Matrix indicates a score of 8 for this site, with a weighted score of 11.5. The following elements of the matrix contribute to the score:

- Adequate Fire Response (Station #1, 303 W. Center St.)
- Near Sewer Main (N. Fletcher Avenue)
- Near Water Main (N. Fletcher Avenue)
- Near Grocery Store (Ozark Natural Foods, 380 N. College Ave.)
- Near City Park (Mt. Sequoyah Gardens)
- Near ORT Bus Stop (Route 10)
- Near Razorback Bus Stop (Route 13 Detour Peak; Route 17 Detour Peak)
- Sufficient Intersection Density (Greater than 140 intersections/square mile)

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: ***Land Use Compatibility:*** Staff finds the request to be compatible with the surrounding context. Neighboring properties are residential in nature and contain a of a variety of structure types and sizes. Both the existing and proposed zoning designations are high-density residential districts with urban form setbacks that are congruent with the existing pattern in the neighborhood. When compared to RMF-24, RI-U would increase the permitted buildable area from 50% to 60% of the lot's overall area. Since the subject property contains roughly 0.20 acres, a maximum of four units are permitted under current entitlements; rezoning to RI-U would remove the density limitation. Any future development would be subject to, and limited by, minimum parking requirements, tree preservation, drainage, and access management standards. RMF-24 zoning allows multi-family dwellings by-right where multi-family is only allowed as a conditional use in RI-U. Rezoning to RI-U would reduce side and rear setbacks for three- and four-family dwellings, increasing the buildable area on site. RMF-24 also prescribes bulk and area regulations for lot width and area based on the specific use of the property where RI-U merely requires an 18-foot lot width minimum and no lot area minimum for residential uses. Conversely, RMF-24 includes a five-story height limit, compared with the smaller single-, 2-, 3-, and 4-family buildings allowed under RI-U with a maximum three-story height limit.

Land Use Plan Analysis: Staff finds that the request is consistent with adopted land use policies, the Future Land Use Map designation, and goals of City Plan 2040. The property has an infill score of 8. A high infill score indicates that the area can likely support additional density if it is feasible under the proposed zoning entitlements. The request meets Goals 1 and 6 of City Plan 2040, by providing infill development, as well as by providing a

potential for a variety of housing types, which could help fulfill a goal towards the provision of more attainable housing.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: Staff finds that a rezoning to RI-U is justified. The RMF-24 zoning regulations are oftentimes most suitable for development on larger sites. Rezoning is less restrictive in terms of the bulk and area regulations that govern the size of properties which may better support infill, redevelopment, or subdivision of the property in a manner that fits with the rest of the neighborhood. Rezoning removes multi-family from a use which is allowed by-right and allows structures to have a maximum of four attached units. Staff finds the scale of development permitted under RI-U is more compatible with the surrounding mix of residential densities and therefore appropriate.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: Rezoning to RI-U has an associated potential to increase traffic at this location. RI-U permits development at an unlimited density where it is currently limited to 24 units per acre. Staff finds, though, the potential to increase the number of residential units is marginal given the size of the lot and unlikely to result in increased traffic danger or congestion. The subject property has access to N. Fletcher Avenue a partially improved Residential Link Street and future development would be required to meet the City's applicable access management and parking standards.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: Rezoning the property from RMF-24 to RI-U may increase population density and therefore the load on public services; however, the impact is not expected to be detrimental. Adequate water and sewer connections are available to the site, suggesting the area can support the increase and avoid costly extensions to services. Fayetteville Public Schools did not comment on this request.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
- b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: N/A

RECOMMENDATION: Planning staff recommend forwarding RZN-2023-0011 to City Council with a recommendation of approval.

PLANNING COMMISSION ACTION: Required <u>YES</u>			
Date: <u>April 24, 2023</u>	☐ Tabled	☒ Forwarded	☐ Denied
Motion: Madden			
Second: McGetrick		Recommending approval.	
Vote: 9-0-0			

BUDGET/STAFF IMPACT:

None

Attachments:

- Unified Development Code:
 - §161.12 District RI-U, Residential Intermediate – Urban
 - §161.16 District RMF-24, Residential Multi-Family – Twenty-Four (24) Units Per Acre
- Applicant Request Letter
- Public Comment
- One Mile Map
- Close-up Map
- Current Land Use Map
- Future Land Use Map

161.12 District RI-U, Residential Intermediate - Urban

(A) *Purpose.* The RI-U Residential District is designed to permit and encourage the development of detached and attached dwellings in suitable environments, to provide a range of housing types compatible in scale with single-family homes and to encourage a diversity of housing types to meet demand for walkable urban living.

(B) *Uses.*

(1) *Permitted Uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings
Unit 9	Two (2) family dwellings
Unit 10	Three (3) and four (4) family dwellings
Unit 41	Accessory dwellings
Unit 44	Cluster housing development
Unit 46	Short-term rentals

(2) *Conditional Uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 12a	Limited business
Unit 24	Home occupations
Unit 26	Multi-family dwellings
Unit 36	Wireless communications facilities

(C) *Density.* None.

(D) *Bulk and Area Regulations.*

	Dwelling (all types)
Lot width minimum	18 feet
Lot area minimum	None

(E) *Setback Requirements.*

Front	Side Other Uses	Side Single & Two (2) Family	Rear Other Uses	Rear, from centerline of an alley
A build-to zone that is located between the front property, line and a line 25 feet from the front property line.	None	5 feet	5 feet	12 feet

(F) *Building Height Regulations.*

Building height maximum	2 stories/3 stories*
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* A building or a portion of a building that is located between 0 and 10 feet from the front property line or any master street plan right-of-way line shall have a maximum height of two (2) stories. Buildings or portions of the building set back greater than 10 feet from the master street plan right-of-way shall have a maximum height of three (3) stories.

(G) *Building Area.* The area occupied by all buildings shall not exceed 60% of the total lot area. Accessory ground mounted solar energy systems shall not be considered buildings.

(H) *Minimum Buildable Street Frontage*. 50% of the lot width.

(Ord. No. 5945 , §5(Exh. A), 1-17-17; Ord. No. 6015 , §1(Exh. A), 11-21-17; Ord. No. 6245 , §2, 10-15-19; Ord. No. 6427 , §§1(Exh. C), 2, 4-20-21)

Editor's note(s)—Ord. No. 6427 , § 2, adopted April 20, 2021, "determines that this ordinance and all amendments to Code sections ordained or enacted by this ordinance shall automatically sunset, be repealed, terminated, and become void twenty (20) months after the passage and approval of this ordinance, unless prior to that date, the City Council amends this ordinance to repeal this sunset, repeal and termination section."

161.16 District RMF-24, Residential Multi-Family - Twenty-Four (24) Units Per Acre

(A) *Purpose.* The RMF-24 Multi-family Residential District is designed to permit and encourage the developing of a variety of dwelling types in suitable environments in a variety of densities.

(B) *Uses.*

(1) *Permitted Uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three (3) and four (4) family dwellings
Unit 26	Multi-family dwellings
Unit 41	Accessory dwellings
Unit 44	Cluster Housing Development
Unit 46	Short-term rentals

(2) *Conditional Uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 11	Manufactured home park
Unit 12a	Limited business
Unit 24	Home occupations
Unit 25	Professional offices
Unit 36	Wireless communications facilities

(C) *Density.*

Units per acre	24 or less
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(D) *Bulk and Area Regulations.*

(1) *Lot Width Minimum.*

Manufactured home park	100 feet
Lot within a Manufactured home park	50 feet
Single-family	35 feet
Two-family	35 feet
Three or more	70 feet
Professional offices	100 feet

(2) *Lot Area Minimum.*

Manufactured home park	3 acres
Lot within a mobile home park	4,200 square feet
Townhouses: Individual lot	2,000 square feet
Single-family	3,000 square feet
Two (2) family	4,000 square feet
Three (3) or more	7,000 square feet
Fraternity or Sorority	2 acres
Professional offices	1 acres

(3) *Land Area Per Dwelling Unit.*

Manufactured Home	3,000 square feet
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(E) *Setback Requirements.*

Front	Side Other Uses	Side Single & Two (2) Family	Rear Other Uses	Rear Single Family
A build-to zone that is located between the front property line and a line 25 feet from the front property line.	8 feet	5 feet	20 feet	5 feet

(F) *Building Height Regulations.*

Building Height Maximum	2 stories/3 stories/5 stories*
-------------------------	--------------------------------

* A building or a portion of a building that is located between 0 and 10 feet from the front property line or any master street plan right-of-way line shall have a maximum height of two (2) stories, between 10—20 feet from the master street plan right-of-way a maximum height of three (3) stories and buildings or portions of the building set back greater than 20 feet from the master street plan right-of-way shall have a maximum height of 5 stories.

If a building exceeds the height of two (2) stories, the portion of the building that exceeds two (2) stories shall have an additional setback from any side boundary line of an adjacent single family district. The amount of additional setback for the portion of the building over two (2) stories shall be equal to the difference between the total height of that portion of the building, and two (2) stories.

(G) *Building Area.* The area occupied by all buildings shall not exceed 50% of the total lot area. Accessory ground mounted solar energy systems shall not be considered buildings.

(H) *Minimum Buildable Street Frontage.* 50% of the lot width.

(Code 1965, App. A., Art. 5(III); Ord. No. 2320, 4-6-77; Ord. No. 2700, 2-2-81; Code 1991, §160.033; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. No. 5028, 6-19-07; Ord. No. 5079, 11-20-07; Ord. No. 5224, 3-3-09; Ord. No. 5262, 8-4-09; Ord. No. 5312, 4-20-10; Ord. No. 5462, 12-6-11; Ord. No. 5495, 4-17-12; Ord. No. 5592, 6-18-13; Ord. No. 5664, 2-18-14; Ord. No. 5800, §1(Exh. A), 10-6-15; Ord. No. 5921, §1, 11-1-16; Ord. No. 5945, §§5, 8, 9, 1-17-17; Ord. No. 6015, §1(Exh. A), 11-21-17; Ord. No. 6245, §2, 10-15-19; Ord. No. 6427, §§1(Exh. C), 2, 4-20-21)

Ord. No. 6427, § 2, adopted April 20, 2021, "determines that this ordinance and all amendments to Code sections ordained or enacted by this ordinance shall automatically sunset, be repealed, terminated, and become void twenty (20) months after the passage and approval of this ordinance, unless prior to that date, the City Council amends this ordinance to repeal this sunset, repeal and termination section."

Ronny Hambrice
239 N. Fletcher Ave.
Fayetteville, AR 72701

City of Fayetteville
Planning Commission
125 W. Mountain St.
Fayetteville, AR 72701

Dear Planning Commission,

I would like to rezone my property at 239 N. Fletcher Ave. to RIU from its current zoning of RMF-24. I believe this will be compatible with neighboring property, because the lot directly to the north has an eight-unit apartment. I built two single-family houses on this property with an eleven ft. driveway between them. The driveway is shared with a two-space parking area behind each house. I built these houses in 2021. I am asking for the rezoning of this property with the intention of applying for a lot split. My wife and I live in one of the houses. The reason I want to split the property is so I can sell one of the houses. Each property will have a 26' x 65' green space at the back and also green space in the front.

I believe this proposed rezoning will not affect or conflict with surrounding land uses. Fletcher Ave. is a mixture of residential uses. I would not be making any other changes to the property.

Regards,

Ronny Hambrice

Umberger, Ryan

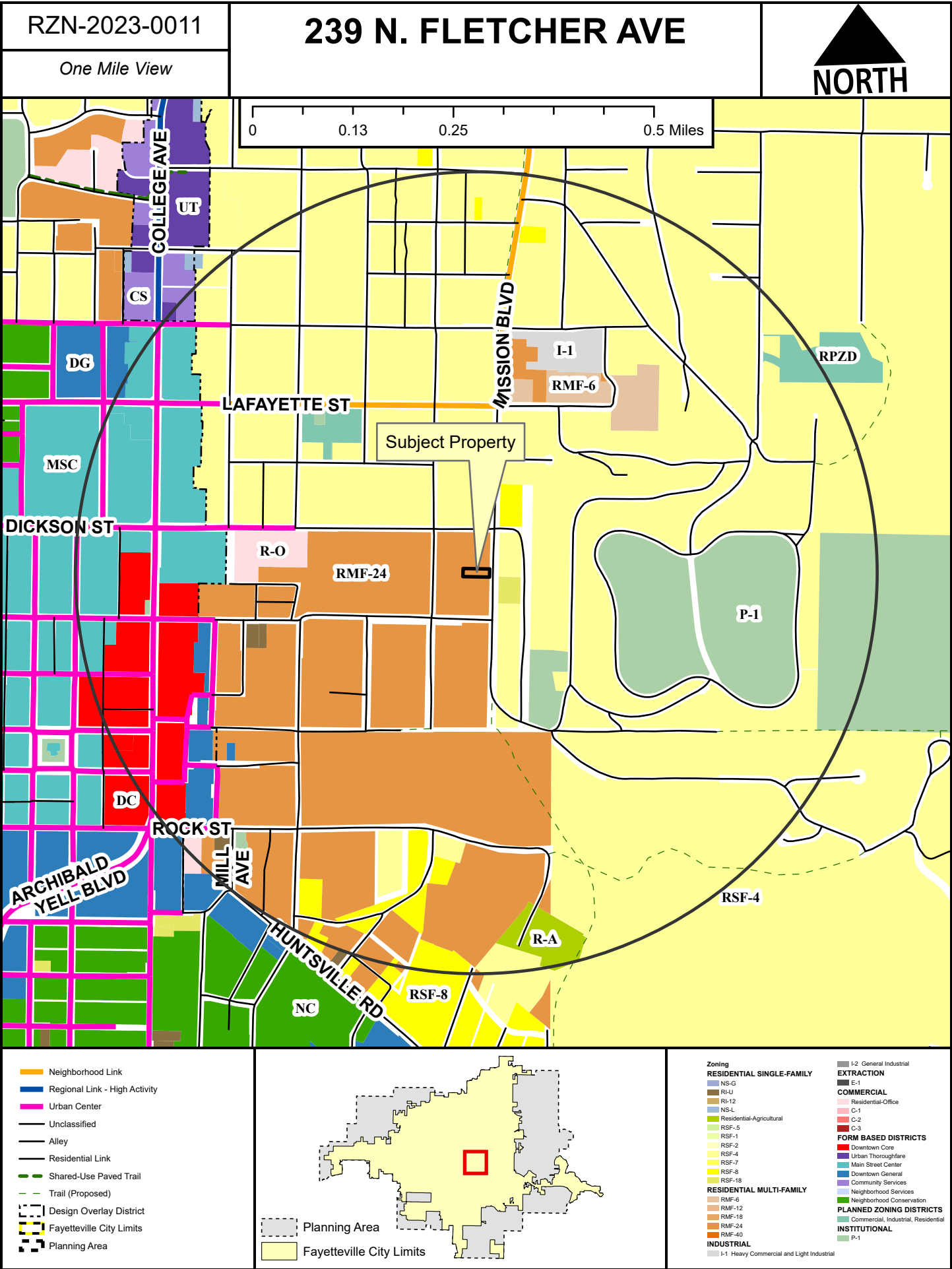
From: Greg House <ghouse@housesinc.com>
Sent: Thursday, April 20, 2023 11:53 AM
To: Umberger, Ryan
Subject: Fwd: 239 N. Fletcher Ave. rezoning application

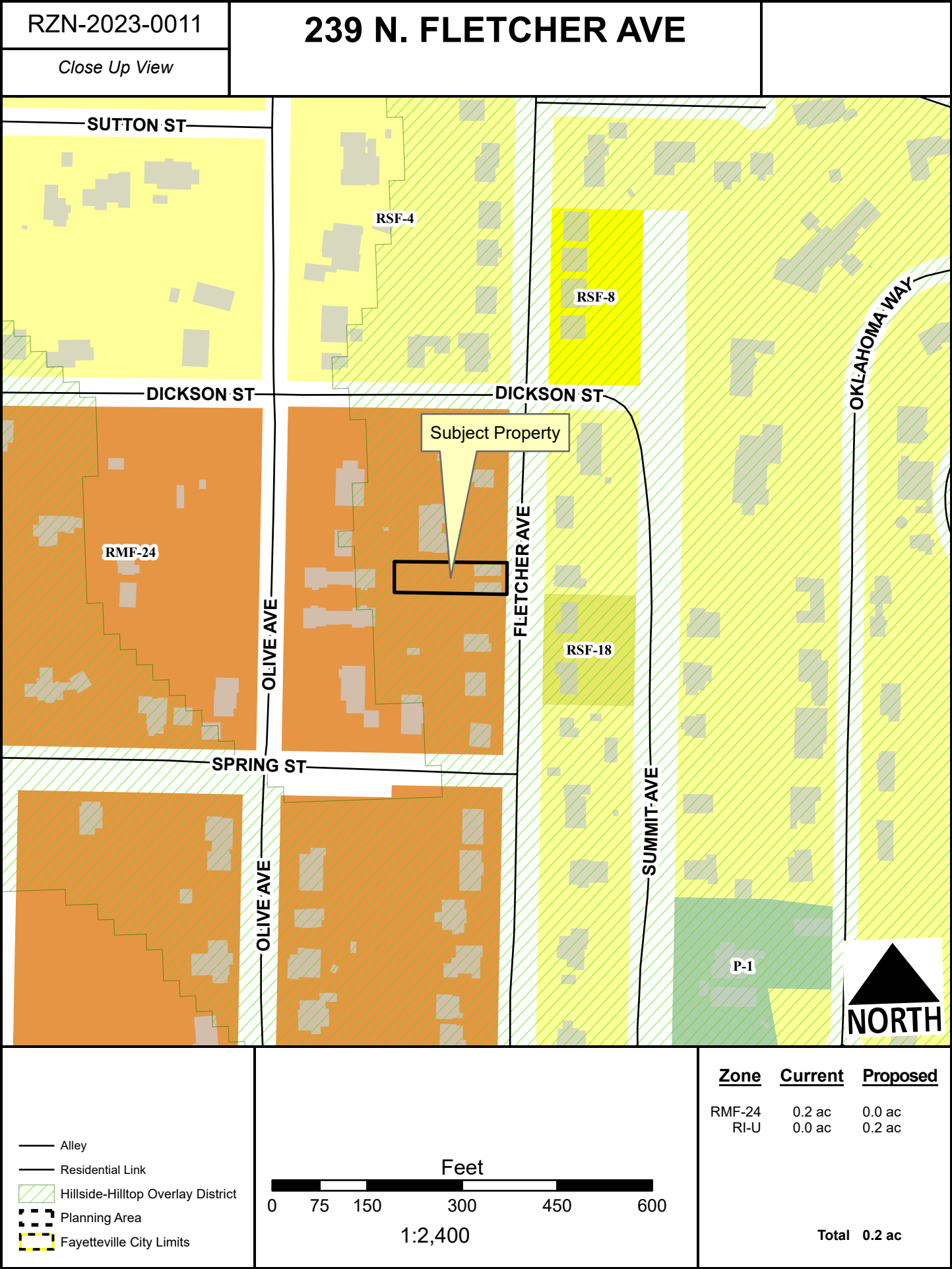
CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Ryan - Again I appreciate your time educating me yesterday, after giving this some thought I would like to share some thoughts with the Planning Commission members regarding the proposed rezoning above. Might you be able to distribute the following to the Commission Members?

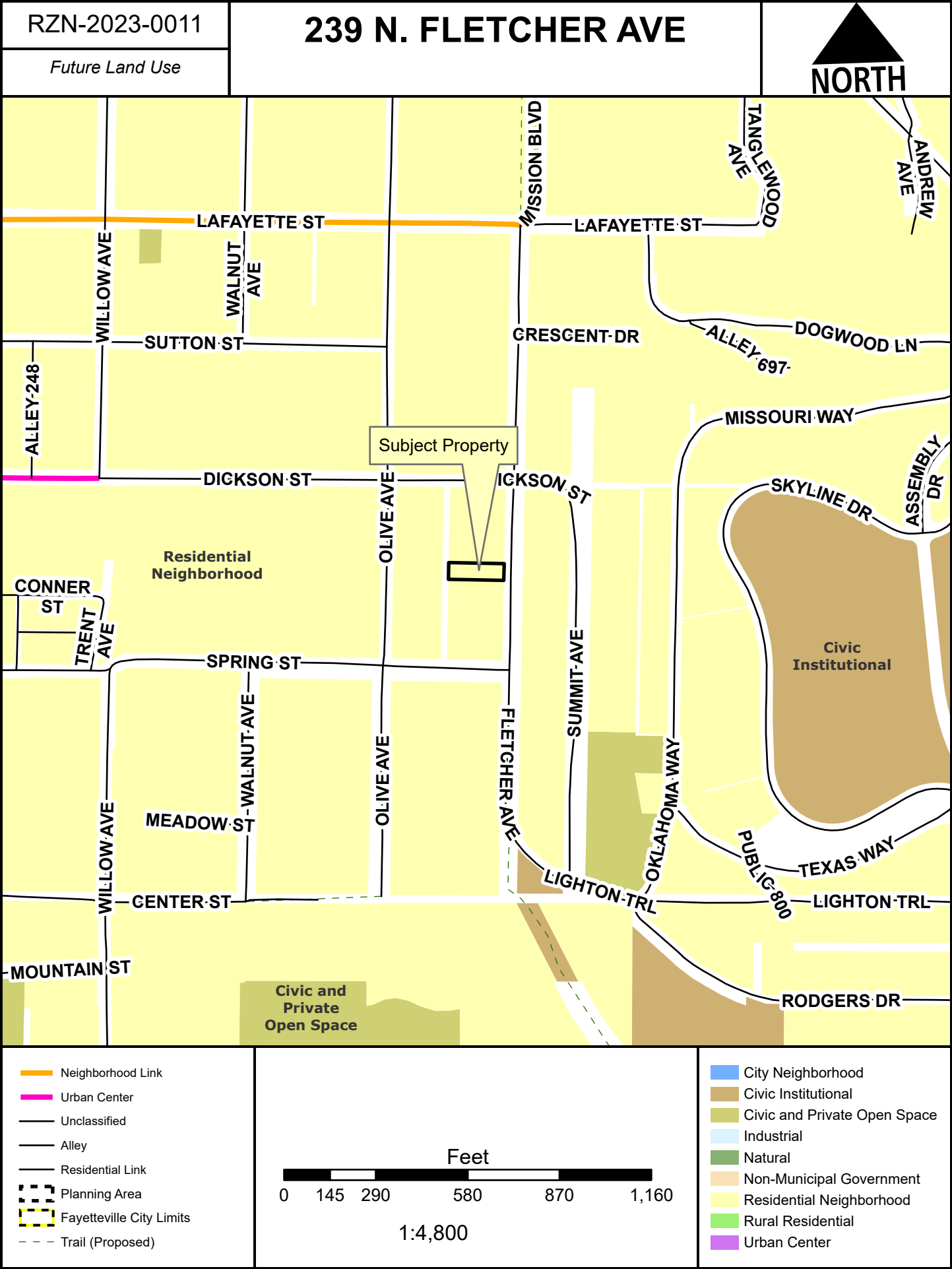
Thank you in advance for your help,
Greg

>
> To the Members of the Fayetteville Planning Commission,
>
> My name is Greg House and I'm writing both as an adjoining property owner, nearby resident of Mount Sequoyah and as an infill property developer regarding the above referred rezoning application.
>
> While it's my understanding that the petitioner's goal is to simply create a circumstance that permits them to sell each building as separate units, I thought I might communicate how I could view the proposed rezoning to RI-U from an infill developers perspective.
>
> A quick and rough analysis indicates that if the property is rezoned RI-U it could be sold the next day. An aggressive developer (even considering the 3 story height restriction) could then submit a plan for construction of 32 to 48 one bedroom, 500 square foot, apartments. Parking could be accommodated both by going below grade and/or just stacking two floors above surface and some subsurface parking. Neighboring property might be bought to provide access and/or more parking.
>
> Perhaps a solution to prevent the possibility of such density could be for the petition to be approved subject to a bill of assurance, tied to the title of the property, that limits development to that already permitted under its current zoning of RMF- 24. That would permit the current property owners to achieve their objectives and preserve the status quo should their interests change.
>
> Respectfully,
> Greg House











MEETING OF MAY 16, 2023

TO: Mayor Jordan and City Council

THRU:

FROM: Blake Pennington, Assistant City Attorney

DATE:

SUBJECT: Resolution to authorize a contract for short term rental compliance checks

RECOMMENDATION:

Council Member Teresa Turk is sponsoring a resolution to authorize Mayor Jordan contract with a company to investigate and report back to the city information about compliance with the City's short term rental regulations.

BACKGROUND:

DISCUSSION:

BUDGET/STAFF IMPACT:

ATTACHMENTS: Agenda Request - Short Term Rental Compliance - Council Member Teresa Turk



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2023-739

Resolution to authorize a contract for short term rental compliance checks

A RESOLUTION TO AUTHORIZE AND REQUEST THAT MAYOR JORDAN CONTRACT WITH A COMPANY TO INVESTIGATE AND REPORT BACK TO THE CITY INFORMATION ABOUT SHORT-TERM RENTAL OPERATIONS THAT DO NOT HAVE VALID BUSINESS LICENSES AND TO APPROVE AN APPROPRIATE BUDGET ADJUSTMENT TO PAY FOR THE CONTRACT

WHEREAS, there appears that many short-term rentals are operating in Fayetteville without the life and safety inspections required of all short-term rentals; and

WHEREAS, these numerous short-term rentals have also failed to become property licensed as required by Fayetteville law; and

WHEREAS, these short-term rentals are operating without a conditional use permit so that their neighbors have not been provided an opportunity to discuss any objections to or comments about these unlicensed short-term rentals; and

WHEREAS, city staff does not apparently have enough staff time to promptly locate and investigate these unlicensed short-term rentals so that the City should retain a private company to locate and investigate these unlicensed short-term rentals so the Fayetteville regulations will be enforced for all short-term rentals equally.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby authorizes and requests that Mayor Jordan contract with an independent contractor to locate, investigate and report to the City the address and status of all short-term rentals operating, but not currently licensed pursuant to the *Fayetteville Code*, and expresses its intent to approve an appropriate budget adjustment to fund this effort.

AGENDA REQUEST FORM

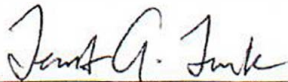
FOR: Council Meeting of May 16, 2023

FROM: Council Member Teresa Turk

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

A RESOLUTION TO AUTHORIZE AND REQUEST THAT MAYOR JORDAN CONTRACT WITH A COMPANY TO INVESTIGATE AND REPORT BACK TO THE CITY INFORMATION ABOUT SHORT TERM RENTAL OPERATIONS THAT DO NOT HAVE VALID BUSINESS LICENSES AND TO APPROVE AN APPROPRIATE BUDGET ADJUSTMENT TO PAY FOR THE CONTRACT

APPROVED FOR AGENDA:



**City Council Member
Teresa Turk**

April 28, 2023

Date



City Attorney Kit Williams
Approved as to form

April 28, 2023

Date

To: City of Fayetteville attorney, Kit Williams

From: Teresa Turk, City Council Member, Ward 4, Position 1

Date: April 28, 2023

Re: Request for Resolution to Investigate Unlicensed Short-Term Rentals within the City of Fayetteville, Arkansas

Good morning Kit,

I am requesting the drafting of a resolution to bring before the City Council on May 16, 2023 requiring the City of Fayetteville to hire an independent contractor with expertise and experience in identifying unlicensed short-term rentals. The findings from this investigation would inform the City Council and the Administration of the total number of short-term rentals operating within the City of Fayetteville and identify those out of compliance with City of Fayetteville ordinances.

Please let me know if you require further information and thank you for your assistance.

A handwritten signature in black ink, appearing to read "Teresa A. Turk". The signature is fluid and cursive, with the first name "Teresa" and last name "Turk" clearly visible.

Teresa A Turk

City of Fayetteville, AR, Council Member, Ward 4, Position 1



MEETING OF MAY 16, 2023

TO: Mayor Jordan and City Council

THRU:

FROM: Kit Williams, City Attorney

DATE:

SUBJECT: Amend City Council Rules of Order & Procedure Regarding Public Comment

RECOMMENDATION:

Council Member Berna is sponsoring a resolution to amend the City Council Rules of Order & Procedure to reduce the allowed speaking time for the public from 5 minutes to 3 minutes and to remove the requirement that speakers sign up to speak.

BACKGROUND:

DISCUSSION:

BUDGET/STAFF IMPACT:

ATTACHMENTS: Agenda Request Form



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2023-751

Amend City Council Rules of Order & Procedure Regarding Public Comment

A RESOLUTION TO AMEND RULE A.7. D. (2) PUBLIC COMMENTS TO REDUCE THE ALLOWED SPEAKING TIME FOR THE PUBLIC FROM 5 MINUTES TO 3 MINUTES AND TO REMOVE ANY REQUIREMENT FOR SPEAKERS HAVING TO SIGN UP BEFORE THE ITEM IS OPENED FOR PUBLIC COMMENT

WHEREAS, to better ensure that all members of the public will have a reasonable time to address the City Council at a more reasonable hour of the meeting, the allowed speaking time for each member of the public wishing to address the Council should be reduced to three minutes; and

WHEREAS, the fairly new change instituted to require every speaker having to be “signed up prior to the beginning of the agenda item they wish to address being opened for public comment” was confusing to the public, did not speed up the meeting, and has not been enforced for a long time, and therefore should be removed as a requirement for a member of the public to address the Council in person.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby amends the *Rules of Order and Procedure of the Fayetteville City Council* A.7.d.(2) **Public Comments** by repealing it in its entirety and replacing it as follows:

“Public Comments. The public shall be allowed three minutes to address the City Council during a public hearing or about any item on New or Unfinished Business which is then being considered. The City Council by unanimous consent or majority vote may allow a speaker additional time. Speakers present in the Council Chambers shall be recognized prior to speakers participating by electronic means. Amendments may receive public comments only if approved by the City Council by unanimous consent or majority vote. As part of a person’s public comments allowed above, a speaker may use electronic visual aids.”



DEPARTMENTAL CORRESPONDENCE

OFFICE OF THE
CITY ATTORNEY



TO: **Mayor Jordan**
City Council
City Clerk Treasurer Kara Paxton

Kit Williams
City Attorney
Blake Pennington
Assistant City Attorney
Jodi Batker
Paralegal

CC: **Susan Norton**, Chief of Staff

FROM: **Kit Williams**, City Attorney

DATE: **May 8, 2023**

RE: **Resolution to change public comment limitations to three minutes**

Council Member Berna has requested a Resolution to change the public comments from five minutes to three minutes during City Council meetings. The Council retains the power to grant further time by unanimous consent or majority vote.

I suggested that the Resolution also remove the seldom used requirement added during the pandemic that someone wishing to speak on an agenda item had to sign up before the public comments are allowed on the agenda item or this member of the public was barred from speaking. This was somewhat controversial when first proposed but passed by a majority vote of the Council. It was used for a while with the Council always allowing a speaker who had not signed up to go ahead and address the Council if that speaker asked for an exception.

This rule was proposed in an attempt to speed up the Council meetings. However, since persons who failed to sign up ahead of time had to specifically request that the City Council give unanimous consent or vote to allow the nonsigner to speak, it appears to have actually slowed down the meeting. No sign-up list had been required for decades of public comment, and it appears that a sign-up list is not really needed nor effective in speeding up the meetings. Therefore, I recommend that requirement be removed from your Rules.

Council Member Berna plans to walk this onto the Agenda Session tomorrow for next week's meeting.

AGENDA REQUEST FORM

FOR: Council Meeting of May 16, 2023

FROM: Council Member Scot Berna

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

A RESOLUTION TO AMEND RULE A.7. d. (2) PUBLIC COMMENTS TO REDUCE THE ALLOWED SPEAKING TIME FOR THE PUBLIC FROM 5 MINUTES TO 3 MINUTES AND TO REMOVE ANY REQUIREMENT FOR SPEAKERS HAVING TO SIGN UP BEFORE THE ITEM IS OPENED FOR PUBLIC COMMENT

APPROVED FOR AGENDA:

Approved by email

**City Council Member
Scott Berna**

May 5, 2023
Date



City Attorney Kit Williams
Approved as to form

May 5, 2023
Date

Williams, Kit

From: Berna, Scott
Sent: Friday, May 05, 2023 8:20 PM
To: Williams, Kit
Subject: Re: 3 minute time limit for public comment

I can sign on Monday or you can use my email. I have notified all council members of my walk on item

Scott Berna
Ward 3 Position 1
Fayetteville City Council

On May 5, 2023, at 5:25 PM, Williams, Kit <kwilliams@fayetteville-ar.gov> wrote:

Scott,

Do you want to sign and return the agenda request form to me or let your email approval stand for your request? This cannot be placed on the tentative agenda. You will have to walk it on to the Final Agenda at the Agenda Session. I will send it out to the council on Monday.

Kit

From: Berna, Scott <scott.berna@fayetteville-ar.gov>
Sent: Friday, May 05, 2023 5:07 PM
To: Williams, Kit <kwilliams@fayetteville-ar.gov>
Cc: Pennington, Blake <bpennington@fayetteville-ar.gov>
Subject: Re: 3 minute time limit for public comment

I am good with this.

RESOLUTION NO. _____

A RESOLUTION TO AMEND RULE A.7. d. (2) **PUBLIC COMMENTS** TO REDUCE THE ALLOWED SPEAKING TIME FOR THE PUBLIC FROM 5 MINUTES TO 3 MINUTES AND TO REMOVE ANY REQUIREMENT FOR SPEAKERS HAVING TO SIGN UP BEFORE THE ITEM IS OPENED FOR PUBLIC COMMENT

WHEREAS, to better ensure that all members of the public will have a reasonable time to address the City Council at a more reasonable hour of the meeting, the allowed speaking time for each member of the public wishing to address the Council should be reduced to three minutes; and

WHEREAS, the fairly new change instituted to require every speaker having to be “signed up prior to the beginning of the agenda item they wish to address being opened for public comment” was confusing to the public, did not speed up the meeting, and has not been enforced for a long time, and therefore should be removed as a requirement for a member of the public to address the Council in person.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby amends the *Rules of Order and Procedure of the Fayetteville City Council* A.7.d.(2) **Public Comments** by repealing it in its entirety and replacing it as follows:

“Public Comments. The public shall be allowed three minutes to address the City Council during a public hearing or about any item on New or Unfinished Business which is then being considered. The City Council by unanimous consent or majority vote may allow a speaker additional time. Speakers present in the Council Chambers shall be recognized prior to speakers participating by electronic means. Amendments may receive public comments only if approved by the City Council by unanimous consent or majority vote. As part of a person’s public comments allowed above, a speaker may use electronic visual aids.”

PASSED and APPROVED this 16th day of May, 2023.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
KARA PAXTON, City Clerk/Treasurer

(2) **Public Comments.** Public comment at a City Council meeting shall be allowed for all members of the audience who have signed up prior to the beginning of the agenda item they wish to address being opened for public comment. Speakers present in the City Council Chambers shall be recognized before speakers participating by electronic means. Speakers shall be limited to a maximum of five (5) minutes to discuss the agenda item being considered by the City Council. Amendments may receive public comments only if approved by the City Council by unanimous consent or majority vote. If public comment is allowed for an amendment, speakers will only be allowed to speak for three (3) minutes. The City Council may allow both a speaker additional time and an unsigned-up person to speak by unanimous consent or majority vote. As part of a person's public comments allowed above, the speaker may use electronic visual aids during their five (5) minutes presentation period concerning the agenda item being considered by the City Council.

e. **Courtesy and Respect.** All members of the public, all city staff and elected officials shall accord the utmost courtesy and respect to each other at all times. All shall refrain from comments that are harassing or amount to a personal attack against any identifiable individual including abusive comments and derogatory remarks about integrity or offer any other comments that are also not limited to the discussion of the specific agenda item being considered by the City Council. Any member of the public who violates these standards shall be ruled out of order by the Mayor, must immediately cease speaking and shall leave the podium.

8. **Smoking Prohibited.**

There will be no smoking allowed in the City Council Chambers during City Council meetings.

9. **Cell Phones and Pagers.**

Cell phones must be turned off or put in silent mode and not used within the City Council Chambers during City Council meetings. Pagers must be turned off or put in silent mode within the City Council Chambers during City Council meetings. These restrictions also apply during Agenda Sessions.

10. **Virtual City Council Meetings Authorized**

After proper notice has been provided to the public, City Council Members are authorized to assemble, gather, meet, and conduct open public meetings (including speaking, voting and passing ordinances and resolutions) through appropriate electronic means which ensure the public's right to attend by being able to listen to the proceedings and discussions. These open public meetings include City Council meetings and agenda sessions as well as City Council Member Committee meetings.